

EXAMINING THE RELATIONSHIP OF VARIABLES RELATED TO LITIGATION
REGARDING STUDENTS WITH SIGNIFICANT COGNITIVE DISABILITIES

by

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ABSTRACT

IRENE M. MEIER: Examining the relationship of variables affecting litigation regarding students with significant cognitive disabilities (Under the direction of DR. DIANE BROWDER)

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) contains procedural safeguard provisions for parents [20 U.S.C. § 615]. Among these safeguards are (1) dispute resolution, (2) mediation, and (3) administrative hearing. Getty and Summy (2004) contend that some district litigation could be prevented if districts were aware of the factors which may cause a parent to file for a contested case hearing. Best practice variables for students with significant cognitive disabilities were identified from the literature (Browder & Spooner, 2006; Snell & Brown, 2006), and legislative variables were also identified from IDEA (2004). Survey methodology was used to examine the relationship of the best practice and legislative variables and school district litigation. The respondents included 173 special education administrators from North Carolina, South Carolina, Maryland, Virginia and West Virginia. The results showed little variability in the dependent variable resulting in a lack of statistical significance. While results did not indicate significance for variables affecting litigation, descriptive analysis revealed that respondents self-evaluated their systems much higher on legislative than best practice variables. Implications for practice indicated a need for professional development for special education administrators in the area of best practices for students with significant cognitive disabilities. Implications for future research included expanding the study to include more states or the possibility of a comparative case study

focused on identifying variables associated with school district litigation for this population of students.

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CHAPTER 1: INTRODUCTION

Federal law governing students with disabilities has maintained procedural safeguards for parents since the Education for All Handicapped Children Act was passed in 1975. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) also contains procedural safeguard provisions for parents [20 U.S.C. § 615]. Parents have recourse, through dispute resolution, to file a petition for an administrative hearing if they believe a school district did not follow legal procedures or if they disagreed with district decisions involving identification, evaluation or placement of the child (Yell, 2006). Under IDEA (2004), there are now three distinct types of dispute resolution and parents are now entitled by federal law to enter into 1) resolution, 2) mediation, or 3) administrative hearing [20 U.S.C § 615 (2)(b)(5-7); (2)(e)(2)(a); (2)(f)(2)(1)(A)]. IDEA (2004) entitles parents and districts to enter into resolution and mediation sessions before an administrative hearing ensues. Resolution is a new provision of IDEA (2004) and was introduced into law as a step between mediation process and due process hearing [20 U.S.C. § 615(2)(f)(1)(B)(i)(ii)(iii)(iv)]. It is voluntary on the part of both parties and was an attempt by lawmakers to resolve differences outside of the hearing process. If resolution is successful, districts may enter into a settlement agreement that is legally binding (Richards & Martin, 2005). If resolution is unsuccessful, the parties may proceed to mediation or to hearing within the required time frame of 30 days from filing

complaint [20 U.S.C. § 615 (2)(f)(1)(B)(ii)]. In a recent study by Hazelkorn, Packard, and Douvanis (2008) the use of dispute resolution was found to be less widely used across five states.

Mediation may also occur before a case goes to administrative hearing and is outlined in IDEA (2004) as voluntary for both parties. Mediation cannot be used to delay the administrative hearing, and it must be conducted by an impartial mediator [20 U.S.C. § 615 (2)(e)(2)(A)(i)(ii)(iii)]. All proceedings during formal mediation sessions are confidential and may not be disclosed or used as evidence should the case proceed to hearing [20 U.S.C. § 615 (2)(e)(2)(G)]. Hazelkorn, Packard, and Douvanis (2008) found that 76% of districts surveyed believed that mediation permits a better discussion of the issues. Both resolution and mediation are legislative processes designed to settle disagreements between parents and school districts before a hearing occurs.

An administrative hearing occurs when resolution and mediation sessions are unsuccessful or a parent or school district refuses to participate in those dispute resolution processes [20 U.S.C. § 615 (2)(f)(1)(A)]. While federal law sets specific timelines for hearings to occur many states are unable to meet those timelines (Yell, 2000). While offering procedural safeguards for parents is a critical component of the law protecting students with disabilities, there are ramifications of litigation for both parties involved. First, dispute resolution at the level of administrative hearing is costly for school districts and parents in terms of attorney and expert witness fees. Second, it is very time consuming for everyone involved and parents and educators often miss time from work in order to attend and testify at the hearing. Third, an administrative hearing may damage the relationship between the parent and school. This relationship has been documented in

the literature as a key to student success (Snell & Brown, 2006). Fourth, it can also be a disruptive time for students because during the pendency of the hearing the student with a disability is entitled to the “stay put” provision of the law [20 U.S.C. § 6 (G)(j)]. This provision entitles the student to be returned to the prior placement regardless of the fact that it may not be the best placement for the student according to the professional educators involved. A final ramification of administrative hearings is that districts may enter into litigation that could have been prevented. Getty and Summy (2004) contend that some district litigation could be prevented if districts were aware of the factors which may cause a parent to file for a contested case hearing.

This study will focus on variables related to litigation for students with significant cognitive disabilities. These students are defined by Browder and Spooner (2006, p. xviii) as “one who 1) requires substantial modifications, adaptations, or supports to meaningfully access the grade-level content; 2) requires intensive individualized instruction in order to acquire and generalize knowledge; and 3) is working toward alternate achievement standards for grade-level content.” The authors also refer to a broader population of students than those with severe disabilities which may include students functioning in the moderate intellectual range, students with autism, and students with multiple disabilities (Browder & Spooner, 2006). According to Yell and Drasgow (2000), school districts enter into litigation with parents of students with significant cognitive disabilities for a variety of reasons.

Many students with autism have significant cognitive disabilities and fall under the definition outlined by Browder and Spooner (2006). Methodology, a district’s choice of instructional method and curriculum, is a prominent dispute area particularly in the

area of young students with autism (Katsiyannis & Maag, 2001). Parent requests for discrete trial training based on Lovaas methodology is often a request that results in school districts entering into a litigious situation with a parent. The courts across the nation have consistently deferred to the educational teams regarding methodology decisions (*Lachman v. Illinois State Board of Education, 1988*), but costly litigation continues to occur regarding methodological considerations particularly for young children with autism.

Etscheidt (2003) reviewed 68 legal cases published between 1997 and 2002 representing 28 states. All 68 cases involved parents of students with autism who have challenged, through litigation, the appropriateness of the district's proposed program for their child. The author's intent in reviewing the cases was to assist parents and schools in designing effective programs for students with autism, thereby reducing the need for costly and time intensive litigation. Results of the investigation revealed three major factors influencing the determination that an IEP had been reasonably calculated to confer educational benefit required. First, the goals developed should match the needs identified by the evaluation. Second, the IEP team participants should be qualified to make appropriate placement decisions for students identified with autism. Third, the methodology selected by the district should be able to achieve goals outlined in the child's IEP. A recommendation consistent with Yell and Drasgow (2000) was that districts must provide a program that is empirically validated. Heflin and Simpson (1998) recommended that educators question both the risks and outcomes of their programs as well as the efficacy. Crockett and Kaufmann (1999) recommended including empirically-

based practices in addition to providing a Free Appropriate Public Education (FAPE) and adhering to the principles of least restrictive environment (LRE).

A second area of dispute may occur when a parent believes that their child has been denied a Free Appropriate Public Education (FAPE) (Dragow, Yell, & Robinson, 2001). According to IDEA (2004), FAPE is defined as

special education and related services that (A) have been provided at public expense, under public supervision and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under 614(d). [20 U.S.C. § 602 (9)(A-D)]

The FAPE standard was first defined in the *Rowley* case as being “reasonably calculated to enable a child to receive educational benefit” (*Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 1982). This standard has been tested repeatedly in cases involving students with significant cognitive disabilities and the provision of both special education and related services.

One court case involving a student with a significant cognitive disability that further tested the definition of FAPE was *Polk v. Central Susquehanna Intermediate Unit 16* (1988). In this case, the 3rd U.S. Circuit Court of Appeals ruled that a child with significant cognitive disabilities was denied FAPE because the district provided consultative physical therapy rather than direct physical therapy as a related service. In the *Polk* case, the court held that IDEA called for more than trivial or *de minimis* benefit when applying the FAPE standard. This ruling held school districts to a higher standard when providing services designed to provide educational benefit to students with significant cognitive disabilities.

A third area of dispute may occur when parents disagree with school districts regarding a child's placement in their least restrictive environment (LRE) (Thomas & Rapport, 1998; Yell & Drasgow, 1999). According to IDEA (2004), least restrictive environment is defined as "to the maximum extent appropriate, children with disabilities, including children in public or private institutions and other care facilities, are educated with children who are not disabled." The law also reflects that students should not be removed from the regular education environment except "only when the nature and severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily" [20 U.S.C. § 612 (a)(5)(A)].

Concerning the principle of least restrictive environment (LRE), litigation has historically focused on the right of students with disabilities to be placed in inclusive settings (Yell & Drasgow, 1999). According to Villa and Thousand (2000), the term least restrictive is viewed as synonymous with the least segregated environment in which children with disabilities are less separated from their peers. According to Crockett (1999), the lack of agreement about placement has often interfered with service delivery for students with disabilities. Initially, the LRE term was introduced to stop placements focused on category of disability and to discourage states from obtaining funding based on category alone (Crockett & Kaufmann, 1999). According to Yell (1995), there are five elements related to inclusion grounded in federal regulations. They are (1) the individual needs of the student determine their least restrictive environment, (2) districts are not required to place a student in an integrated setting before recommending a segregated placement, (3) each district should make a continuum of alternative placements available

to students, (4) if students are placed in segregated placements then they should be integrated to the maximum extent appropriate to meet their individual needs, and (5) the potential disruptive effect on the students without disabilities should be considered. The courts have considered many of these elements when making decisions in LRE cases involving students with significant cognitive disabilities.

In *Oberti v. Board of Educ. of Borough of Clementon Sch. Dist* (1993), the 3rd U.S. Circuit Court of appeals ordered full inclusion of a young child with Down syndrome because they said the district reached the decision regarding a segregated placement without considering the range of supplemental aids and services. The court concluded that the use of the supplemental aids and services may have assisted the student to be successful in a general education placement. In this case, the courts considered three factors in making their decision. First, they considered whether or not the district made a reasonable effort to accommodate the child in a general education classroom. Second, they investigated what educational benefits were available to the child in the general educational classroom if appropriate supplemental aids and services were provided as compared to potential benefits that would have been provided in a segregated class. Third, they questioned whether there were any possible negative effects on the education of students in the class if the child were included. In addition, the courts considered the young age of the student (age 8) as a significant factor in favor of inclusion.

In *Sacramento City Unified Sch. Dist. Bd. Of Educ v. Rachel H. by Holland* (1994), the courts considered similar factors as in *Oberti*, but they also considered the cost of including a student in a general education classroom. In this case, the district was

unable to demonstrate that placing the student in general education classes would burden the district financially. In *Daniel R.R. v. State Bd. Of Educ* (1989), the courts established a similar standard for deciding whether a student with significant cognitive disabilities can receive an appropriate education in an inclusive placement (Norlin, 2007).

Crockett and Kaufmann (1999) refer to LRE, FAPE, and evidence-based practices as “the holy trinity” of special education law. A key concept in the literature is that following the legal tenets of LRE and FAPE may not be all that is required of districts to prevent disputes. Researchers in the field of special education and special education law make reference to the fact that validated or evidence-based practices should be followed by school districts as well (Crockett & Kaufmann, 1999; Etscheidt, 2003; Yell & Drasgow, 2000). Therefore, focusing on legal tenets of IDEA alone may not be sufficient in and of itself to prevent legal disputes.

A fourth area of litigation may occur in the area of related services (Bartlett, 2000). According to IDEA (2004), “the term related services means transportation, and such developmental, corrective, and other supportive services.....as may be required to assist a child to benefit from special education.” Some examples of related services outlined in the statute are speech-language pathology, audiology, interpreting services, psychological services, occupational and physical therapy, therapeutic recreation services, social work, nursing, counseling, orientation and mobility, medical services designed for evaluative purposes” [20 U.S.C.§ 602(26)(A)]. The area of related services has been a frequent area of litigation cited in case law regarding students with significant cognitive disabilities.

In *Irving Independent School District v. Tatro* (1988), the U.S. Supreme Court ruled that clean, intermittent catheterization for a child with spina bifida was considered a related service and not an excluded medical service under federal law. In this landmark case, the U.S. Supreme Court established a “bright line” test stating that districts must provide health care related services if the child needs these services during the day so that they may attend school and benefit from their education. The services must be able to be performed by non-physicians and would therefore be considered a related service under IDEA rather than a medical service (Norlin, 2007).

Another case related to the provision of health services as related services for students with significant cognitive disabilities is *Cedar Rapids Community Sch. Dist. v. Garret F.* (1999). In this case the U.S. Supreme Court upheld the previous *Tatro* decision when a district refused to provide services to a medically fragile student. The student required catheterization, as well as blood pressure monitoring, suctioning of tracheotomy, and ventilator-setting checks. Since the services were necessary for the student to attend school, and they did not require the services of a physician, they were deemed supportive services outlined in IDEA under the related services provision.

While sufficient case law evidence exists related to the fact that districts are repeatedly challenged in the courts by parents of students with significant disabilities, there are limitations in the literature. The majority of studies have focused on school district litigation regarding students with autism (Choutka, Doloughty, & Zirkel, 2004; Mandlewitz, 2002; Turnbull, Wilcox, & Stowe, 2002). Regarding other disability categories of students with significant cognitive disabilities as defined by Browder and Spooner (2006), litigation has focused primarily on methodology, FAPE, LRE, and

related services disputes. Zirkel & Gischlar (2008) found there was an ascending trend in litigation regarding students with disabilities for the period of 1997 to 2005. However, there are a limited number of studies in the literature that focus on what causes parents of students with significant cognitive disabilities to file for a contested case hearing. There are also limitations in the literature as to what school districts are doing which prompts parents to file for due process and also a lack of empirical data concerning special education litigation due to the difficulties that arise in conducting an analysis of the case law (Mayes & Zirkel, 2001).

While litigation has often defined the parameters of educational services for students with significant cognitive disabilities, experts in the field have often advocated for practices that go beyond the minimum intent of the law. Various states and school districts also interpret the intent of the law differently. Given the alignment of NCLB (2002) and IDEA (2004) regarding the use of evidenced-based practices, districts no longer can rely on meeting minimum legal compliance standards and must also incorporate evidence-based practices for students with significant disabilities if they are to avoid potential litigation.

Given the problem of recurring costly school district special education litigation across the nation, as well as a lack of empirical evidence as to what causes districts to enter into litigation, the purpose of this study was to investigate the amount and type of litigation for students with significant disabilities in school districts located in North Carolina, South Carolina, Virginia, West Virginia, and Maryland. A second purpose was to identify variables from the literature in the areas of both federal legislation and best practices which may cause a district to enter into litigation. This research investigation

proposed two main hypotheses. The first hypothesis is that school districts enter into litigation related to students with significant cognitive disabilities because they fail to implement the key principles of IDEA (2004). The second hypothesis is that school districts enter into litigation because they fail to implement program quality indicators and best practices for students with significant cognitive disabilities as outlined in the literature.

Given the hypotheses, the investigation sought to answer the following four research questions:

- 1) What is the amount and type of litigation that occurs in school districts within the United States Court of Appeals (Fourth Circuit) related to students with significant cognitive disabilities?
- 2) Are there significant differences in litigation among the types of litigation (no litigation, resolution, mediation, administrative hearing) that occurs in school districts across a three-year time period in the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?
- 3) Does failure to implement best practice variables identified in the literature affect the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the the United States Court of Appeals (Fourth Circuit)?
- 4) Does failure to implement federal legislative mandates of IDEA (2004) affect the amount of litigation regarding students with significant

cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

The potential significance of the study was to inform school districts in five states as to which variables may influence litigation in their districts related to students with significant cognitive disabilities. As a result, school districts may potentially seek to provide improved quality educational services to students with significant cognitive disabilities and adhere to the major tenets of federal legislation. If any variables are substantiated to affect litigation, results would be beneficial to school districts parents, and to students with significant cognitive disabilities. School districts may be able to reduce costly and time intensive litigation in their districts, parents may be assured their child is receiving appropriate services and students with significant cognitive disabilities may receive higher quality, evidence-based educational programs.

Definitions of Terminology

Key terminology used throughout this study will be defined in this section. Understanding the key terminology presented will be critical to understanding the purpose, implementation, and results of the study.

Administrative hearing. Parents of students with disabilities may file a petition for a contested case hearing conducted by an impartial hearing officer if they disagree with a decision of the school district (IDEA, 2004).

Free Appropriate Public Education (FAPE). Students with disabilities are afforded an education that is considered “appropriate” and at no cost to parents as outlined in their individualized education program (IEP) (IDEA, 2004).

Individualized Education Program (IEP). Each student with a disability is required to have an IEP outlining their strengths and weaknesses, present level of performance, annual goals, short-term objectives or benchmarks, classroom modifications, test accommodations, regular program participation, special education and related services, access to assistive technology, Braille, sign language, supplementary aids and services, extended school year, and justification for least restrictive environment (IDEA, 2004)

Least restrictive environment (LRE). Educational placement for students with disabilities should be in their least restrictive environment which is considered to be placement with typical peers to the maximum extent appropriate for the student with disabilities given supplementary aids and services (IDEA, 2004).

Mediation. Voluntary dispute resolution designed to prevent disagreements from moving into an administrative hearing. It is the second attempt resolution that would occur after dispute resolution and prior to administrative hearing (IDEA, 2004).

Related services. Services designed to help students derive benefit from special education. Examples include, but not limited to, speech therapy, occupational therapy, physical therapy, counseling, orientation and mobility, and transportation (IDEA, 2004).

Resolution. This is the first step in voluntary dispute resolution that must occur within fifteen days of filing of a petition for an administrative hearing. It is a new component of the reauthorized statute of 2004 (IDEA, 2004).

Students with significant cognitive disabilities (SCD). In the literature this refers to a broader population of students than those with severe disabilities and may include students functioning in the moderate intellectual range, students with autism, and students with multiple disabilities (Browder & Spooner, 2006).

CHAPTER 2: REVIEW OF THE LITERATURE

This chapter will review both the empirical and theoretical evidence in the fields of significant cognitive disabilities and special education legislation. One of the primary roles of a special education director is to oversee the provision of quality educational programs in their respective districts for students with disabilities, including those students with significant cognitive disabilities. This investigation sought to identify the variables which may potentially influence a district to engage in litigation regarding students with significant cognitive disabilities. Program quality indicators and best practices based on expert opinion in the field will be reviewed in an effort to identify potential predictor variables for quality educational programs. Since the investigation sought to determine if there are best practice and legislative predictor variables which may affect school district litigation, major tenets of IDEA (2004), including relevant case law, will also be reviewed. This review of empirical data, theoretical constructs, and federal mandate requirements will establish the conceptual framework for this investigation.

In the literature of the late 70's, educational programs for students with significant cognitive disabilities were often described in terms of the *criterion of ultimate functioning* which refers to “the ever changing, expanding, localized, and personalized cluster of factors that each person must possess in order to function as productively and independently as possible in socially, vocationally, and domestically integrated adult

community environments (Brown, Nietupski, & Hamre-Nietupski, 1976, p. 8). Many of the earlier recommended program features were not supported by empirical evidence and the criterion of ultimate functioning was used to evaluate the programs (Donnellan & Neel, 1986; Meyer, Eichlinger, & Park-Lee, 1987). Since data were not always available for this population of students, Donnellan (1984) suggested applying the *criterion of the least dangerous assumption*. This criterion advocated that decisions should demonstrate practices that would have the least dangerous effect on students' independent adult function given a lack of empirical evidence. Donnellan and Neal (1986) proposed that the combination of the criterion of ultimate functioning and least dangerous assumption, although two separate concepts, may be helpful in evaluating program decisions.

In 1987, Meyer, Eichlinger, and Park-Lee, outlined a social validation study of program quality indicators in educational services for school-age students with severe disabilities. Six respondent groups were identified comprised of those who had influenced programs for students with severe disabilities and met inclusionary criteria for participation. Four expert groups were represented in the areas of (a) behavior therapy, (b) services for student who were deaf-blind, (c) researchers in the area of mental retardation, and (d) severe disabilities experts identified by TASH. In addition, two groups represented service delivery and consumers of services such as state special education directors and parents of students with disabilities. A total of 254 survey respondents participated for an overall response rate of 68%. While Program Quality Indicators were derived from some available empirical data, the majority was derived from expert opinion. Principal factor analysis revealed five factors which were (1) integration, (2) individualized professional practices and home-school instructional

strategies, (3) staff development, (4) data-based instruction, and (5) criterion of ultimate functioning.

Results of analysis revealed consensus about the value of the Program Quality Indicators and some differences were detected as to which indicators were viewed as important to educational programs for students with severe disabilities. On the integration factor, the severe disabilities experts and parents were significantly higher than the behavior and deaf-blind experts and the researchers. State special education directors reported that they did consider integration to be important. On the staff development factor, the parent group had significantly higher ratings. On the data-based instruction factor, the severe disabilities expert's ratings were significantly higher than all other groups except for behavior experts who rated this factor significantly higher than the researchers and state directors. The findings of this study gave evidence of strong support for the social validity of the Program Quality Indicators.

In 1987, the differences in the stakeholders groups may have implied some underlying conflicts between those groups. Integration was a growing concern for state special education directors as more parents requested that their children with severe disabilities spend more time in the general education class. Litigation was growing across the nation in the least restrictive environment arena. Experts in the field, researchers and behavior experts were advocating for data-based instruction while parents were rating the need for staff development as significant. While this investigation did not serve as a replacement for the need for establishment of evidence-based practices for students with significant cognitive disabilities, this early study was a first step in identifying components of a quality program (Meyer et al., 1987). Since the identification of quality

indicators in the late 1980's, many experts in the field have continued to promote the same concepts as best practices in the field (Browder & Spooner, 2006; Kennedy & Horn, 2004; Snell & Brown, 2006; Westling & Fox, 2004). These best practices in the literature include (1) inclusive practices, (2) home-school relationship, (3) collaborative teaming, (4) systematic instruction, (5) positive behavior support, (6) self-determination, (7) teaching academic skills, and (8) teaching functional skills. Each of these areas will now be reviewed in terms of both theoretical and empirical constructs.

Inclusive Practices

According to Alper (1996), full inclusion has been defined as “the practice of educating students with moderate to severe disabilities alongside their chronological age peers with disabilities in general classrooms within their home neighborhood schools” (p.3). Full inclusion encompasses social and physical integration into activities that occur in school which are educational, recreational, and social. Inclusion, as opposed to full inclusion, refers to the “placement of special education students in general education settings (Sailor & Roger, 2005, p.503).

Based on his earlier work, Giangreco (2006), outlined characteristics of inclusive education. First, students with disabilities would attend their district school in which they would attend if not disabled, appropriate supports would be available, and all students would be welcome in the general education program. Second, students with disabilities would be educated with age-appropriate peers in classes where the proportion of students with disabilities is related to the proportion in the community. Third, shared educational experiences would take place in general education classes and integrated community settings. Fourth, students would receive educational services that are individually

designed to balance academic-functional and social-personal domains of learning.

Ryndak (1996) outlined instructional strategies such as cooperative learning strategies, small group instruction, and peer partnering, including peer tutoring and study buddies, as effective strategies to facilitate inclusion of students with significant cognitive disabilities.

Benefits for full inclusion of students with significant disabilities have been established in the literature. A review of the literature by Alper and Ryndak (1992) revealed that students with significant cognitive disabilities who are fully included have more opportunities for social interaction, appropriate behavior models, improved communication and social skills and friendships. Teachers develop higher expectations as students access more age-appropriate curricular content. Finally, students may increase their chances for increased participation in life-long integrated activities.

The utilization of peer supports has been documented to be a viable alternative strategy to support students with significant cognitive disabilities in the general education classroom (Cushing & Kennedy, 1997). Carter et al., (2005) investigated the potential impact of altering number of participating peers on social and academic outcomes of students with significant cognitive disabilities. The participants were three middle school students with significant cognitive disabilities and six general education students. Peers were taught strategies including how to adapt materials, provide instruction on IEP goals, implement behavior plans, give feedback to the student, and promote communication between the students with disabilities and their peers in the classroom. Results indicated that students with disabilities increased social interaction when two peers were provided vs. one peer but this did not affect their interactions with other students in the class. Peer

supports did encourage the student's activities being aligned with the general curriculum. Neither configuration of peer supports had a negative effect on the general education student's curricular access. Therefore, it was not detrimental for the general education students to serve as peer supports for student with disabilities. These studies illustrate a body of research that supports inclusive practices for students with significant cognitive disabilities (Giangreco, 2006).

Home and School Collaboration

Chen and Miles (2004, p. 31) stated that "teachers not only must have instructional skills for teaching children but also must have the competency to work effectively with families." The 1997 amendments to the Individuals with Disabilities Education Act (IDEA) increased the parent's responsibility to be an active partner in decision-making with the schools and agencies. Under this amendment parents have the right to informed consent as it relates to assessment, goals, objectives, services and also to participate in all decisions that relate to eligibility and placement (National Information Center for Children and Youth with Disabilities, 1998).

While schools today appear to be child focused, there is a need to be more family-focused and utilize a family-centered approach when working with students with significant cognitive disabilities (Childre, 2004). Family and educator collaborative practices are more likely to be positive when using a family-centered approach. According to Powell, Batsche, Ferro, Fox, and Dunlap (1977), major principles for establishing a family-centered approach are: (1) building trust, (2) open communication, (3) enabling and empowering family and student, and (4) utilization of a collaborative problem-solving approach.

Conflicts often arise between parents and educators when the issue of educational priorities is discussed (Browder & Lim, 2001). In a study by Hamre-Nietupski, Nietupski, and Strathe (1992), Iowa parents of students with moderate to severe and profound disabilities were asked to rate the value they placed on functional life skills, social relationship/friendship skills, and functional academics. Results indicated that parents of students with moderate disabilities ranked functional life skills at the highest level, followed by functional academics and social relationship/friendship skills. Parents of students with severe and profound disabilities varied in that they ranked social relationship/friendship skills at the highest level, followed by functional life skills and functional academics. In another study, Lim, Tan, and Quah (2000) surveyed Singaporean parents of students with mild, moderate and severe disabilities. Results indicated that parents of students with moderate and severe disabilities ranked self-help functional life skills, followed by community-based life skills, social relationship and then functional academics. Since possible differences exist among parents of varying cultures in terms of educational priorities, educators must be aware of both parental preferences and cultural influences when collaborating with families to achieve optimum outcomes for students.

Collaborative Teaming

For students with significant cognitive disabilities to experience school success a certain degree of collaborative teaming among professionals is required (Ryndak, 1996). A collaborative team has been defined by Ryndak (1996, p. 85) as “a group of equal individuals who voluntarily work together in a spirit of willingness and mutual reward to problem solve and accomplish one or more common and mutually agreed upon goals by

contributing their own knowledge and skills and participating in shared decision making, while focusing on the efficiency of the whole team.” A collaborative team functions differently than a transdisciplinary team in that the members focus on the student needs and work together to accomplish their goals as a team rather than individually (Thousand & Villa, 2000). In collaborative teaming, professionals brainstorm to meet a student’s needs in many environments, including school, home and the community. The team shares roles and responsibilities and treats the student as a “whole” rather than just focusing on the student’s needs in their particular discipline. Collaborative teams plan services in locations that would be considered “natural.” For example, collaborative services are delivered in location where the target skill may naturally occur (i.e. eating in the cafeteria) rather than working on skills in isolation.

One of the benefits of collaborative teaming for students with significant disabilities is the students have increased number of practice trials during the instructional day which may result in a faster acquisition and generalization of skills. A second benefit is that collaborative teams provide information to parents relative to instructional strategies and application to real-life situations. A third benefit is that collaborative teams problem solve and provide technical and moral support to each other, to the classroom teacher, families and student (Ferguson, Meyer, Jeanchild, Juniper, & Zingo, 1992). The use of collaborative teaming, including cross-disciplinary instruction and flexible scheduling, has been supported in the literature by expert opinion as a best practice for this population of students (Ryndak, 1996; Snell & Brown, 2006; Westling & Fox, 2004).

Systematic Instruction

Students with significant cognitive disabilities have been able to acquire new skills and behaviors through the use of systematic instruction. Systematic instruction has been defined as “teaching focused on specific, measurable responses that may either be discrete (singular) or a response chain (e.g., task analysis), and that are established through the use of defined methods of prompting and feedback based on the principles and research of applied behavior analysis” (Browder, 2001, p. 95). Prompting is one component of systematic instruction and various types have been used successfully with students with significant cognitive disabilities (Kennedy & Horn, 2004; Westling & Fox, 2004). Prompting may be gestural, pictorial, model, partial or full physical prompts. Gestural prompts can often occur in a natural context but they have limitations and may not exert enough stimulus control over the student so that the desired behavior is performed. Verbal prompts are defined as “use of a specific verbal statement that tells a student what to do and how to do it” (Westling & Fox, 2004, p. 158). Pictorial prompts involve two-dimensional stimuli such as the use of symbols in the forms of words or signs. An example of an effective use of this type of prompt has been with the use of job picture books which have been used to increase job performance of students with severe disabilities (Copeland & Hughes, 2000). Model prompts involve the use of demonstration teaching of a behavior. Physical prompts can be either partial or full. Partial physical prompts can be observed when the teacher touches or makes physical contact with the student as opposed to full physical response occurring when the teacher places his or her hand over the student’s hand and guides the student to complete the task. Full prompting

is perceived as the most intrusive prompt and should only be used if a student does not respond to less intrusive prompting strategies.

The system of least prompts refers to hierarchy in which a teacher presents a series of prompts from least to most intrusive. If there is no response or an incorrect response, prompts are then given from the least to the most intrusive until the student gives the correct response (Ault, Wolery, Doyle, & Gast, 1989). In another study, Doyle, Wolery, Ault, and Gast (1988) found that the system of least prompts was successful in teaching students with a variety of ages and diagnoses as well as tasks across various domains. Billingsley and Romer (1983) reviewed investigations focused on prompt fading. Results were mixed and indicated that most-to-least prompting may be more effective than least-to-most prompting for students with significant cognitive disabilities primarily in the acquisition phase of learning.

Prompts must be faded in an effort to decrease student dependence on prompting. Demchak (1990) reviewed four methods for systematically fading prompts such as: (1) system of least prompts, (2) system of most-to-least prompts, (3) graduated guidance, and (4) time delay. Results were consistent with Billingsley and Romer (1983) and Ault et al., (1989). Demchak (1990) found that the system of least prompts is more efficient than most-to-least prompts for achieving an instructional goal while the system of most-to-least prompts is more efficient for acquisition. Time delay and the system of least prompts were equally effective for discrete responses while time delay is more efficient. Constant time delay and system of least prompts was found to be equally effective when teaching chained responses.

Systematic instruction also includes the use of task analysis which identifies the specific skills required to execute a skill. Chained tasks have been defined as “those that involve a number of behaviors sequenced together to form a complex skill” (Wolery, Ault, & Doyle, 1992, p. 49). Constant time delay is a response prompting procedure that has been reported in the literature to be an effective method of teaching chained tasks to students with varying disabilities including mental retardation (Ault, Gast, & Wolery, 1988) and students with multiple disabilities (Wolery, Ault, & Doyle, 1992). The use of constant time delay as a controlling prompt will ensure a correct student response and can initially present as a zero time delay with increases across time in an effort to fade the prompt. In a review of the literature on constant time delay, Schuster, Morse, Ault, Doyle, et al. (1998) analyzed demographics, procedural variables, outcome measures, and methodological adequacy for twenty investigations. Results of the literature review indicated that the use of time delay for chained tasks was an effective strategy for students with a wide variety of disabilities across settings.

Positive Behavior Support Strategies

Positive behavior support has been used as an effective practice for managing challenging behaviors in students with disabilities, including students with significant cognitive disabilities (Snell & Brown, 2006). Positive behavior support strategies have also proven to be effective for students with autism (Horner et al., 2002) and those with developmental disabilities (Carr, Horner, Turnbull, Marquis, McLaughlin, et al., 1999). It has been described by some experts in the field as using positive strategies to decrease inappropriate behaviors and increase appropriate behaviors (Horner et al., 2006). Snell

(2005) reported that although PBS has experienced success there is still a research to practice gap for students with significant cognitive disabilities.

Carr et al. (1999), conducted a comprehensive review of 107 studies involving positive behavior support. Two hundred and twenty-two participants, with the largest percentage having mental retardation, were identified in the studies between the years 1985-1996. The investigation focused on the following variables: (1) demographics, (2) assessment, (3) interventions, and (4) outcomes. Results of the comprehensive review indicated that the field has been growing over the years primarily in the areas of assessment and interventions focused on remediating environmental deficiencies. PBS strategies can be utilized for people with serious behavioral problems and are effective in reducing behavioral problems in one- half to two-thirds of cases. Success rates appear to improve to almost double when the intervention is predicated upon the functional assessment.

Self-Determination

The importance of self-determination for students with disabilities has been substantiated in the literature although students with significant cognitive disabilities have not always had the opportunity to learn these skills (Algozzine, Browder, Karvonen, Test, & Wood, 2001; Martin, Van Dycke, Christensen, Greene, Gardner, et al., 2006; Wehmeyer, & Schwartz, 1998; Wood, Fowler, Uphold, & Test, 2005). Self-determination has been defined as “a combination of skills, knowledge, and beliefs that enable a person to engage in goal-directed, self-regulated, autonomous behavior” (Field, Martin, Miller, Ward, & Wehmeyer, 1998, p. 2). These skills include (a) choice making, (b) decision-making, (c) goal setting and attainment, (d) problem solving, (e) self-

awareness, (f) self-regulation, (g) and participation in the IEP process (Agran, Blanchard, Wehmeyer, & Hughes, 2001; Allen, Smith, Test, Flowers, & Wood, 2001; Van Reusen & Bos, 1990). Wehmeyer (2005) has proposed that the definition of self-determination for students with significant cognitive disabilities be that “self-determined behavior refers to volitional acts that enable one to act as the primary causal agent in one’s life and to maintain or improve one’s quality of life” (p. 117).

Self-determination practices evolved as a result of the normalization and deinstitutionalization efforts of the 1970’s. The concept of self-determination is about teaching individuals with disabilities to make choices, as well as teaching individuals without disabilities to respect those choices (Algozzine, et al., 2001). Regardless of the severity of disability, all individuals should be active participants as much as possible in exercising choice over the decisions affecting their lives (Brown, Betz, Corsi, &Wenig, 1993). According to Wehmeyer and Schwartz (1998), people who are self-determined have better outcomes related to their quality of life. Research has demonstrated that students of varying age ranges and disabilities can be taught self-determination and self-advocacy skills (Algozzine, et al., 2001; Wood et al., 2005).

Wood et al. (2005) reviewed 20 single-subject designs and one qualitative study focusing on interventions in self-determination for students with significant cognitive disabilities. Results of both Algozzine et al. (2001) and Wood et al. (2005) indicate that research on self-determination for students with significant disabilities is limited and, in both reviews, the most common self-determination component was choice making.

Functional Skills Instruction

The initial model used for instruction of students with significant cognitive disabilities was the developmental model which focused on instructing students at the mental age level as determined by developmental assessment (Spooner & Browder, 2006). In the mid 1970's Brown, Nietupski, and Hamre-Nietupski, (1976) rejected the developmental model in favor of a more *functional* curriculum. Thus, the acquisition of functional skills was considered to be the only outcome of educational programs for many years (Brown, Snell, & Lehr, 2006). While students with significant cognitive disabilities should also participate in academic instruction, Westling and Fox (2004) recommend that the teaching of functional skills should also occur on a daily basis and functional objectives should be incorporated into a student's individualized educational program (IEP). Functional skills include those skills deemed necessary to promote the "criterion of ultimate functioning" and result in achieving independence whenever possible. Brown et al., 1976) referred to four domains in the functional curriculum as community, domestic, vocational, and recreational.

Some recommended practices for teaching functional skills include: (1) objectives should be focused on increasing independence or self-determination while teaching integrated skills, (2) skills should be taught in the home, school, or community environment (naturalistic settings) within functional contexts, (3) skills should be taught that not only focus on initial acquisition of skills but also on maintenance and generalization of skills, and (4) data should be kept on student performance and results of the data should drive the decisions to change instruction (Westling & Fox, 2004).

In a study of 14 teachers of severe disabilities over a two year period, Liberty, White, Haring, and Billingsley (1988) reported that only 33% to 44% of decisions of an instructional nature made by teachers actually resulted in an improvement in student performance. This occurred even among teachers who collected student data on a frequent basis. Functional relevance in the literature is used to imply that the goals and instructional methods are socially valid. Areas of need that will have an impact on the student's life should also be incorporated into the curriculum (Gee, 2004). While functional skills remain critically important in a comprehensive curriculum for students with significant disabilities, the functional age-appropriate skills may also provide a context for academic learning that is meaningful to the student (Spooner & Browder, 2006).

Academic Skills Instruction

According to Spooner and Browder (2006, p.5) "the primary reason to teach academic content to students with severe disabilities is to promote equal access to the educational content all students receive." In the area of literacy, Koppenhaver & Yoder (1993) reported that students with severe disabilities did not have sufficient opportunities to participate in literacy activities in school. The reasons for this could be the low expectations that children with severe disabilities could learn to read and the difficulty making reading materials accessible for this population of students (Browder, Courtade-Little, Wakeman, & Rickelman, 2006). In a comprehensive review of the literature, Browder, Wakeman, Spooner, Ahlgrim-Delzell, and Algozzine (2006) identified 128 studies in literacy between the years 1975 and 2003. When analyzed across the National Reading Panel's "Big Ideas" for reading, the majority of the studies (80) focused on

teaching sight word vocabulary. Fluency was measured in some (36) of the studies while comprehension was measured in 31 studies. A very small number of studies focused on phonemic awareness (5) and phonics (13). Gains were made by students in teaching sight words using repeated trials with systematic instruction (prompting and fading). The use of time delay procedures was common across studies that were defined as high quality using Horner et al. (2005) standards.

According to Browder, Ahlgrim-Delzell, Pugalee, and Jimenez (2006), much of the research in math instruction for students with moderate to severe disabilities has focused on instruction of the functional skill of money management. In 2005, Browder, Spooner, Ahlgrim-Delzell, Flowers and Algozzine conducted a comprehensive review of 55 math studies since 1975 involving students with moderate to severe disabilities. The result of the review indicated that 27 studies, almost half, involved a form of money management skills. In most of these studies systematic instruction using repeated trials were used. While math focuses on five content areas of “number and operations, algebra, geometry, measurement, data analysis and interpretation” (Browder et al., 2006, p.192), most studies involving students with significant cognitive disabilities has focused on purchasing skills.

Spooner, DiBiase, and Courtade-Little (2006), stated that empirical research on teaching science to students with significant cognitive disabilities is limited except for two areas: personal and social perspectives and earth and space sciences. A comprehensive review of the science literature for students with significant cognitive disabilities was conducted by Courtade, Spooner, and Browder (2007). The review covered 20 years of research and 11 studies were identified. The skills taught in 8 of the

11 studies were categorized under Content Standard F of the National Science Content Education Standards (Science in Personal and Social Perspectives). Two studies that involved students knowing relative position were categorized under Content Standard B which was Physical Science. One study investigated the acquisition of weather-related sight words and this was categorized under Content Standard D: Earth and Space Science. No data-based studies were identified in the review in the content areas of Science as Inquiry, Life Science, Science and Technology, and History and Nature of Science. The interventions used in the 11 studies included systematic response prompting methods similar to those found in reading and math studies (Browder et al., 2006; Browder et al., 2007). One instructional strategy found across all of the studies was the use of time delay. While data-based studies are limited in the area of teaching science to students with significant cognitive disabilities, the studies that were reviewed further support systematic instruction as a strong methodology for teaching this population of students.

Legislative Variables

In addition to best practice indicators derived from expert opinion and the literature, IDEA (2004) tenets may also influence litigation in a school district (Etscheidt, 2005; Yell, 2006). Several components of current federal legislation were influenced by expert opinion, therefore, the two categories of variables related to best practices and legislation are not mutually exclusive. Expert testimony over the years influenced the legislation passed by the federal government. The key components of IDEA (2004) are: (a) special education [20 U.S.C. § 1404(a)(16), (b)] free and appropriate public education (FAPE) [20 U.S.C. § 1401(18)(C)], (c) least restrictive environment (LRE) [20 U.S.C. §

1412], (d) access to the general curriculum [20 U.S.C. § 14], (e) related services [20 U.S.C. § 1404(a)(17)], (f) transition services [20 U.S.C. § 1401(a)(19)], (g) individualized educational program (IEP) [20 U.S.C. § 1414(a)(5)], (h) assistive technology [20 U.S.C. § 1401(25-26)], and (i) procedural safeguards [20 U.S.C. § 1415(a)].

IDEA (2004) contains many critical components designed to protect students with disabilities and ensure that they receive what they are entitled to under the law which is a free and appropriate public education (FAPE). This must be delivered in the student's least restrictive environment (LRE) and consists of specially designed instruction and related services designed to confer educational benefit as outlined by the *Rowley* standard established by the United States Supreme Court (*Rowley*, 1982). A procedural violation occurs when there is an error in the process and sometimes results in no penalties to school districts (Yell, 2006). Some examples of procedural violations are: (a) required members missing at an IEP meeting, (b) paperwork completed incorrectly, and (c) a lapsed timeline such as an IEP or re-evaluation. According to IDEA [20 USC § 1415(f)(3)(E)(ii)], circumstances were outlined when procedural violations may result in a denial of FAPE such as: "(i) Impeded the child's right to a free appropriate public education, (ii) Significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefit. Substantive violations have been viewed by the courts differently and districts that have evidence of substantive violations have not always prevailed in litigation (Yell, 2006). Some examples of substantive violations are (a) denial of FAPE, (b) failure to evaluate in a timely manner, and (c) failure to provide services outlined on an IEP.

Nine key components of IDEA (2004) will be defined and discussed in this review. Relevant case law will be presented to document both procedural and substantive violations. It is important to note that in the instance of case law judicial decisions do not set precedent for every school district in the nation. The decisions are only binding for that court's jurisdiction. However, the courts do review case law from other jurisdictions as guiding practices when confronted with a similar case (Norlin, 2007). Table 1 illustrates relevant case law for some of the major components of IDEA and all published cases have been cited to LRP's Individuals with Disabilities Education Law Report (IDELR).

Special Education

In IDEA (2004) "special education" is defined as "specially designed instruction at no cost to parents, to meet the unique needs of a child with a disability...." [34 C.F.R. § 300.39(a)(1)]. Specially designed instruction is further defined as "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction (i) to address the unique needs of the child that result from the child's disability; and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children" [34 C.F.R. § 300.39(b)(3)]. In order for students to qualify for one of IDEA's thirteen categories they must be determined to be eligible for a particular category of disability. Included in the eligibility criteria is a student need for the provision of "specially designed instruction."

Case law from the 8th circuit ruled on the denial of specially designed instruction to a student with cerebral palsy. In *Yankton School District v. Schramm* (1996) a school

district decided to dismiss a student from special education two weeks before her sixteenth birthday citing she was not in need of special education services. The student had been determined eligible for special education due to a physical impairment of cerebral palsy since the 3rd grade. The 8th Circuit Court of Appeals denied the district's claim that the student could receive an adequate education without IDEA services. The decision of the courts ruled against the school district because the student was entitled to IDEA eligibility not because of the physical impairment alone but because of the need for specially designed instruction, including a transition plan.

Free and Appropriate Public Education (FAPE)

FAPE has been defined in the regulations as “special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under sections 300.320-300.324” [34 C.F.R. § 300.17]. The FAPE provision has been the most legally contested area in special education. FAPE must be directly related to the provision of special education and related services as outlined in a student's individualized education program (IEP) (Yell, 2006). In the first U.S. Supreme Court case involving a student with a disability the right to FAPE was contested. In *Board of Educ. of Hendrick Hudson Cent. Sch. Dist. Vs. Rowley* (1982), commonly referred to as *Rowley*, a landmark decision was made concerning a student's right to receive FAPE. The case involved a student and her need for an educational interpreter. Since the student was progressing from grade to grade emotionally, academically, and

socially in spite of minimal residual hearing, the school district contended that she was receiving FAPE. Two lower courts ruled in favor of the parents saying that FAPE was required so that student could achieve full potential. In 1982, the U.S. Supreme Court reversed two lower court decisions and decided that the student did not require an educational interpreter in order to receive FAPE and personalized instruction and related services would be sufficient. Since the term “appropriate” is not defined in the IDEA statute or regulations, therefore, a two-part test was formulated to determine if education was considered “appropriate.” First, the question is whether or not the district has complied with the procedural regulations of IDEA. Second, the courts must determine if the IEP has been reasonably calculated so that the student will receive educational benefit. This case has been cited in almost every administrative and judicial decision regarding FAPE (Norlin, 2007) and the two part test has become known as the *Rowley Standard*.

Recently, the *Rowley Standard* has been challenged in *J.L. v. Mercer Island Sch. Dist.* (2006) and, at this writing, is now under appeal in the 9th Circuit Court of Appeals. This recent ruling challenged the FAPE standard set forth in the Rowley decision as no longer applicable since IDEA has now been amended. The court ruled that since the original law has been amended then the US Supreme Court decision of 1982 no longer applies and a new FAPE standard should be determined. If upheld this ruling would still only be relevant to the 9th circuit.

Least Restrictive Environment (LRE)

IDEA requires that students with disabilities receive special education and/or related services in settings with students without disabilities when appropriate. Least restrictive environment has been defined in the statute as:

to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [34 C.F.R § 300.114(a)(2)(ii)]

This term has been a key component in federal legislation since 1975. Students with significant cognitive disabilities have not always been afforded the opportunity to receive their special education and/or related services in their least restrictive environment. Before a student with disabilities is removed from general education for any amount of time during the instructional day, substantial justification for the removal must be given. Case law has focused on examining whether FAPE could be delivered adequately in a child's least restrictive environment with supplementary aids and services.

One of the major cases involving LRE came from the Fifth Circuit Court of Appeals in 1989. In *Daniel R.R. v. State Board of Education* (1989), referred to as *Daniel*, parents of a 6 y/o child with Down syndrome requested a split placement between a general education pre-kindergarten class and an early childhood special education class. Shortly after school started, an IEP committee determined that Daniel was not able to master the skills in the pre-kindergarten class and required too much teacher attention. He was placed in an early childhood special education class with

interaction at lunch and recess with the general education preschool class. In making its decision, the court developed a two-part test (known as The *Daniel* Two-Part Test) which asks two questions: “(1) Can education in the general education classroom with supplementary aids and services be achieved satisfactorily?” and (2) If a student is placed in a more restrictive setting, is the student integrated to the maximum extent appropriate.” If the school has reasonably accommodated the student in the general education classroom, then the court must decide if the student will receive benefit from the general education placement and if there is a negative effect on the education of classroom peers. If the district has not attempted to include the student to the maximum extent possible then they have violated the LRE provision of IDEA. Regarding, the second question, the court must determine if the district has provided the student with as much exposure to students without disabilities as appropriate. The district was able to satisfy the requirements of the two-part test and the court ruled in favor of the district on this case.

Based on the various court rulings on key cases involving LRE decisions, Yell (1995) has recommended that district decisions should be based on data and the following questions should be answered: (1) What steps has the school taken to afford the child an opportunity to remain in the general education classroom? (supplementary aids and services; interventions), (2) What are academic and nonacademic benefits of general vs. special education placements?, (3) What, if any, are the effects on classroom peers in general education setting (peers and teacher)?, (4) If a student is educated in a special education setting are integrated experiences with students without disabilities available?, and (5) Does the district offer an entire continuum of services so that an appropriate placement can be made?

Crockett (2000) discusses five themes that have emerged from analysis of the LRE provision of the law. First, there are “moral and ethical” (Crockett, 2000, p. 44) tensions that have emerged from policy analysis which forced IEP teams to make defensible decisions both legally and morally. Second, IEP teams should focus on the unique behavioral and learning needs of students which require specialized instruction. Third, children must receive equity as dictated by the law and be protected from discrimination while receiving educational benefit. Fourth, the teams must ensure that appropriate instructional and assessment practices are implemented to address a variety of students needs including “academic, functional, social, and emotional/behavioral progress” (Crockett, 2000, p. 57) of students. Lastly, IEP teams should be able to develop collaborative partnerships and increase effective communication practices and advocacy for students with disabilities (Crockett, 2000).

Access to the General Curriculum

Students with significant cognitive disabilities have not always had an opportunity to access the general education curriculum even though mandated by federal law. Both the 1997 Individuals with Disabilities Act and its amended act of 2004 (IDEA, 2004) mandated that students with disabilities have access to and make progress in the general education curriculum. According to Spooner and Browder (2006, p. 1) “access means more than being exposed to content such as reading and mathematics – access means academic progress.” While mastery of general education curriculum content may not be a realistic expectation, mastery of alternate achievement standards for the student’s appropriate grade level is expected. Access to the general curriculum is not synonymous

with all educational services delivered in an inclusive setting (Spooner & Browder, 2006).

Historically, case law has focused on the provision of FAPE when determining accessing the general curriculum with supplementary aids and services. In order for students with significant cognitive disabilities to access and make progress in the general curriculum schools will need to provide necessary supports (Agran, Alper, & Wehmeyer, 2002). One of the most prevalent forms of support has been the use of paraprofessionals (Brown, Farrington, Knight, Ross, & Ziegler, 1999; Carter, Cushing, Clark, & Kennedy, 2005; Giangreco, Edelman, Broer, & Doyle, 2001). However, there have been concerns that the over-use of paraprofessionals may interfere with student's social interaction with students without disabilities (Marks, Shrader, & Levine, 1999), decrease their contact with general education teachers (Giangreco, Broer, & Edelman, 2001), and increase the length of time that students depend on adults (Giangreco, Edelman, Luiselli, & MacFarland, 1997).

Related Services

Under IDEA (2004) related services are those “supportive services as may be required to assist a child with a disability to benefit from special education [34 C.F.R. § 300.16(a)]. Examples of related services include, but are not limited to, are: physical therapy, occupational therapy, speech and language therapy, audiology, educational interpreting, counseling, and transportation. Students with significant cognitive disabilities often have multiple disabilities requiring the services of several related services professionals. This relates directly to the best practice variable of collaborative teaming.

A case involving FAPE and the provision of related services, *Polk v. Central Susquehenna Intermediate School District 16* (1988) concerned a 14 year old student with a significant cognitive disability who was denied physical therapy services. The student received the services of an individualized assistant but direct physical therapy services were discontinued. The 3rd Circuit Court of Appeals ruled in favor of the parent saying that the district must offer educational programs that provide more than a *de minimis* benefit. In the *Polk* case the 3rd Circuit ruled that IDEA called for more than simply trivial educational benefit.

Transition Services

Transition requirements have been outlined in IDEA since 1990. Transition services have been defined in the statute as:

a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. [20 U.S.C. § 1401(a)(19)]

In 2004, the amendment made a significant change to the IEP's transition requirement.

In the amendment it states that "beginning not later than the first IEP to be in effect when a child turns 16, or younger as determined appropriate by the IEP team, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services which would include,

courses of study, would need to assist the child in reaching those goals” [20 U.S.C. § 1414(d)] and [34 C.F.R. § 300.320(b)]. Since transition planning occurs long before age 16 many states have reduced the required age to even as young as 13 to afford IEP teams an opportunity to adequately address the assessments and planning required. The IEP must reflect student preferences for postsecondary goals. The postsecondary goals must be linked to a transition plan and appropriate transition services (Martin, Greene, & Borland, 2004). The IEP team is also required to prepare a summary of the student’s academic achievement and functional performance including recommendations on how to assist the student to meet his or her postsecondary goals [20 U.S.C. § 1414(e) (5)(B)(ii)].

The most frequent mistakes IEP teams make when addressing transition are : (a) failing to address transition in the IEP of a student who is 16 or older (or younger in some states), (b) failing to include the required or appropriate transition participants at the IEP meeting, (c) inform parents about transition planning, and (d) develop a transition plan that meets the regulatory requirement which would include a coordinated set of activities designed to help the student achieve their post-secondary goals (Lake, 2002). Failing to meet these procedural requirements could result in a denial of FAPE.

Case law has not been prolific in the area of transition. In one case, *Yankton S.D. v Schramm* (1995) a 16 y/o student with cerebral palsy was denied an appropriate transition plan. As a result a federal district court found that the district’s minimal approach to include appropriate transition plans violated the legal requirements of IDEA. The IEP team had written “not applicable” across many sections of the student’s transition plan. While the courts have historically been lenient with school districts who

failed to meet federal mandated transition requirements, there may be an increase in due process cases in this area given the fact that according to the National Council on Disability (2000), “88% of 44 states failed to ensure compliance with transition requirements for students with disabilities. Transition planning and services relate directly to the best practices indicator of self-determination.

Individualized Education Program (IEP)

The IEP is considered to be one of the major tenets of IDEA and all aspects of the student’s educational program is directed by the IEP. An IEP also is the document which offers FAPE to a student (Smith, 1990; Katsiyannis, Yell, & Bradley, 2001; Yell, 2006) and failure to adequately develop and implement an IEP could result in a court ruling against the school district for a violation of IDEA. While the courts tend to rule more leniently on procedural violations, school districts must develop IEP’s which meet both procedural and substantive components of the IEP. According to Yell (2006), some procedural requirements are (a) notice to parents, (b) mandatory timelines, (c) including parents in educational decisions, (d) conducting evaluations that meet components of IDEA, (e) including all required members of the IEP team, (f) ensuring appropriate content, and (g) ensuring implementation of the IEP as written. Yell (2006), describes substantive requirements as those that require districts to provide meaningful benefit (*Rowley* standard) such as: (a) academic and functional areas must be assessed, (b) needs drive goals, (c) goals should be measurable, appropriate, and complete, (d) provide evidence-based special education and related services, and (e) monitor student progress towards goals and change instruction as appropriate. The purpose of an IEP according to IDEA regulations is “a collaborative effort between school personnel and parents to

ensure that a student's special education program will meet his or her individual needs and confer meaningful benefit. The IEP serves other important purposes, including communication, management, accountability, compliance and monitoring, and evaluation" [34 C.F.R. § 300. Appendix C:1].

The courts often find procedural violations in an IEP where components are omitted but if there has not been a denial of FAPE, the courts have often ruled in favor of the school district. For example, in *G.N. v. Board of Education of the Town of Livingston (2007)* the district court in New Jersey ruled for the school district even though the IEP did not contain any goals or objectives which is an IDEA violation. That did not constitute a denial of FAPE because the court stated to do so would be "elevating form over substance." When a procedural violation infringes on parents opportunity to be able to meaningfully participate in an IEP meeting, the procedural violation will often become a substantive issue. In *Deal ex rel. Deal v. Hamilton County Bd. Of Educ. (2004)*, a district predetermined an education placement for a student with autism. The courts ruled for the parent as the student was denied FAPE because his parents were prevented from participating in the IEP meeting. The district had already predetermined placement prior to the IEP meeting.

Most litigation involving a student's IEP for students with significant cognitive disabilities has focused on educational placement in LRE and the provision of FAPE. The student's IEP is always a pivotal document for the courts to review in a due process case. The IEP interrelates with all of the legal variables listed here and to the best practice variables of inclusive services, home and school collaboration, collaborative teaming,

positive behavior support strategies, self-determination, teaching academic skills, and teaching functional skills.

Assistive Technology

Students with significant cognitive disabilities often require the use of assistive technology in order to access the general curriculum and derive benefit from their special education services. Assistive technology device and service are delineated in the statute separately. An assistive technology device can be defined as “any item, piece of equipment, or produce, system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities” [20 U.S.C. § 1401, 25-26]. Some examples of assistive technology devices include low tech devices such as communication boards and simple switches as well as high-tech devices such as voice output augmentative communication and word processing devices.

The term assistive technology services “means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device”. Assistive technology services may include: functional evaluations, purchasing or leasing of assistive, technology devices, designing and customizing devices, coordinating therapies and services with assistive technology devices, and training for child, family or professionals [20 U.S.C. § 1401, 25-26]. The regulations require that “each public agency shall ensure assistive technology or assistive technology services, or both are made available to a child with a disability if required as part of the child’s (a) special education under § 300.17; (b) related services under § 300.16; (c) supplementary aids and services under § 300.550(b)(2)” [34 C.F.R. § 300.308].

In an investigation by Cosbey and Johnston (2006) the benefits of assistive technology for young students, ages 3 to 6 years, with severe and multiple disabilities are illustrated. The three children were taught to use a voice output communication aid (VOCA) to request access to peers or preferred items during play. Results indicated that there was an increase in all three participants' correct use of the VOCA when unprompted. The participants obtained access to toys in all opportunities and obtained access to social intervention with peers in 96% of the opportunities. The results of the study indicated target skills acquisition for all participants even though they had severe developmental disabilities affecting communication and motor skills.

Increased access to assistive technology for students and school districts may occur with the passing of the Assistive Technology Act of 2004, signed into law by President Bush. It provides for an increased access for technology for those individuals with disabilities. It requires that school districts use assistive technology resources as necessary to improve transition services. It also ensures students with disabilities have support as they apply for loans for assistive technology devices. Lastly, it has helped to raise awareness about the need for assistive technology devices (Yell, 2006). Assistive technology relates to the best practices variables of special education, related services and the legal variables of FAPE, IEP, and accessing the general curriculum.

Procedural Safeguards

Procedural safeguards are embedded into IDEA (2004) in an effort to protect students and parents. Procedural safeguards can be divided into four areas: general procedural safeguards, independent educational evaluation, surrogate parent appointment, and dispute resolution, including mediation and due process hearing [34 C.F.R. § 300.500

et seq.]. General safeguards include prior notice and consent. An example of a violation of prior notice is when a district conducts an IEP meeting or changes educational placement, or refuses to a request without giving a parent prior notice. An example of a violation of consent would be when a district conducts an evaluation or places a student into special education programs without prior written parental consent.[34 C.F.R. §300.504 (a)(b) *et seq.*]. An independent educational evaluation (IEE) is offered at no cost to the parent when they disagree with a district educational evaluation. The district must provide the parent with information as to where this evaluation may be obtained, the district must consider the information from the IEE and it may be presented as evidence at a due process hearing [34 C.F.R. § 300.504]. IDEA requires that the school district appoint a surrogate parent in accordance with state law when a child's parents cannot be located or the child is a ward of the state. The actual selection method and appointment are not controlled by IDEA. However, IDEA does require that the surrogate parent appointed must represent the child related to the provision of special education [34 C.F.R. § 300.514 *et seq.*]. Lastly, when there is disagreement between the parents and the school district about identification, evaluation, placement, or any issue related to FAPE, either party may request a due process hearing. Dispute resolution in the form of resolution and mediation, both voluntary, are also available to both parties prior to engaging in a hearing. Each State Educational Agency (SEA) must have a process in place for conducting hearings, including appointment of hearing officers [34 C.F.R. § 300.504(b) *et seq.*].

Relevant Case Law

All of the case law listed below in Table 1 are examples of a disagreement resulting in a due process hearing, and in many cases also resulting in an appeal to district and circuit court of appeals, and on occasion to the US Supreme Court. Once districts follow procedural safeguards outlined in IDEA the number of dispute resolutions, mediations, and due process cases should potentially decrease in number across the nation.

Table 1

Relevant Case Law

Citation	Component	Summary	Decision
Yankton Sch, Dist. v. Schramm, 24 IDELR 704 (8 th Cir. 1996)	Specially Designed Instruction	District dismissed student with cerebral palsy from special education because of adequate educational progress.	Ruling in favor of the parent. Court ruled that continued eligibility under IDEA not based on presence of orthopedic impairment. Eligibility continues because the impairment requires specially designed instruction. Student was entitled to provision of transition services.
Board of Educ. Hedrick Hudson Cent. Sch. Dist. v. Rowley, 533 IDELR 656 (US 1982)	FAPE	District refused to provide an interpreter to a profoundly deaf student because she was advancing from grade to grade without interpreting services.	Ruling in favor of the district. The student was progressing from grade to grade successfully without the services of an interpreter.
Polk v. Central Susquehenna Intermediate School District 16, 441 IDELR 130 (3 rd Cir. 1988)	FAPE and related services	14 y/o student with significant cognitive disabilities had an individual assistant but direct PT services were discontinued.	Ruling in favor of the parent. Some educational benefit means more than “de minimum” benefit.

Table 1 continued

M.L. by C.D. and S.L. v. Federal Way Sch. Dist., 42 IDELR 57 (9 th Cir. 2004)	IEP	District failed to include at least one general education teacher on IEP team of student with mental retardation, macrocephaly, and autism.	Ruling in favor of parent. While violation was procedural but was important because court was unable to review substantive IEP provisions due to omission.
G.N. v. Township of Livingston, 48 IDELR 160 (D.N.J. 2007)	IEP	IEP did not contain goals or objectives.	Ruling in favor of district. While omission is a violation of IDEA there was no denial of FAPE due to procedural error.
Deal ex rel. Deal v. Hamilton County Bd. Of Educ., 42 IDELR 109 (6 th Cir. 2004)	IEP	Parent was not given change to meaningfully participate in IEP meeting for student with autism	Ruling in favor of parent. Procedural violation was determined to be substantive in nature due to fact that placement was predetermined by district.
Oberti v. Board of Educ. of Borough of Clementon Sch. Dist., 19 IDELR 908 (3 rd Cir. 1993)	LRE	District proposed a self-contained placement for a 8 y/o student with Down syndrome.	Ruling in favor of parent. The district did not consider supplementary aids and services that could have been used to facilitate inclusion.
Daniel R. R. v. State Bd. Of Educ., 441 IDELR 433 (5 th Cir. 1989)	LRE	District proposed a special education class placement for a 6 y/o student with Down syndrome.	Ruling in favor of district. The district was able to establish that the child would not benefit from the general education placement and the curriculum would have to be modified too much. District court developed a "Two-Part Test."
Sacramento City Unified School Dis. Bd. Of Educ. v. Rachel H. by Holland, 20 IDELR 812 (9 th Cir. 1994)	LRE	District refused to provide general education placement for an 11 y/o student with moderate mental retardation.	Ruling in favor of the parent. The district could not prove there would be a negative impact on other students or that the general education placement would be cost prohibitive. District court developed a "Four Factor Test."

Table 1 continued

Hartmann v. Loudoun County Board of Education (4 th Cir. 1997)	LRE	District changed placement to a special education class from general education for an 11 y/o student with autism after providing supplementary aids and services.	Ruling in favor of district overturning a lower court ruling. Court determined that mainstreaming not required on three factors and developed the “Three-Factor Test.”
D. B. v. Ocean Township Bd. Of Educ., 27 IDELR 151 (D.N.J. 1997)	LRE and Residential Placement	District refused residential placement for a 16 y/o student with moderate mental retardation.	Ruling in favor of the district. The district was able to demonstrate that the special education class was more appropriate due to exposure to age-appropriate nondisabled peers than was the residential placement.
Cedar Rapids Community Sch. Dist. v. Garrett F., 29 IDELR 966 (U.S. 1999)	Related Services	District refused to provide nursing services to a medically fragile student.	Ruling in favor of the parent. US Supreme Court determined that districts must provide health-care related services if a student needs the services to attend school and benefit from education. Affirmed earlier <i>Tatro</i> ruling.
Yankton S.D. v. Schramm (1995)	Transition	District provided minimal information related to transition and inappropriately wrote “not applicable” across sections of the plan.	Ruling in favor of the parent. Federal district court determined that the district’s minimal approach to transition planning violated IDEA legal requirements.

Relationship of Variables

Many of the best practice indicators and the legal components of IDEA are interrelated with each other and some evidenced by the early documented quality indicators (Meyer et al., 1987). The relationship of the three groups of variables discussed in this chapter are outlined in Table 2 and identify five main factors which incorporate all of the variables discussed. The first factor is inclusive programming, which directly

relates to the earlier quality indicator of integration. Best practices identified in the literature such as systematic instruction, collaborative teaming, positive behavior support strategies, and teaching of both academic and functional skills would be incorporated to assure that a student with significant disabilities would receive FAPE while remaining in his or her least restrictive environment. When inclusive programming was utilized by school districts, students would be able to successfully access and make progress in the general curriculum through the use of many best practice indicators. The second factor listed is professional development, which relates directly to the quality indicator of staff development, all best practice indicators, and professional development outlined in IDEA (2004). The potential outcomes are highly qualified and effective personnel including administrators, teachers, related services personnel, paraprofessionals, and parents. The third factor identified is collaborative practices which directly relates to the quality indicator of home-school strategies. This incorporates best practice variables of collaborative teaming and home-school collaboration and IDEA variables such as specially designed instruction, related services and collaborative planning through the IEP team process. The fourth factor identified is the use of established evidence-based practices and relates directly to the quality indicators of data-based instruction and meets the requirements outlined in IDEA for the use of scientifically-based research practices. The potential student outcomes are again the provision of FAPE and access and progress in the general curriculum in the student's least restrictive environment. The final factor identified is transition planning activities which relates directly to the quality indicator of "criterion of ultimate functioning" and relates to best practice indicators of collaborative instructional planning, systematic instruction, teaching of functional and academic skills,

and self-determination practices. The transition components of IDEA would be the main component addressed with potential student outcomes of increased independent living and success with post-school goals outlined on the student's transition plan.

This chapter has outlined empirical and theoretical evidence necessary to build the conceptual framework for this study. Quality indicators from the early literature in severe disabilities were reviewed. Current best practice indicators from empirical data and expert opinion as well as the major tenets of IDEA (2004) legislation were reviewed. Seminal case law involving students with significant cognitive disabilities was also cited. Quality indicators, best practice indicators and IDEA (2004) components were then categorized into five factors outlined in Table 2. The factors are: (1) inclusive programming, (2) professional development, (3) collaborative practices, (4) evidence-based practices, and (5) transition planning. Survey items will be derived from the eight best practice variables and nine legislative variables outlined in this review.

Table 2

Relationship of Variables

Quality Indicators (Meyer et al., 1987)	Best Practice Variables	Components of IDEA (2004)	Potential Student Outcomes	Conceptual Framework
Integration	Systematic Instruction Positive Behavior Support Teaching Academic Skills Teaching Functional Skills Collaborative Teaming	Special Education IEP Related Services Procedural Safeguards	FAPE LRE Access and Progress in General Curriculum	Inclusive Programming

Table 2 continued

Staff Development	All Indicators	Professional Development Special Education Related Services Transition Planning	Highly Qualified and Effective Personnel Quality Services for Students with Disabilities	Professional Development
Home-School Strategies	Collaborative Teaming Home-School Collaboration	Special Education Related Services IEP	FAPE LRE Access and Progress in General Curriculum	Collaborative Practices
Data-Based Instruction Professional Practices	Systematic Instruction Teaching Academic Skills Teaching Functional Skills Self-Determination PBS	Scientificallly-Based Research Practices IEP Special Education Related Services Transition Planning Assistive Technology	FAPE LRE Access and Progress in General Curriculum	Evidence-Based Practices
Criterion of Ultimate Functioning	Collaborative Instructional Planning Teaching Academic Skills Teaching Functional Skills Self-Determination	Transition Planning Special Education Related Services IEP Assistive Technology	FAPE LRE Access and Progress in General Curriculum Post School Goal Attainment	Transition Practices

The need continues to exist for school district special education administrators to be knowledgeable about providing quality programming using best practices for all students with significant cognitive disabilities so that the best possible outcomes are provided for all students with disabilities. In addition to positive outcomes for students

with disabilities, special education administrators need to understand the variables which are most likely to predict litigation in their school district for students with significant cognitive disabilities. The question remains as to whether best practice variables, legislative variables or a combination of both are critical to reduce district litigation. Therefore, the purpose of this study was to investigate the amount of type of litigation for students with significant disabilities in school districts located in Maryland, North Carolina, South Carolina, Virginia, and West Virginia. A second purpose was to identify variables derived from best practice and legislative variables which may be related to school district litigation for students with significant cognitive disabilities. The next chapter will focus on the methodology of the research investigation.

CHAPTER 3: METHOD

The purpose of this study was to investigate the amount and type of litigation for students with significant cognitive disabilities for five states in the U.S. District Court of Appeals (4th Circuit) jurisdiction. The second purpose was to identify variables derived from best practice and legislative variables related to litigation for students with significant cognitive disabilities. This investigation focused on the following four research questions:

- (1) What is the amount and type of litigation that occurs in school districts within the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?
- (2) Are there statistically significant differences between the types of litigation (dispute resolution, mediation, administrative hearing) that occurs in school districts across a three-year time period in the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?
- (3) Does failure to implement best practice variables in the literature affect the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

- (4) Does failure to implement legislative mandates of IDEA (2004) affect the amount of litigation regarding students with significant disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

Participants

The participants selected for this investigation are school district special education directors working within the jurisdiction of the United States Court of Appeals (Fourth Circuit) which encompasses the states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia. The Fourth Circuit was selected because its jurisdiction includes North Carolina and decisions rendered for districts in these states will influence legal interpretations in the state of North Carolina and the surrounding region.

Participants were selected through two sampling methods. The first selection was obtained from a convenience sample attending the Council for Administrators in Special Education (CASE) national conference in November, 2008. The second sample was located from each selected state's department of education's special education director database and comprised 351 school district special education directors in the selected five states.

Design

The research design utilized for this investigation was a quantitative, non-experimental, cross-sectional survey design. Both a paper and pencil format and an electronic survey questionnaire format was utilized to collect respondent information. Survey design is efficient, timely, and inexpensive. Quality indicators for conducting

survey design research according to experts in the field were followed as outlined in Table 3 (Creswell, 2003; Creswell, 2005; Dillman, 2007; Salant & Dillman, 1994).

Table 3

Quality Indicators for Survey Design Research

Quality Indicator	How will this be addressed?
Sampling From a Population	<ul style="list-style-type: none"> To reduce coverage error have a good sampling frame list or target population from which individuals are selected <i>A list can be obtained of special education directors in school districts in 5 states</i> To reduce sampling error, select as large a sample from the population as possible <i>All school district special education directors will be sampled in 5 states which is a large sample from a target population</i> To reduce measurement error use a good instrument with questions and responses that are easily understood <i>The questionnaire will be pilot tested with content experts in severe disabilities, legal, and special education administration to ensure clarity of questions</i>
Collecting Data	<ul style="list-style-type: none"> Use of electronic surveys is a quick form of data collection but disadvantage is that all participants are not comfortable using the electronic method. <i>A paper survey will be available to participants as well as an electronic survey</i>
Designing Instruments	<ul style="list-style-type: none"> Closed-ended questions are practical and can be used with sensitive questions. <i>Instrument used will be closed-ended multiple choice scenarios</i> The questionnaire should be clear, have single questions that match the answers in wording, be brief and free from jargon and overly technical language. <i>A pilot test of the questionnaire will occur.</i>
Obtaining a High Response Rate	<ul style="list-style-type: none"> A response rate of 50% or better is desirable. <i>Participants will be prenotified of survey with appropriate follow-up measures such as follow-up survey sent and thank you/reminder sent.</i> <i>Survey will be brief</i> <i>Survey will be web-based for ease of responding</i> The participants studied should be representative of the sample and the population

Dependent Variables

The two proposed dependent or criterion variables identified for this investigation were: (1) amount of litigation, and (2) type of litigation occurring in a school district with respect to students with significant cognitive disabilities. The amount of litigation was defined as the number of times a due process case was filed by a parent against a school district over a period of three school years (2004-2005, 2005-2006, 2006-2007) as reported by the respondents. The type of litigation was defined as: (1) case settled, (2) resolution, (3) mediation, (4) administrative hearing. Case withdrawn occurred when a parent withdrew a petition for contested case hearing before participating in resolution or mediation. Resolution is a new statutory requirement first introduced in 2004 through The Individuals with Disabilities Education Improvement Act (IDEA) [20 U.S.C. § 615 (2)(B)(5-7)]. It is voluntary on the part of both district and parent and is more informal than mediation. Mediation is also voluntary on the part of both district and parent and is more structured and formal than a resolution session. It requires an impartial mediator to be present [20 U.S.C. § 615 (2)(e)(2)(a)]. An administrative hearing occurs when parties have failed to reach an agreement either through dispute resolution or mediation and requires an appointed hearing officer to preside over the hearing [20 U.S.C. § 615 (2)(f)(2)(1)(A)].

The independent variables were derived from themes in the literature relative to recommended best educational practices for students with significant cognitive disabilities according to experts in the field and outlined in Chapter 2 (Browder, 2001; Browder & Spooner, 2006; Browder et al., 2006; Browder et al., 2007; Collins, 2007; Downing, 2002; Ryndak & Alper, 1996; Snell & Brown, 2006; Westling & Fox, 2004;

Wehmeyer & Schwartz, 1999). The independent variables regarding best practices were: (1) inclusion, (2) home and school relationships, (3) collaborative teaming, (4) self-determination, (5) systematic instruction, (6) positive behavior support, (7) teaching academic skills, and (8) teaching functional skills.

Legislative variables were derived from the major tenets of IDEA (2004). They were: (1) least restrictive environment, (2) access to the general curriculum, (3) specially designed instruction, (4) related services, (5) assistive technology, (6) transition services, (7) free and appropriate public education, (8) individualized education program, and (9) procedural safeguards. These independent variables were embedded in the survey questionnaire distributed at the CASE conference and disseminated electronically.

Procedures

Instrumentation

A closed-ended questionnaire survey entitled “Special Education Administrator’s Perceptions of Variables Related to the Education of Students with Significant Cognitive Disabilities” was developed by the author to investigate the perceptions of special education administrators regarding possible variables which may affect litigation for students with significant cognitive disabilities. The variables used in the survey (Appendix A) were derived from a review of the literature regarding students with significant cognitive disabilities and major tenets of IDEA legislation. The survey was comprised of five sections: (1) respondent and district demographics, (2) amount of litigation over three year period, (3) type of litigation divided into four types (resolution, mediation, hearing, case settlement) over a three-year period, (4) close-ended questionnaire based on best practices from the literature and legislative tenets from IDEA

(2004), and (5) an open-ended comment section designed to afford the participants an opportunity to elaborate on their answers. Respondent demographics included position, years of experience in position, educational level, age, gender, and ethnicity. District demographics included location of the district by state and size of population of students with significant cognitive disabilities. The closed-ended questionnaire contained 20 questions using a Likert-type scale of “all,” “most,” “some,” and “none.” Follow-up questions were provided if the respondent answered “some” or “none.” The follow-up questions sought to further explain the respondent’s answer and included the following: (1) not appropriate for this population of students, (2) not a legal requirement, (3) lack of district resources, and (4) other.

In order to gain a deeper understanding of respondent’s perceptions of these variables and possible effects on litigation in their district open-ended questions were also included in the questionnaire. The three open-ended questions queried respondents as to (a) what programs they have in place that may prevent litigation, (b) the role of advocates in their district with respect to litigation, and (c) their perceptions of what prevented litigation in their district.

The study proposal was submitted and approved by UNC Charlotte’s Institutional Review Board (IRB) for both disseminations of the survey. After IRB approval, the survey questions that focused on the best practice themes were reviewed by content experts in the field of significant cognitive disabilities such as: Dr. Diane Browder , Snyder Distinguished Professor of Special Education at UNC Charlotte, Dr. Fred Spooner, Professor of Special Education at UNC Charlotte, and Dr. Ginevra Courtade, Assistant Professor of Special Education at West Virginia University. An email request

was sent to each of the experts in severe disabilities with an introductory letter (Appendix B) and feedback form (Appendix C). The experts in severe disabilities were asked if they believed the best practice predictor variables were indicative of current best practices in the field for students with significant disabilities. The response from all three experts confirmed that the best practice variables in the survey were reflective of the literature.

Survey questions that focused on legal themes from IDEA (2004) were reviewed by special education legal experts in both the fields of law and special education. The following experts were asked to provide feedback: Ann McColl, J.D., Associate Professor of Education at University of North Carolina at Charlotte and Dr. Mitchell Yell, Professor of Special Education at University of South Carolina. An email request was sent to the legal experts with an attached introductory letter (Appendix B) and feedback form (Appendix C) in the same format used for the experts in severe disabilities. Legal experts were questioned as to whether they believe the legislative variables are inclusive of major tenets in IDEA or if any needed to be added or deleted. A face to face meeting was held with Dr. Mitch Yell to discuss the legislative variables used. Both legal experts agreed that the legislative variables used in the survey were reflective of the major tenets of IDEA (2004).

The survey was pilot tested using a “talk aloud” format with a small sample of special education directors selected from both the North Carolina and South Carolina Councils for Administrators in Special Education. Directors were asked to review the survey for understanding. No revisions needed to be made to the survey based on content, legal and practitioner input.

According to Dillman (2007), certain steps should be followed when conducting an investigation using a survey design to ensure an appropriate response rate. A recommended response rate for a survey design is greater than 50% with careful attention paid to possible response bias. Prior to electronic dissemination, an introductory letter (Appendix E) was sent electronically to the participants selected one week prior to dissemination. This letter contained all information that would be included in an informed consent letter. The survey was then disseminated one week later via an electronic format (survey monkey). A reminder email with another copy of the survey was sent four to eight days later. The final follow-up attempt included an electronic thank you or reminder will be sent three weeks after the second survey was disseminated. For the convenience sample at the national conference, the introductory letter was attached to the survey (Appendix D). A UNC Charlotte informed consent letter was also attached to the survey. An announcement was made regarding the investigation so that members were informed. The incentive used for both disseminations was four drawings for four Barnes & Noble gift cards worth \$50.00 each. Respondents were given a chance to participate in the drawing when their survey was returned.

Data Analysis

The first data analysis was descriptive in nature and described the sample population in terms of demographics such as: number of participants, position, age, gender, ethnicity, educational level, experience level, size of district, and location by state. A frequency table was generated and displayed to describe the participants. Descriptive analysis also included measures of central tendency such as the mean and

standard deviation statistics for age, educational level, experience level, size of district, and amount and type of litigation for the districts surveyed.

Research questions two through four were answered using inferential statistics. Inferential statistics make inferences about the population which allow investigators to generalize their research findings beyond the sample. In designing an investigation four assumptions were examined. The first assumption was that each sample is a random sample of the population that it represents. Therefore, each person in the population has an equal chance of being chosen. The second assumption was that there is an independence of observations. After data have been collected, the third assumption was that each variable was normally distributed in terms of the dependent variable. The fourth assumption was that each sample had the same degree of variability in the dependent variable.

The second research question regarding differences in type of litigation was answered using a one-way within repeated measures analysis of variance (ANOVA) to test the significance of group differences with respect to type of litigation across the three years surveyed (dispute resolution, mediation, and administrative hearing). Results of this analysis were illustrated in APA tabular format for F statistics, degrees of freedom (df), significance level (p) and effect size (η^2).

The third and fourth research questions utilized a standard multiple regression analysis for each year (2005, 2006, 2007). The third research question focused on examining the relationship of best practices variables (independent variables) and the amount of district legislation (dependent variable). The fourth research question focused on examining the relationship of legislative variables (independent variables) and the

amount of district litigation (dependent variable). Prior to data analysis, the data was screened for missing data, outliers, and assumptions. Skewness values and a visual inspection of frequency distributions were examined to determine if the distributions of the variables were normally distributed. For analyses of research questions #3 and #4, correlational coefficients (r), unstandardized regression coefficients (B) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i), variance accounted for (R^2), t -values and p -values were reported in tabular form. Results of the standard multiple regression analyses determined if any of the independent variables contributed significantly to the amount of litigation for students with significant cognitive disabilities.

In summary, a survey was developed by the author based on best practices in the literature and legislative tenets of IDEA (2004). The best practice variables were confirmed by three experts in the field of severe disabilities and the legislative variables were confirmed by two special education legal experts. The survey was reviewed for understanding by a small sample of special education directors in two states. There were two disseminations of the survey. Initially the survey was disseminated to a convenience sample at a national conference of special education administrators and later it was disseminated via an electronic survey format. Descriptive and inferential statistics such as one-way within repeated measures analysis of variance and standard multiple regression were used to answer the research questions. Results of the data analysis will be summarized in the following chapter.

CHAPTER 4: RESULTS

Introduction

The purpose of this investigation was to examine the relationship of best practice and legislative variables derived from IDEA (2004) regarding students with significant cognitive disabilities in the U.S. Fourth Circuit Court of Appeals. This jurisdiction includes the states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia. A 20 question survey with subpart follow-up questions was developed by the author after a review of the literature and IDEA (2004) legislation, including relevant case law. After University Institutional Review Board (IRB) approval, the first dissemination of the survey occurred at the 2008 National Conference of Council for Administrators in Special Education (CASE) at Myrtle Beach, SC in November, 2008. The respondents completed a paper and pencil version of the survey and a total of 41 surveys were returned out of 100 distributed for a response rate of 41%. Only 17 surveys returned pertained to the targeted five states comprising the U.S. Fourth Circuit Court of Appeals. The IRB protocol was revised and approved and a second dissemination occurred electronically via Survey Monkey in October, 2009 to 351 special education directors in the five targeted states. The response rate for the electronic survey was 44.4% with 156 surveys returned. The protocol outlined by Dillman (2007) was followed which included (a) an introductory letter, (b) a one-week reminder, (c) a three-week thank you

and follow-up reminder. The incentive used to increase motivation to complete the survey was a drawing for four \$50.00 Barnes & Noble gift cards.

The purpose of this chapter is to present the results of the research questions that guided this investigation. The chapter is organized into four sections as follows: (a) a description of the characteristics of the 173 survey participants, (b) the results of all data analyses used to answer the four research questions, (c) a summary of the themes generated from the open-ended survey questions, and (d) an overall summary of the results.

Respondent Characteristics

The first dissemination included a convenience sample of special education administrators from across the nation who attended a national conference sponsored by National CASE. A response rate of 41% was obtained. Due to the low number of responses for the five target states ($n=17$), a second dissemination occurred electronically via survey monkey utilizing the same survey instrument. A response rate of 44.4% was obtained for the second dissemination. The total number of respondents was 173 combined across two survey disseminations.

The majority of the respondents were Caucasian (87.6%) with African-American (11.8%) and Latino (.6%) also represented. Females comprised 78.5% of the sample and males comprised 21.1%. The majority were over the age of 50 (54.1%) with no one represented in the “under 30” category. The majority (83.6%) held the position of “director” and 47.1% of respondents reported they were in the first five years of their administrative position. The majority (63.7%) reported they had a master’s degree plus additional credits. The respondents were from Maryland (5.8%), North Carolina (31.4%),

South Carolina (27.3%), Virginia (20.3%), and West Virginia (15.4%). The majority of the respondents (57.8%) indicated their population of students with significant cognitive disabilities was less than 50 students while 22.5% indicated that they had between 50-250 students. Very small percentages indicated they had a higher number of students.

Characteristics of respondents are reported in Table 4.

Table 4

Characteristics of Respondents

Demographics		Percentages
Position:	Assistant Superintendent	2.9
	Director	83.6
	Coordinator	11.1
	Other	2.3
Experience:	0-5	47.1
	6-10	25.0
	11-15	12.8
	>15	15.1
Age:	30-40	11.2
	>50	54.1
Education:	BA	2.3
	MA	14.0
	MA+ Doctorate	63.7 19.9
Gender:	Female	78.9
	Male	21.1
Ethnicity:	Caucasian	87.6
	African American	11.8
	Latino	0.6
State:	Maryland	5.8
	North Carolina	31.4
	South Carolina	27.3
	Virginia	20.3
	West Virginia	15.4
Student Pop:	<50	58
	50-250	22.5
	251-450	8.9
	451-650	1.8
	651-850	0
	851-1050	3.0
	>1050	4.1

Responses in the dataset were coded as follows: (a) 1=all, (b) 2=most, (c) 3=some, and (d) 4=none. A frequency summary of the survey question responses by variable are outlined in Tables 5 and 6. Upon visual inspection of these tables, special education administrators appeared to have a higher percentage of “all” answers to more questions involving legislative variables than they did for best practice variables. This observation may suggest that special education administrators may potentially be more knowledgeable about legislative variables and provide legal protections to students with significant cognitive disabilities at a different rate than best practice variables may be provided based on survey results.

Follow-up questions were also included in the survey for any questions where a “some” or “none” answer was given. These questions were included to attempt to gain insight into the rationale for why the administrators would perceive that they did not routinely institute a practice in their district that was a best practice or a legal requirement. Some respondents answered the follow-up questions even when they checked “all” or “most.” Follow-up choices included: (1) not appropriate for teachers or this population of students, (2) not a legal requirement, (3) lack of district resources, and (4) other. A fifth choice (multiple) was coded into the dataset because several administrators checked multiple answers. Less follow-up questions were completed for legislative variables ($n=113$) than for best practice variables ($n=438$). A total of 117 respondents indicated the best practice variable was not appropriate for this population of student while only 20 indicated not appropriate for legislative variables. There were much higher responses in the “other” category for best practice variables ($n=231$) as

opposed to legislative variables ($n=65$). The categories of Tables 7 and 8 report the frequency of responses for the follow-up questions.

It is important to note that 26 of the respondents in the electronic dissemination chose to answer only the demographic questions. All indicated they had no litigation for the years outlined and then did not proceed to answer any of the following survey questions. It is believed that no response bias occurred because it appears to be a misunderstanding on the part of the group of respondents thinking that they did not have to proceed if they indicated no litigation on the previous answer. These cases were not excluded from the cases analyzed.

Table 5

Best Practices Survey Responses by Percentage

	Best Practice Variables									
	Inst Supp	Sys Inst	Lit Inst	PBIS	Coll	Parent Trng	Func. Skills Trng	Stud Part	Full Inc	Integ Related Serv
All	59.6	41.4	29.4	50.0	36.8	14.9	74.1	13.9	55.2	27.3
Most	24.7	34.3	37.8	31.7	41.0	24.8	22.4	25.7	16.1	46.2
Some	14.4	11.4	29.4	14.8	17.4	47.5	2.1	52.1	18.9	23.1
None	1.4	12.9	3.5	3.5	4.9	12.8	1.4	8.3	9.8	3.5

Table 6

Legislative Variables Responses by Percentage

	Legislative Variables									
	LRE	FBA	IEP	FAPE	Trans	AT	PWN	Core Inst.	Evidence-based Inst	Consent
All	93.1	53.1	94.4	93.7	66.7	50.0	91.6	60.1	56.3	97.2
Most	6.2	31.5	4.9	5.6	25.7	36.6	8.4	28.0	35.9	1.4
Some	.7	12.6	.7	.7	6.9	12.7		9.8	7.7	1.4
None		2.8			.7	.7		2.1		

Table 7

Frequency of Responses to Follow-Up Best Practice Questions

	<u>Best Practices Variables</u>						
IV	N	Not App	Not Req	Lack	Other	Mult	Resources
Inst. Supp	24	17		1	6		
Syst Inst	37	3	4	6	21	3	
Lit Inst	47	22	2	2	20	1	
PBIS	28	6	5	1	16		
Collab	37	7		4	22	4	
Parent Trng	84	2	13	14	49	6	
Funct Skills	7	1	1	2	2	1	
Student Part	87	33	3		48	3	
Inclusion	42	18	2	2	16	4	
Related Ser	45	8	1	2	31	3	
Total	438	117	31	34	231	25	

Table 8

Frequency of Responses to Follow-Up Questions

IV	<u>Legislative Variables</u>					
	N	Not App	Not Req	Lack Res	Other	Mult
FBA	2	1			1	
LRE	26	7		2	17	
IEP Team	2				2	
FAPE	2		1		1	
Transition	19		2	1	15	1
AT	23	2		12	9	
PWM	1				1	
Core Inst	20	8	1	3	8	
EB Inst	16	2		3	8	3
Consent	3				3	
Total	114	20	4	21	65	4

Results by Research Question

Research Question One: What is the amount and type of litigation that occurs in school districts within the United States Court of Appeals (Fourth Circuit) related to students with significant cognitive disabilities?

To answer this first research question the amount of litigation was listed by survey respondents across three school years (2005, 2006, and 2007). Litigation was defined for the respondents as when a parent files for a contested case hearing under the procedures for their state. The type of litigation was also delineated as: (1) withdrawn, (2) dispute resolution, (3) mediation, and (4) administrative hearing. The amount of litigation across five states for this population of students was reported by the respondents at a relatively low rate across the three years. For 2005 ($N=158$), there were 18 reported cases

of litigation with 15 school districts reporting cases filed. In 2006 ($N=158$) 13 cases were reported with a decrease of 7 with only 8 school districts reporting cases filed. In 2007 ($N=160$) 16 cases were reported with an increase of 4 with 12 school districts reporting cases filed. It is important to note that the amount of hearings filed may not equal the types of litigation reported by the respondents. One petition for an administrative hearing could result in several dispute resolutions and mediations before being settled, withdrawn or moved to an actual administrative hearing. Analysis reveals that there was a slight drop in litigation in 2006 from a reported 18 cases filed to 13 across school districts. IDEA (2004) introduced the concept of voluntary dispute resolution when parents filed a petition for a hearing in an effort to reduce the number of costly administrative hearings and resolve disputes quickly at the local level. Figure 1 reports the amount and type of litigation reported by school districts while Table 9 reports the frequency of districts who reported litigation for each year.

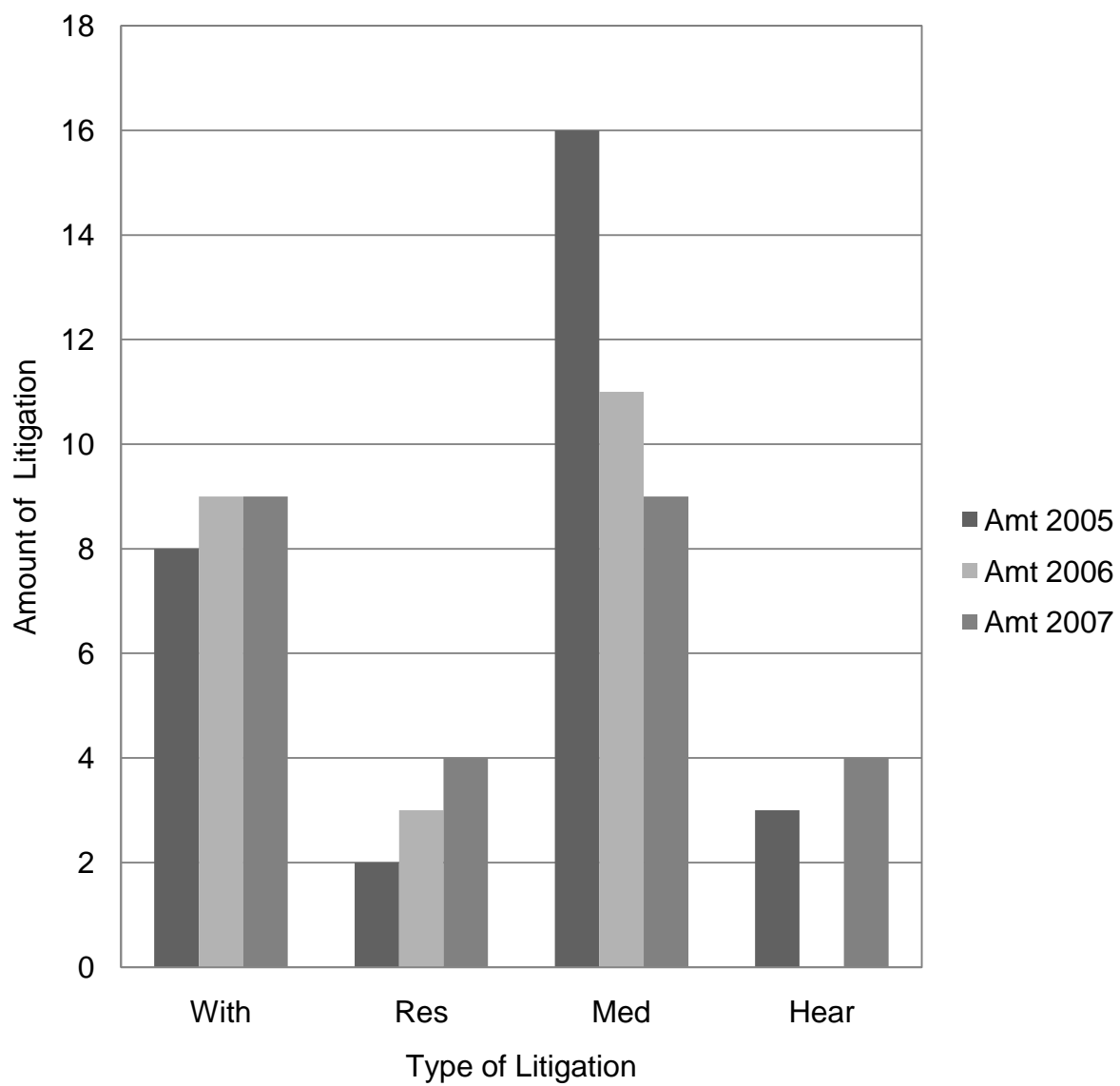


Figure 1

Amount and Type of Litigation for 2005, 2006, 2007

Table 9

Number of LEA's Reporting Litigation for 2005, 2006, 2007

Year Reported	# of Filed Cases	# of Districts
2005	0	143
	1	13
	2	1
	3	1
	>3	
2006	0	150
	1	5
	2	2
	3	
	>3	1
2007	0	148
	1	9
	2	2
	3	1
	>3	

Research Question Two: Are there significant differences in litigation among the amount and types of litigation (no litigation, resolution, mediation, administrative hearing) that occurs in school districts across a three-year time period in the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?

A one-way within repeated measures analysis of variance was utilized to determine if the difference in amount of litigation across three years was significant. The means and standard deviations of the amount of litigation for 2005, 2006 and 2007 are reported in Table 10. The assumption of normality was tested and found to be violated. A univariate repeated measures analysis of variance indicated no significant difference

between the means of the three years of amounts of litigation, $F(2, 314)=.913$, $p=.40$, partial eta squared=.006.

Table 10

Descriptive Statistics Amount of Litigation

Year	N	Mean	Std. Deviation
2005	158	.11	.391
2006	158	.08	.422
2007	160	.10	.392

Table 11

Analysis of Variance Repeated Measures for Amount of Litigation

Source	df	MS	<i>F</i>	<i>p</i>	η
Tests of Within-Subjects Effects					
Years	2	.044	.913	.403	.006
Years	314	.049			

Three different one-way within repeated measures of analysis of variance were conducted to determine if the differences in the types of litigation were significant across a three-year period. The means and standard deviations for withdrawn cases for three years are reported in Table 12. The assumption of normality was tested and found to be violated. Table 13 illustrates a univariate repeated measures analysis of variance which indicated no significant difference between the means of the withdrawn cases for the three years, $F(2,190)=.197$, $p=.61$, $\eta=.005$.

Table 12

Descriptive Statistics (Type of Litigation)

Type/Year	N	Mean	Std. Deviation
WD2005	99	.08	.340
WD2006	100	.09	.473
WD2007	99	.09	.406

Table 13

Analysis of Variance Repeated Measures for Type of Litigation (Withdrawn)

Source	df	MS	<i>F</i>	<i>p</i>	η
Tests of Within-Subjects Effects					
Years	2	.010	.497	.609	.005
Years	190	.021			

The means and standard deviations for dispute resolution across three years are reported in Table 14. The assumption of normality was tested and found to be violated. Table 15 illustrates a univariate repeated measures analysis of variance which indicated no significant difference between the means for dispute resolution across three years, $F(2, 182)=1.00, p=.37, \eta= .011$.

Table 14

Descriptive Statistics Dispute Resolution

Type/Year	N	Mean	Std. Deviation
RES2005	95	.02	.144
RES2006	97	.03	.174
RES2007	98	.04	.199

Table 15

Analysis of Variance Repeated Measures for Type of Litigation (Resolution)

Source	df	MS	F	p	η
Tests of Within-Subjects Effects					
Years	2	.004	1.0	.370	.011
Years	182	.004			

The means and standard deviations for mediation for the three years are reported in Table 16. The assumption of normality was tested and found to be violated. A univariate repeated measures analysis of variance indicated no significant difference between the means of mediation across three years, $F(2, 184)=1.0, p=.37, \eta=.011$ as reported in Table 17.

Table 16

Descriptive Statistics (Mediation)

Type/Year	N	Mean	Std. Deviation
RES2005	98	.16	1.03
RES2006	97	.11	1.02
RES2007	97	.09	.542

Table 17

Analysis of Variance Repeated Measures for Type of Litigation (Mediation)

Source	df	MS	<i>F</i>	<i>p</i>	η
Tests of Within-Subjects Effects					
Years	2	.100	1.0	.370	.011
Years	184	.100			

The means and standard deviations for hearings across three years are reported in Table 18. The assumption of normality was tested and found to be violated. A univariate repeated measures analysis of variance indicated no significant difference between the means of hearings across three years, $F(2, 184)=1.0, p=.37, \eta=.011$ as reported in Table 19.

Table 18

Descriptive Statistics Hearing

Type/Year	N	Mean	Std. Deviation
HEAR/2005	97	.03	.174
HEAR/2006	95	.00	.000
HEAR/2007	98	.04	.199

Table 19

Analysis of Variance Repeated Measures for Type of Litigation (Hearing)

Source	df	MS	F	p	η
Tests of Within-Subjects Effects					
Years	2	.004	1.0	.370	.011
Years	184	.004			

Research Question Three: Does failure to implement best practice variables identified in the literature predict the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

A standard multiple regression was conducted to determine if any variables could be considered possible predictors for the amount of litigation for each year (2005, 2006, and 2007). Best practice variables from the literature such as (a) instructional supports (b) systematic instruction, (c) literacy instruction, (d) positive behavior support plans, (e) home and school collaboration, (f) parent training, (g) functional skills training, (h) student participation in IEP team meetings, (I) full inclusion, and (j) integrated related services model were used. A standard multiple regression was also conducted for each year (2005, 2006, 2007) using identified legislative variables such as (a) least restrictive environment, (b) functional behavior assessment, (c) IEP, (d) FAPE, (e) transition, (f) assistive technology, (g) prior written notice, (h) access to the general curriculum, (i) evidence-based instruction, and (j) parental consent as possible predictor variables for litigation.

Before conducting the multiple regression, the data were screened for missing data, outliers, and assumptions. While there were missing values it was not deemed significant to affect results of analysis. Best practice variables for the years 2005, 2006 and 2007 will be discussed first.

Year 2005

The means, standard deviations, skewness, and kurtosis for the best practice variables are reported in Table 20. The best practice variance accounted for (R^2) equaled .05 (adjusted $R^2 = -.04$), which was not significantly different from zero ($F=.561$, $p=.842$). The correlation coefficients, unstandardized regression coefficients (B) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 21. None of the 10 independent variables for best practices contributed significantly to the prediction of the amount of litigation for 2005.

Table 20
Descriptive Statistics

IV	N	Mean	Std. Deviation	Skewness	Kurtosis
Supports	146	1.58	.786	1.084	.063
Sys Inst	140	1.96	1.024	.821	-.462
Lit Inst	143	2.07	.853	.210	-.901
PBSP	142	1.72	.845	.933	.000
Collab	144	1.90	.855	.664	-.247
Parent Trng	141	2.58	.896	-.340	-.629
Funct	143	1.31	.584	2.189	5.639
Student Part	144	2.55	.835	-.449	-.440
Inclusion	143	1.83	1.055	.853	-.706
Rel Svs	143	2.03	.804	.361	-.457

Table 21

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2005 Amt)

<u>IV s</u>	<u>B</u>	<u>β</u>	<u>sr_i</u>	<u>t-value</u>	<u>p-value</u>
Intercept	.18			.97	.34
Supports	.01	.03	.02	.24	.81
Sys Inst	-.01	-.03	-.03	-.30	.76
Lit Inst	.01	.01	.01	.11	.91
PBSP	.06	.13	.11	1.21	.23
Collaboration	.03	.07	.06	.61	.55
Parent Trng	.00	.01	.01	.07	.94
Functional	.04	.06	.06	.64	.52
Participation	-.07	-.13	-.13	-1.33	.19
Inclusion	-.02	-.06	-.05	-.57	.57
Rel Services	-.05	-.09	-.08	-.88	.38

Year 2006

The means, standard deviations, skewness, and kurtosis for the best practice variables are reported in previous Table 20. The best practice variance accounted for (R^2) equaled .07 (adjusted $R^2 = -.01$), which was not significantly different from zero ($F=.895$, $p=.540$). The correlation coefficients, unstandardized regression coefficients (B) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 22. Only student participation in IEP meetings contributed significantly ($p=.02$) to the possible prediction of the amount of litigation for 2006. This suggested that a higher level of participation in IEP meetings resulted in lower levels of litigation.

Table 22

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2006 Amt)

IV s	<i>B</i>	β	sr_i	<i>t</i> -value	<i>p</i> -value
Intercept	.26			1.31	.19
Supports	-.01	-.01	-.01	-.13	.90
Sys Inst	-.01	-.03	-.03	-.27	.79
Lit Inst	.01	.03	.02	.249	.80
PBSP	.09	.18	.16	1.70	.09
Collaboration	.01	.01	.01	.11	.91
Parent Trng	.04	.08	.07	.75	.45
Functional	-.02	-.03	-.02	-.25	.80
*Participation	-.13	-.23	-.22	-2.41	.02
Inclusion	-.00	-.00	-.00	-.03	.98
Rel Services	-.04	-.07	-.06	-.67	.51

Year 2007

The means, standard deviations, skewness, and kurtosis for the best practice variables are reported previously in Table 17. The best practice variance accounted for (R^2) equaled .11 (adjusted $R^2 = .03$), which was not significantly different from zero ($F=1.38, p=.198$). The correlation coefficients, unstandardized regression coefficients (B) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 23. Only student participation in IEP meetings contributed significantly ($p=.03$) to the prediction of the amount of litigation for 2007.

Table 23

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2007 Amt of Litigation)

<u>IV s</u>	<u>B</u>	<u>β</u>	<u>sr_i</u>	<u>t-value</u>	<u>p-value</u>
Intercept	.34			1.77	.08
Supports	-.03	-.05	-.05	-.54	.59
Sys Inst	-.04	-.09	-.08	-.80	.43
Lit Inst	.06	.11	.10	1.11	.27
PBSP	.06	.12	.11	1.20	.23
Collaboration	.08	.15	.13	1.44	.15
Parent Trng	-.03	-.07	-.07	-.70	.48
Functional	-.06	-.08	-.08	-.80	.43
*Participation	-.12	-.22	-.21	-2.27	.03
Inclusion	-.05	-.11	-.10	-1.09	.28
Rel Services	.04	.07	.06	.68	.50

Research Question Four: Does failure to implement identified legislative variables from IDEA (2004) predict the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

Year 2005

The means, standard deviations, skewness, and kurtosis for the legislative variables are reported in Table 24. The legislative variance accounted for (R^2) equaled .10 (adjusted $R^2 = .02$), which was not significantly different from zero ($F=1.25$, $p=.27$). The

correlation coefficients, unstandardized regression coefficients (B) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 25. Only parental consent ($p=.02$) contributed significantly to the amount of litigation for the year 2005 meaning that parents were more likely to give consent in districts reporting.

Table 24

Descriptive Statistics

IV	N	Mean	Std. Deviation	Skewness	Kurtosis
LRE	145	1.08	.344	5.50	37.84
FBA	143	1.65	.807	1.05	.326
IEP Team	143	1.06	.271	4.66	23.44
FAPE	143	1.07	.282	4.32	19.98
Trans	144	1.42	.653	1.46	1.53
AT	142	1.64	.728	.785	-.289
PWN	143	1.08	.278	3.03	7.30
Core Inst	143	1.54	.758	1.30	1.01
EBased	142	1.51	.638	.859	-.301
Consent	142	1.04	.263	6.63	45.05

Table 25

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2005 Amt of Litigation)

IV s	<i>B</i>	β	sr_i	t-value	p-value
Intercept	-.08			-.302	.76
LRE	-.07	-.06	-.06	-.67	.50
FBA	-.02	-.05	-.05	-.50	.62
IEP Team	-.16	-.10	-.10	-1.08	.29
FAPE	-.01	-.01	-.01	-.06	.96
Transition	.07	.12	.10	1.10	.27
AT	-.03	-.05	-.05	-.52	.61
PWN	-.03	-.02	-.02	-.20	.84
Core Inst	-.03	-.05	-.05	-.51	.61
Evidence-based	.10	.16	.14	1.44	.15
*Consent	.36	.23	.22	2.42	.02

Year 2006

The means, standard deviations, skewness, and kurtosis for the legislative variables are reported in Table 24. The legislative variance accounted for (R^2) equaled .08 (adjusted $R^2 \leq .01$), was not significantly different from zero ($F=1.02$, $p=.43$). The correlation coefficients, unstandardized regression coefficients (*B*) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 26. Only transition ($p=.02$) contributed significantly to the prediction of the amount of litigation for the year 2006.

Table 26

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2006 Amt of Litigation)

IV s	<i>B</i>	β	sr_i	<i>t</i> -value	<i>p</i> -value
Intercept	.23			.73	.47
LRE	-.06	-.05	-.05	-.48	.64
FBA	-.05	-.09	-.08	-.90	.37
IEP Team	-.21	-.12	-.12	-1.23	.22
FAPE	-.18	-.10	-.10	-1.01	.31
*Transition	.18	.25	.22	2.34	.02
AT	-.05	-.08	-.01	-.82	.42
PWN	-.01	-.01	-.01	-.07	.94
Core Inst	-.01	-.02	-.02	-.16	.87
EB	.09	.12	.10	1.10	.28
Consent	.15	.09	.08	.89	.38

Year 2007

The means, standard deviations, skewness, and kurtosis for the legislative variables are reported in Table 24. The legislative variance accounted for (R^2) equaled .04 (adjusted $R^2 = -.04$), was not significantly different from zero ($F=.50, p=.89$). The correlation coefficients, unstandardized regression coefficients (*B*) and intercept, the standardized regression coefficients (β), and semipartial correlations (sr_i) are reported in Table 27. None of the ten legislative variables contributed significantly to the prediction of the amount of litigation for the year 2007.

Table 27

Unstandardized Regression Coefficients (B) and Intercept, the Standardized Regression Coefficients (β), Semipartial Correlations (sr_i), t-values, and p-values (2006 Amt of Litigation)

IV s	B	β	sr_i	t-value	p-value
Intercept	.11			.36	.72
LRE	-.00	-.00	-.00	-.01	.99
FBA	-.06	-.10	-.10	-1.06	.29
IEP Team	-.05	-.03	-.03	-.27	.79
FAPE	-.14	-.09	-.08	-.85	.40
Transition	.06	.10	.08	.87	.38
AT	-.01	-.01	-.01	-.14	.89
PWN	.02	.01	.01	.12	.90
Core Inst	-.04	-.07	-.06	-.63	.53
EB	.09	.13	.11	1.18	.24
Consent	.12	.08	.07	.77	.44

Analysis of Open-Ended Survey Questions

Three open-ended questions were included at the end of the survey. All responses were transcribed and then analyzed for themes. Thirty-seven respondents answered the first question that focused on whether they had any special programs or services in their district which would explain their litigation outcomes. The first theme that emerged was focused on the provision of services based on legal requirements. Administrators mentioned following due process procedures for all students and providing a free appropriate public education in a student's least restrictive environment. Comments focused on providing students "appropriate" services based on individual needs and IEP team decisions. Appropriate services included providing a full continuum, inclusive

services, or a separate school. Several stated the parent was an active member of the IEP team. A second theme emerged centered on personnel and curriculum. Administrators mentioned the support they provide to students through specialized teams, including related service providers. Many indicated they developed curriculum including reading, functional, community-based, and transition. The final theme that emerged focused on administrators fostering communication between the parent and school, including soliciting parent input.

Twenty-five administrators responded to question two which focused on the role of advocates in the administrator's school districts and their effect on potential litigation. The first theme that emerged was that the majority of respondents were very positive about the role of advocates in their school districts. A second theme that emerged was that often administrators thought of advocates in terms of a collaborative role vs. adversarial. One district stated they had their own advocate to assist parents in understanding the "law and their rights." Several also commented that advocates were welcome members at IEP meetings.

Twenty-six administrators responded to question three which focused on administrator's perceptions related to their litigation outcomes in their districts. The first theme that emerged was that administrators perceived their lack of litigation due to the fact that they focused on "putting the child's needs first." One administrator stated "we are trying to do what is right for the student." A second theme emerged focused on provision of services based on legal requirements. This was a similar theme to what was reported for question one. A third theme focused on maintaining good communication with parents which was similar to question one as well. A final theme emerged showing

that parent input was valued by the administrators when determining appropriate services for students.

Summary of Results

This study investigated the amount and type of litigation regarding students with significant cognitive disabilities for years 2005-2007 occurring in five states comprising the U.S. Fourth Circuit Court of Appeals. It also investigated the possibility of any possible predictor variables for litigation for this population of students. Two survey disseminations occurred, one through convenience sampling at a national conference, and a second through electronic dissemination. A total of 173 respondents provided the data for this analysis. Response rate was 41% for convenience sample and 44% for electronic sample. In addition to close-ended questions, three open-ended questions were included at the end of the survey and they were also analyzed for recurring themes. On the electronic sample, twenty-six respondents indicated they had no litigation for the three years specified and did not complete the following survey questions due to a possible misunderstanding of directions. Their responses were not removed from the dataset.

The characteristics of respondents indicated they were primarily white (87.6%) and female (78.4). 54.1% were over the age of 50 and 83.6% indicated their position as “Director.” All five states were represented with Maryland having the least representation at 5.8%, followed by W.Va. at 15.4%. North Carolina had the highest percentage of respondents at 31.4%. 57.8% of respondents indicated that their population of students with significant cognitive disabilities was less than 50 and 22.5% indicated they had a population between 50-250 students. Only a small number (7.1%) indicated a high percentage (850 to >1050) of this population of students. Frequency of survey responses

indicated that special education administrators had a higher percentage of “all” responses for legislative variables when compared with best practice responses across the survey.

The amount of litigation indicated by the districts was observed to show a decrease from 2005 to 2006 (18 to 13 cases), and then a slight increase in 2007 with 16 cases reported. Results of repeated measures within analysis of variance indicated that there was no significant variance in the amount of litigation or in the four types of litigation across the specified three years. The assumption of normality was also violated

Standard multiple regression analysis of independent variables for best practice and legislative variables indicated minimal prediction for the amount of litigation across all three years. A few variables did show significance but because the assumption of normality was violated no statistical significance could be reported. Given the number of predictor variables analyzed over the three- year period, and the fact that the size of the dependent variable (amount of litigation) was too small for statistical analyses, the overall findings do not indicate independent variable prediction for litigation for this population of students within the five states surveyed. The fact that the amount of litigation was minimal for the population surveyed is a major limitation of the study. Further discussion of investigation results, limitations, implications for practice, and recommendations for further research will be discussed in the following chapter.

CHAPTER 5: DISCUSSION OF FINDINGS

This chapter will be divided into sections as follows: (1) purpose and methodology, (2) summary of findings, (3) limitations of the study, (4) implications for practice, and (5) recommendations for future research.

Purpose and Methodology

The first purpose of the study was to investigate the amount and type of litigation occurring in districts within the U.S. Circuit Court of Appeals (Fourth Circuit) for students with significant cognitive disabilities. The second purpose was to examine the relationships between best practice variables derived from the literature and legislative variables derived from IDEA (2004) and the amount and type of litigation regarding students with significant cognitive disabilities. The investigation spanned three years from 2005 to 2007. The respondents chosen were special education administrators responsible for programs in local school districts in five states within the jurisdiction of the U.S. District Court of Appeals (Fourth Circuit). The states included Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

The first hypothesis proposed was that school districts enter into litigation related to students with significant cognitive disabilities because they fail to implement the key principles of IDEA (2004). The second hypothesis proposed was that school districts enter into litigation because they fail to implement program quality indicators and best

practices for students with significant cognitive disabilities. Given these hypotheses, the following four research questions guided this investigation:

- 1) What is the amount and type of litigation that occurs in school districts within the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?
- 2) Are there significant differences in litigation among the amount and types of litigation (no litigation, resolution, mediation, administrative hearing) that occur in school districts across a three-year time period in the United States Court of Appeals (Fourth Circuit) regarding students with significant cognitive disabilities?
- 3) Does failure to implement best practice variables identified in the literature affect the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?
- 4) Does failure to implement federal legislative mandates of IDEA (2004) affect the amount of litigation regarding students with significant cognitive disabilities that occurs in a school district within the jurisdiction of the United States Court of Appeals (Fourth Circuit)?

To determine the relationships, a survey was developed by the author based on prior research on program quality indicators and best practices for this population of students (Browder & Spooner, 2006; Collins, 2007; Downing, 2002; Kennedy & Horn, 2004; Meyer, Eichinger, & Park-Lee, 1987; Snell & Brown, 2006, Westling & Fox, 2004), as well as legal tenets contained in IDEA (2004) and described by experts in the field

(Crockett, 2000; Crockett & Kaufmann, 1999; Drasgow, Yell, & Robinson, 2001; Norlin, 2007; Yell, 2006). The survey contained demographic information listed in ranges, as well as blanks where administrators could list the amount and type of litigation for each year. The survey consisted of 20 questions that included Likert-type responses such as “all,” “most,” “some,” and “none.” If the respondent answered “some” or “none” they were directed to the follow-up question. Data was coded from low to high with all=1, most=2, some=3, and none=4. The follow-up question listed responses such as “not appropriate for this population,” “not a legal requirement,” “lack of district resources,” and “other.” A “multiple” column was created since several respondents checked multiple answers on the follow-up questions. Three open-ended questions were included at the end which queried respondents as to (a) what programs they have in place that may prevent litigation, (b) the role of advocates in their district with respect to litigation, and (c) their perceptions of what prevented litigation in their district. The survey was reviewed by experts in the field of severe disabilities as well as in the area of special education law. The survey was also reviewed by special education administrators prior to dissemination.

There were two types of dissemination. Initially, a convenience sample was taken at a national conference of special education administrators in November, 2008. The response rate was 41% but only included 17 surveys for the target states. A second electronic dissemination occurred in October, 2009 via Survey Monkey to 351 special education directors in the five target states. The response rate was 44%. Both response rates are close to the 50% recommended rate reported by Dillman (2006). Results were

analyzed using both descriptive and inferential statistics (SPSS 18) and will be discussed in the next section.

Summary of Findings

The majority of the 173 respondents could be characterized Caucasian (87.3%) females (78.5%) over the age of 50 (54.1%) who were special education directors (83.6%). A higher number of respondents were from North Carolina (31.4%), South Carolina (27.3%) and Virginia (20.3%). A majority of the respondents (57.8%) indicated the population of students with significant cognitive disabilities was less than 50. This last characteristic could be one variable that may have contributed to the fact that a small amount of litigation was reported by the respondents for the three-year period. Twenty-six respondents who reported no litigation for the three-year period only completed the demographic portion of the survey and no questions were answered. This was judged to be due to a misunderstanding and no response bias occurred, therefore, these cases were not omitted from analyses. However, there may have been potential nonresponse bias whereas respondents with a pattern of higher district litigation possibly choosing not to respond to the survey.

Litigation was defined for the respondents as when a parent filed for a contested case hearing under the procedures for their state. The type of litigation was also delineated as: (1) withdrawn, (2) dispute resolution, (3) mediation, and (4) administrative hearing. Question one investigated the amount of litigation over a three year period for this population of students. The amount of litigation was found to be very small for this population of students across five states for the three year period. For 2005 (N=158), there were 18 reported cases of litigation with 15 school districts reporting cases filed. In

2006 (N=158) 13 cases were reported with a decrease of 7 and only 8 school districts reporting cases filed. In 2007 (N=160) 16 cases were reported with an increase of 4 and 12 school districts reporting cases filed. There appeared to be a slight drop in litigation between 2005 and 2006. One reason could be that states were beginning to draft regulations based on IDEA regulations which came into effect in October, 2006, and the federal regulations were beginning to be clarified for local districts during this time period.

Question two investigated if there were any significant differences in the amount and type of litigation across the districts for the three-year period. Results of one-way repeated measure analyses of variance revealed that there was no statistically significant difference in amount ($p=.06$) or type. Withdrawn cases ($p=.61$), dispute resolution ($p=.37$), mediation ($p=.37$), and hearing ($p=.37$) were all nonsignificant. The assumption of normality was violated and this affected the outcome of both ANOVA and regression analyses. Normality refers to the principle that variables are normally distributed. Both skewness and kurtosis measures indicated that the assumption of normality was violated, thereby affected the results and causing a major limitation in the study. The hypothesis for the violation of the assumption was that the dependent variable was too small in each of the three years and there was insufficient power to prove significance. Since the dependent variable (amount of litigation) was minimal there was little variability in the data. This limitation will be discussed further in the limitations section of this chapter.

Question three investigated whether there was a significant relationship between the best practice variables derived from the literature and the amount of litigation for students with significant cognitive disabilities. A standard multiple regression was run for

each year using the ten best practice variables (instructional supports, systematic instruction, literacy instruction, positive behavior support plans, home and school collaboration, parent training, functional skills training, student participation in IEP meetings, full inclusion, and integrated related services) as the independent variables. The amount of litigation was the dependent variable. The assumption of normality is required for a standard multiple regression analysis and the assumption was violated due to the minimal amount of litigation reported by the respondents resulting in a lack of variability. Inferential statistics revealed that student participation in IEP team meetings appeared to contribute significantly for 2006 ($p=.02$) and 2007 ($p=.03$) indicating that the higher the student participation, then the lower level of district litigation. A frequency analysis of the responses to best practice variable questions compared to legislative variable questions revealed some important findings. The analysis showed that the administrators answered more questions with “all” or “most” when the question related to a legislative variable. More follow-up questions were found related to best practice variables as they received more “some” or “none” responses than legislative questions.

For example, only 29.4% reported that “all” students had access to literacy instruction which is consistent with prior research showing students with significant disabilities have not had sufficient opportunities to participate in literacy instruction (Koppenhaver & Yoder, 1993). Meanwhile, functional skills scored the highest at 74.1% reported as “all.” While functional skills are important (Westling & Fox, 2004), students with significant cognitive disabilities should also be taught academic skills so that they can have access to the content that other students receive (Browder & Spooner, 2006).

A review of the literature demonstrated that systematic instruction is an evidence-based practice for teaching a variety of academic and functional skills to students with significant cognitive disabilities (Browder, 2001; Copeland & Hughes, 2000; Snell & Brown, 2006). However, respondents indicated that 11.4% of “some” of their teachers and 12.9% of “none” of their teachers had access to this training. Only 41.4%, less than half of the respondents, indicated that “all” of their teachers had access to systematic instruction. This is disconcerting given that there is evidence to support this methodology for this population of students.

There is a growing empirical-base showing self-determination skills to be important for students with disabilities although this population of students has not always had an opportunity to learn these skills (Algozzine, Browder, Karvonen, Test, & Wood, 2001; Martin, Van Dycke, Christensen, Greene, Gardner, et al., 2006). According to Wehmeyer and Schwartz (1998), people who are self-determined have better outcomes related to their quality of life. Research has demonstrated that students of varying age ranges and disabilities can be taught self-determination and self-advocacy skills (Algozzine, et al., 2001; Wood et al., 2005).

Collaborative teaming among professionals has been cited as a practice which supports student’s success (Ferguson et al., 1992; Ryndak, 2006). Collaborative teaming has been found to result in more practice trials during the day, provide instruction to parents, and promote generalization (Snell & Brown, 2006). However, the respondents indicated that only 27% of “all” students received integrated related services and only 14.9% of “all” parents received parent training.

Regarding legislative variables, administrators reported “all” responses 93.1% for least restrictive environment, 94.4% for IEP, 93.7% for FAPE, 91.6% for Prior Written Notice, and 92.2% for Consent variables. These high percentages may indicate that special education administrators have a stronger knowledge base of legislative variables and implement those practices more frequently than they implement best practices for this population of student. Crockett and Kaufmann (1999) recommended including empirically-based practices in addition to the providing a Free Appropriate Public Education (FAPE) and adhering to the principles of least restrictive environment (LRE). Since administrators responded higher on all legislative variables vs. best practice variables using more “all” or “most” answers for legislative variable questions, then one implication for practice is that administrators need to become more knowledgeable about empirically-based practices for this population of students. Results of the frequency analysis of responses showed that educators still have to educate special education administrators about best practice or program quality indicators that are empirically based to ensure that students gain the necessary academic skills so that they can access the general curriculum as required by IDEA (2004). Best practice and legislative variables are not two separate entities for without best practices being utilized, the legal requirements cannot be met.

Question four investigated whether there was a significant relationship between the legislative variables (least restrictive environment, functional behavioral assessment, IEP, FAPE, transition, assistive technology, prior written notice, access to the general curriculum, evidence-based instruction, and parental consent) and the amount of litigation for students with significant cognitive disabilities. A standard multiple regression was run

for each year using the legislative variables as independent, predictor variables. The amount of litigation was the dependent variable. Parental consent appeared to contribute significantly ($p=.02$) to the amount of litigation for 2005, indicating that administrators who reported a high percentage use of the practice following the procedural safeguard related to parental consent may have had an effect on their amount of litigation.

Transition also showed significance ($p=.02$) for 2006, indicating that transition practices in the districts surveyed may have an effect on the amount of litigation that occurred.

The three open-ended questions were analyzed for themes and results indicated that special education administrators were utilizing some of the best practice and legislative variables in their school districts to prevent litigation. This finding may explain the fact that a small number of hearings were reported by the respondents. The first open-ended question focused on whether the respondents had any special programs in their district which would explain their litigation outcomes. Results of analysis of this question revealed a theme focused on the legislative variables as respondents indicated they provided “appropriate services” according to the student’s IEP, a “full continuum of services” was offered to students, “all students were offered due process,” and they provide a “free appropriate public education” in the student’s “least restrictive environment.” Another theme showed best practice variables addressed by the respondents stating they developed appropriate curriculum in the areas of “reading, community-based instruction, functional and transition.” These are all areas addressed in the literature as best practices by experts in the field (Browder et al., 2006; Snell & Brown, 2006; Spooner & Browder, 2006; Westling & Fox, 2004). The best practice of

home-school collaboration (Chen & Miles, 2004; Childre, 2004) was evidenced by comments by several administrators of fostering “parent and school” communication.

The second open-ended question focused on the role of parent advocates in the school districts. An analysis of the results of this question revealed themes that emerged focused on the positive and collaborative relationship many of the districts have developed with external advocates. Family and educator collaborative practices are more likely to be positive when using a family-centered approach. According to Powell et al., (1977), major principles for establishing a family-centered approach are: (1) building trust, (2) open communication, (3) enabling and empowering family and student, and (4) utilization of a collaborative problem-solving approach. Several mentioned that parent advocates were “welcome at IEP meetings,” and one administrator stated they had “their own advocate to assist parents in understanding the law and their rights.” The majority of positive responses towards external, community advocates in their districts may also have an influence on the lack of litigation reported.

The third open-ended question focused on respondent’s perceptions related to their litigation outcomes in their district. An analysis of results for this question revealed a theme focused on meeting the student’s needs. Two themes emerged that were repeated from question one. There was again a theme focusing on providing services based on legislative mandates (IDEA, 2004; NCLB, 2002). There was also a theme that emerged focusing on maintaining good communication with parents which is a best practice according to Powell et al., (1977).

The open-ended questions gave a good indication that some of the directors surveyed did understand many critical best practice and legislative factors that could lead

to potential litigation. While the quantitative analysis was limited by the minimal dependent variable, the qualitative analysis revealed more information about the director's perceptions of the causes of litigation. The themes also reinforced both legislative variables from IDEA as well as best practice variables from the literature.

Limitations of the Investigation

One limitation to the study was narrowing the target population to five states of which several of those states do not historically have a reputation for extensive litigation. For example, in 2005 North Carolina only had 2 reported cases of litigation (Zirkel, 2008). The rationale for the sample selected was that these directors comprised the Fourth Circuit Court of Appeals and ruling in this court does set legal precedent for these states. A larger sample including one or two other Circuit Courts of Appeal would have possibly provided broader views and more litigation.

A second limitation of the investigation was that the population was not very diverse. The majority were beginning administrators who were Caucasian, female, and over 50 years of age. The majority also administered programs in school districts where they had less than 50 students that met the definition (Browder & Spooner, 2006) of a student with a significant cognitive disability. A more diverse population of respondents may have yielded different perceptions. It is difficult to generalize these findings to a larger sample when the representative sample characteristics were so narrow.

While the response rates were 41% and 44%, which is close to recommendations by Dillman (2007), there were twenty-six respondents who did not answer the survey questions. While response bias was not determined to be the cause, these missing cases may have influenced some of the results in a small sample of 173. A limitation may be

that directions were not clear enough on the survey to advise respondents that even if they reported “no litigation” their answers were valued and influential to the results of the analysis. In addition, the potential for nonresponse bias exists. Perhaps those directors with a history of little to no litigation were more motivated to respond to the survey while those with a history of more litigation were less motivated to respond.

The last limitation of the investigation was that the number of districts reporting any litigation was very small. Therefore, very little variability could be predicted, resulting in minimal statistical significance reported. .

Implication for Practice

Getty and Summy (2004) contend that some district litigation could be prevented if districts were aware of the factors which may cause a parent to file for a contested case hearing. This investigation sought to examine some potential factors which may cause a parent to choose to go to the hearing level. Some of the directors surveyed did demonstrate an awareness of best practice and legislative factors that may prevent a district from going into an adversarial role such as what occurs during a due process hearing. However, more administrators had higher percentages reported for use of practices involving legislative variables than they did for best practice variables.

In recent years, empirically validated curriculum in literacy, math and science have become available (Browder, Gibbs, Ahlgrim-Delzell, Courtade, Lee, 2007; Courtade, Jimenez, Trela, Browder, 2008; Trela, Jimenez, Browder, 2008) yet many districts have not had the benefit of these resources. Having National organizations such as Council for Administrators in Special Education (CASE) recognize the need and endorse products like the *Early Literacy Skill Builders* (2007) has an impact on informing

the practice. Results of this investigation showed there is a strong indication that special education administrators need professional development focused not only on interpretation of state and federal legislation, but also focused on quality program indicators for students with significant cognitive disabilities.

As a result of NCLB (2002), the nation has become more focused on outcomes that include “all” students in statewide assessment. As the nation moves towards common core standards and the reauthorization of NCLB (2002), empirically-based practices for this population of students will become even more critical. Administrators who are responsible for district-wide programs for students with disabilities must not lose focus on the needs of students with significant cognitive disabilities regardless of the size of the population in their district. With autism prevalence rates on the rise and now up to 1:110 (U.S. Centers for Disease Control, 2009) and recently released autism evidence-based practices (National Standards Project, 2009) administrators must implement these practices in their district not only to avoid potential litigation but to do what is ethically best for students with significant cognitive disabilities.

Potential Contributions of the Research

While minimal statistical significance was reported due to a lack of variability in the data, three variables could be identified as statistically significant based on inferential analysis. In the area of best practice variables, student participation in IEP team meetings was statistically significant for 2006 and 2007. This may possibly indicate that the higher student participation is reported, then the lower the level of litigation is in the district. Related to this practice, the legislative variable of transition was also found to be significant in 2006. These findings contribute to the growing body of research supporting

self-determination as an important skill for students with significant cognitive disabilities to possess in order to achieve independence in adulthood (Brown, Betz, Corsi, & Wenig, 1993; Field, Martin, Miller, Ward, & Wehmeyer, 1998; Wehmeyer, 2005; Wehmeyer & Schwartz, 1998). The legislative variable of parent consent was also found to be significant for 2005, indicating that districts who adhered to providing parents procedural safeguards may have reduced litigation.

Descriptive statistics revealed that special education directors self-reported district practices to be consistently higher respective to legislative variables than for best practice variables for students with significant cognitive disabilities. The best practice areas of literacy instruction, systematic instruction, self-determination, and collaboration were all reported at a lower frequency. These areas have all been identified by experts in the field as areas of best practice for students with significant disabilities (Browder, 2001; Browder et al., 2006; Snell & Brown, 2006; Wehmeyer, 2005).

According to Boscardin (2007), the challenge now exists for administrators to support evidence-based practices resulting in increasing educational achievement for all students under their direction. "All" students include students with significant cognitive disabilities who have historically been restricted from accessing the general curriculum and receiving academic instruction. Therefore, the most significant contribution of this research is that weaknesses were identified in the special education administrator's knowledge base of best practices through self-report. Results of this investigation revealed a need for more intensive professional development in the area of best practices for students with significant disabilities for those administrators directing special education programs in their districts.

Implication for Future Research

One implication for future research is to expand research on teaching academic skills to students with significant cognitive disabilities. While we have extensive research to support the efficacy of practices such as systematic instruction (Browder, 2001; Copeland & Hughes, 2000; Snell & Brown, 2006; Westling & Fox, 2004) for this population of students, the research is limited in the area of reading, math and science instruction (Browder, Spooner, Ahlgrim-Delzell, Harris, & Wakeman, 2006; Browder, Wakeman, et al., 2006; Courtade, et al., 2006). Historically, research focused on sight word instruction for reading, counting money and telling time for math, and instruction in safety skills for science. Research needs to be expanded to focus on teaching core subjects that are aligned to the state standards or possible national common standards using proven methodology. Then, the research needs to be disseminated to local school districts through professional development activities and administrators should be included in these trainings.

Given the possible sample bias using survey research, a case study of a school district or comparative case studies may provide important qualitative information regarding the use of best practice and legislative variables in school districts for students with significant cognitive disabilities. An attempt was made in this investigation to identify not only some of the possible variables affecting litigation but also some of the barriers to implementation of these variables. Through a case study design, these important questions may be more effectively answered.

Future research in this area validating that special education administrators should focus on both best practices and legislative variables is critically important. With the

reauthorization of the Individuals with Disabilities Improvement Act on the horizon, research findings for students with significant cognitive disabilities may very well be incorporated into future legislation. With each reauthorization, students with disabilities appear to gain more legislative support for accessing the general curriculum. Perhaps, the research to follow will assist legislators in defining best practices in the law for this population of students. In addition, funding for professional development and training of future special education leaders may be linked to the reauthorized legislation.

Summary

This study focused on investigating the amount and type of litigation affecting students with significant cognitive disabilities across five states. The independent variables consisted of both best practice and legislative variables. The literature and legislation were researched to generate a survey which sampled special education administrators' perceptions across five states. The hypotheses overall were not supported by inferential analysis due to a lack of variability in the data resulting in a lack of statistical significance across the data. Three variables emerged as statistically significant. However, on descriptive analysis special education administrators demonstrated a higher frequency of response scores for "all" answers to legislative variable questions over best practice variable questions. This possibly could indicate that special education administrators self-evaluated their school districts much higher on legislative practices versus best practices for students with significant cognitive disabilities. Results of open-ended questions revealed themes that focused on both legislative and best practice variables but legislative variables were mentioned more frequently. The limitations of the study include a lack of variability in the dependent variable which was the amount of

school district litigation. This lack of variability influenced the statistical significance of the results. Areas of future research include a comparative case study of districts with high and low amounts of litigation as well as a replication of this study with an expanded participant sample. The potential significance of the study is that special education administrators may need more professional development in the area of best practices for students with disabilities. This professional development requirement could possibly be imbedded in federal legislation during upcoming IDEA reauthorization.

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APPENDIX A: SURVEY INSTRUMENT

Special Education Administrators Perceptions

I. Demographics

Position: _____Assistant Superintendent, _____Director of Special Education, _____Coordinator of Special Education, _____Other

Years in Position: _____0-5, _____5-10, _____10-15, _____>15 years

Age Range: _____<30, _____30-40, _____40-50, _____>50

Edu Level: _____BA Degree, _____MA Degree, _____MA+ _____Doctorate Degree

Gender: _____Female, _____Male

Ethnicity: _____Caucasian, _____African American, _____Asian, _____Hispanic, _____Other

Population of Students with Significant Cognitive Disabilities (1% students) ages 3-21: _____<50 identified students, _____51-200 identified students, _____201-400, 401-600 identified students, _____601-800 identified students, _____801-1000 identified students, >1000 identified students.

State: _____

II. Amount of Litigation

Litigation is defined as occurring when a parent files a petition for a contested case hearing under the procedures in your state. Even if the case was dropped or settled, please report each incidence of filing as an occurrence.

Total Amount of Due Process Cases Filed in 3-year period regarding students with significant cognitive disabilities ages 3-21:

2005-2006 _____

2006-2007 _____

2007-2008 _____

III. Type of Litigation

Please list the number of cases defined as the following for students with significant cognitive disabilities ages 3-21:

	2005-2006	2006-2007	2007-2008
Case Settled	_____	_____	_____
Resolution	_____	_____	_____
Mediation	_____	_____	_____
Hearing	_____	_____	_____

IV. District Practices

Please answer all questions regarding practices in your district as they relate to those students with significant cognitive disabilities (SCD) ages 3-21. These would include the students who would be counted as the 1% proficient on alternate assessment in tested grades in your state. This population of students would include students with moderate to severe cognitive deficits, including those students with autism and multiple disabilities (Browder & Spooner, 2006).

1. How many students with significant cognitive disabilities (SCD) in your district are provided instructional supports in order to access the general education curriculum successfully?
- All** SCD are provided supports.
 Most SCD are provided supports.
 Some SCD are provided supports.
 None of the SCD are provided supports.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
2. How many students with significant cognitive disabilities (SCD) in your district receive special education and related services in their least restrictive environment (LRE) based on student needs?
- All** LRE decisions for SCD are determined by student needs.
 Most LRE decisions for SCD are determined by student needs.
 Some LRE decisions for SCD are determined by student needs.
 None of the LRE decisions for SCD are determined by student needs.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
3. How many teachers of students with significant cognitive disabilities (SCD) in your district receive training in the use of systematic instruction?
- All** teachers of SCD are trained in systematic instruction.
 Most teachers of SCD are trained in systematic instruction.
 Some teachers of SCD are trained in systematic instruction.
 None of the teachers of SCD are trained in systematic instruction.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for teachers of this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
4. How many students with significant cognitive disabilities (SCD) in your district are engaged in literacy instruction focused on the five Big Ideas (Phonics, Phonemic Awareness, Vocabulary, Fluency, Comprehension) of the National Reading Panel?
- All** SCD receive literacy instruction focused on Big Ideas.
 Most SCD receive literacy instruction focused on Big Ideas.
 Some SCD receive literacy instruction focused on Big Ideas.
 None of SCD receive literacy instruction focused on Big Ideas.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other

5. How many students with significant cognitive disabilities (SCD) in your district who also exhibit challenging behavior are required to have a functional behavior assessment (FBA) by a qualified team of professionals trained in this assessment?
- All** SCD with challenging behaviors have an FBA.
 Most SCD with challenging behaviors have an FBA.
 Some SCD with challenging behaviors have an FBA.
 None of the SCD with challenging behaviors have an FBA.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
6. How many students with significant cognitive disabilities (SCD) in your district who have challenging behaviors have a positive behavior support plan?
- All** SCD with challenging behaviors have positive behavior support plans.
 Most SCD with challenging behaviors have positive behavior support plans.
 Some SCD with challenging behaviors have positive behavior support plans.
 None of the SCD with challenging behaviors have positive behavior support plans.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
7. How many teachers of students with significant cognitive disabilities (SCD) in your district plan collaboratively with general education teachers and related service professionals on an ongoing basis?
- All** teachers of SCD plan collaboratively with other teachers and therapists.
 Most teachers of SCD plan collaboratively with other teachers and therapists.
 Some teachers of SCD plan collaboratively with other teachers and therapists.
 None of the teachers of SCD plan collaboratively with other teachers and therapists.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for teachers of this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
8. How many teachers of students with significant cognitive disabilities (SCD) in your district provide parent training on instructional activities that can also be reinforced in the home setting?
- All** teachers of SCD provide parent training.
 Most teachers of SCD provide parent training.
 Some teachers of SCD provide parent training.
 None of the teachers of SCD provide parent training.
- If answer is "some" or "none," please check all that apply:**
- Not appropriate for teachers of this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other

9. How many students with significant cognitive disabilities (SCD) in your district receive instruction in functional life skills?
- All** SCD receive functional life skills instruction.
- Most** SCD receive functional life skills instruction.
- Some** SCD receive functional life skills instruction.
- None** of the SCD receive functional life skills instruction.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
10. How many special education teachers in your district develop an Individualized Education Program (IEP) for students with cognitive disabilities (SCD) in collaboration with an IEP team?
- All** special education teachers of SCD develop IEP’s in collaboration.
- Most** special education teachers of SCD develop IEP’s in collaboration.
- Some** special education teachers of SCD develop IEP’s in collaboration.
- None** of the special education teachers of SCD develop IEP’s in collaboration.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
11. How many IEP’s for students with significant cognitive disabilities (SCD) in your district are reasonably calculated to confer educational benefit and receive FAPE?
- All** IEP’s for SCD meet FAPE requirement.
- Most** IEP’s for SCD meet FAPE requirement.
- Some** IEP’s for SCD meet FAPE requirement.
- None** of the IEP’s for SCD meet Fape requirement.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
12. How many teachers of students with significant cognitive disabilities (SCD) in your district have been trained to develop and implement quality transition services?
- All** teachers of SCD have been trained.
- Most** teachers of SCD have been trained.
- Some** teachers of SCD have been trained.
- None** of the teachers of SCD have been trained.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other

13. How many students with significant cognitive disabilities (SCD) in your district actively participate in their IEP team meetings?
- All** SCD actively participate in their IEP team meetings.
 Most SCD actively participate in their IEP team meetings.
 Some SCD actively participate in their IEP team meetings.
 None of the SCD actively participate in their IEP team meetings.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
14. How many students with significant cognitive disabilities (SCD) in your district have **all** of the necessary assistive technology they require in order to be successful in school?
- All** SCD have **all** of the necessary assistive technology that they require.
 Most SCD have **all** of the necessary assistive technology that they require.
 Some SCD have **all** of the necessary assistive technology that they require.
 None of the SCD have **all** of the necessary assistive technology that they require.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
15. How many parents of students with significant disabilities (SCD) in your district are provided written notice when there is a proposed change of placement?
- All** parents of SCD are provided written notice.
 Most parents of SCD are provided written notice.
 Some parents of SCD are provided written notice.
 None of the parents of SCD are provided written notice.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other
16. How many students with significant cognitive disabilities (SCD) in your district are provided instruction in core content areas of language arts, math, social studies, and science?
- All** SCD are provided instruction in core content areas.
 Most SCD are provided instruction in core content areas.
 Some SCD are provided instruction in core content areas.
 None of the SCD are provided instruction in core content areas.
- If the answer is “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
 Not a legal requirement
 Lack of district resources
 Other

17. How many students with significant cognitive disabilities (SCD) in your district receive access to full inclusion in general education classes if deemed appropriate by their IEP team?
- All** SCD receive access to full inclusion.
- Most** SCD receive access to full inclusion.
- Some** SCD receive access to full inclusion.
- None** of the SCD receive access to full inclusion.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
18. How many students with significant cognitive disabilities (SCD) in your district receive specially designed instruction that is evidence-based?
- All** SCD receive evidence-based specially designed instruction.
- Most** SCD receive evidence-based specially designed instruction.
- Some** SCD receive evidence-based specially designed instruction.
- None** of the SCD receive evidence-based specially designed instruction.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
19. How many students with significant cognitive disabilities (SCD) in your district receive their related services in an integrated, collaborative model?
- All** SCD receive related services in an integrated model.
- Most** SCD receive related services in an integrated model.
- Some** SCD receive related services in an integrated model.
- None** of the SCD receive related services in an integrated model.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other
20. How many parents of students with significant cognitive disabilities (SCD) in your district give written permission before their child is formally evaluated by district personnel?
- All** parents of SCD give written permission for evaluation.
- Most** parents of SCD give written permission for evaluation.
- Some** parents of SCD give written permission for evaluation.
- None** of the parents of SCD give written permission for evaluation.
- If the answer is “some” or “none,” please check all that apply:**
- Not appropriate for this population of students (SCD)
- Not a legal requirement
- Lack of district resources
- Other

VI. Open-Ended Questions/Comments

21. Tell us about any specialized programs or services that your district offers that may explain your litigation outcomes for students with significant cognitive disabilities.
22. Please tell us about the role of advocates in your district related to your litigation outcomes regarding students with significant cognitive disabilities.
23. Please provide any comments below regarding your perceptions related to your litigation outcomes in your school district regarding students with significant cognitive disabilities.

Thank you for participating in this survey.

APPENDIX B: INTRODUCTORY LETTER FOR EXPERTS

Date:

Dear _____

My name is Irene Meier and I am currently a doctoral student in special education at the University of North Carolina at Charlotte. I am conducting an investigation regarding possible predictor variables for litigation in school districts involving students with significant cognitive disabilities. I have identified a total of 17 potential variables from the literature and IDEA statute. In order to determine if any of these identified variables may possibly predict litigation, I have developed a short survey to be disseminated to special education administrators at the National CASE Conference. In order to establish content relevance for this survey I am requesting your expertise in reviewing this proposed attached questionnaire. The questions were developed from major tenets in IDEA and best practices in the field of severe disabilities. Please provide feedback to me on the attached form. I realize your time is limited and I sincerely appreciate your time, suggestions and feedback.

Sincerely,

Irene Meier
Doctoral Student in Special Education
University of North Carolina at Charlotte

APPENDIX C: REVIEWER FEEDBACK FORM

Reviewer: _____

Date of Review: _____

Contact email: _____

Feedback:

APPENDIX D: INTRODUCTORY LETTER TO PARTICIPANTS (CASE
CONFERENCE)

November 8, 2008

Dear Special Education Director:

My name is Irene Meier and I am currently a doctoral student in special education at the University of North Carolina at Charlotte under the direction of Dr. Diane Browder, Snyder Distinguished Professor. I am conducting a research investigation examining special education administrators perceptions regarding variables related to the education of students with significant cognitive disabilities. In order to conduct this investigation I am requesting your assistance. Your participation is voluntary and you may withdraw from the study at any time. As an incentive for participating, four drawings will be held at the end of the conference for four directors to each win a \$50.00 gift card to Barnes and Noble. Your answers to the attached survey will be kept confidential. A summary of findings will be disseminated through *In Case* publication after the investigation has concluded. If you have any questions about this survey or investigation please do not hesitate to contact me at 843-937-6501.

Sincerely,

Irene Meier
Doctoral Student in Special Education
University of North Carolina at Charlotte

APPENDIX E: INTRODUCTORY LETTER TO PARTICIPANTS

October 20, 2009

Dear Special Education Director:

My name is Irene Meier and I am currently a doctoral student in special education at the University of North Carolina at Charlotte and an Executive Director of Exceptional Children's Programs for the Charleston County School District, South Carolina. I am conducting an investigation examining the relationship between legislative and best practice variables and their effects on litigation in school districts regarding students with significant cognitive disabilities. I have developed a short survey to be disseminated to special education directors in five states (NC, SC, VA, WVA, and MD) as part of this investigation. These five states were selected because they comprise the Fourth Circuit Court of Appeals.

As a special education director working in the jurisdiction of the Fourth Circuit you have been selected to complete a survey. The survey will take approximately 15 minutes to complete and your participation is strictly voluntary. Your answers to the attached survey will be kept confidential and only demographic information will be disclosed. In one week the survey will be sent to you via email from survey monkey, or, if you prefer, a paper copy will be mailed to you. The survey consists of five brief sections:

- I. Demographic Information
- II. District Litigation Information (Amount)
- III. District Litigation Information (Type)
- IV. Questionnaire
- V. Comments Section

As an incentive for participating, four drawings will be held at the end of the survey period for four directors to each win a \$50.00 gift card to Barnes and Noble. You will receive a summary of findings after the investigation has concluded. It is my intention that this research investigation will assist special education administrators in preventing costly litigation in their districts. UNC Charlotte wants to make sure that you are treated in a fair and respectful manner. Contact the university's Research Compliance Office (704-687-3309) if you have questions about how you are treated as a study participant. If you have any questions about the actual project or study, please contact Irene Meier (843-937-6501, immeier@uncc.edu) or Dr. Diane Browder (704-687-8836, dbrowder@uncc.edu).

Sincerely,

Irene Meier
Doctoral Student in Special Education
University of North Carolina at Charlotte