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Doctor of Education in Organizational Leadership

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An Analysis of the Child Find Provision Due Process Hearings in Texas: Implications From the
Special Education Cap

A dissertation submitted in partial satisfaction
of the requirements for the degree of
Doctor of Education in Organizational Leadership

by

Katherine Hall Crites

March 2021

Dedication

To Mark, Kennedy, mom, and dad, for always giving me love, encouragement, and support.

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Abstract

This legal qualitative content analysis described how special education due process hearing officers applied the Individuals with Disabilities Education Improvement Act (IDEIA) child find provision since the 2016 federal citations. The study found that districts often violated child find by not evaluating each disability condition, either known or previously suspected. The hearing officer decisions were most often focused on: (a) timely referral and evaluation, (b) comprehensive evaluation, and (c) having a reason to suspect that the student has a disability in need of special education. The decisions were represented as: (a) issues held for the prevailing party, (b) child find prevailing party, and (c) relief granted. The trends in the decisions represented: (a) student eligibility, (b) Section 504, and (c) the predominant issues of identification and evaluation. The legal principles hearing officers were most often focused on were: (a) adequate progress with supports, (b) reason to suspect a disability in need of special education, and (c) timely and comprehensive evaluation. The findings suggest that students with attention deficit hyperactivity disorder and unspecified learning difficulties who receive Section 504 services are more likely than other eligibilities to violate the child find provision if they are not making academic, social, emotional, or behavioral progress with supports. The findings in this study provided the guidance that was lacking for Texas school districts to ensure compliance with IDEIA and recommendations to ensure students with disabilities are not denied free and appropriate public education, including critical areas that are most likely to be litigious.

Keywords: child find, special education, evaluation, due process hearing, Performance-Based Monitoring and Analysis System, Section 504, individuals with disabilities education improvement act

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Chapter 1: Introduction

Parents and advocacy groups have criticized special education policies in Texas for denying Free and Appropriate Public Education (FAPE) to children suspected of having disabilities (Rosenthal, 2016). Texas delayed or denied special education services to an estimated 225,000 students over 13 years (DeMatthews & Knight, 2019; Michals, 2018). Thus, the federal Office of Special Education Programs (OSEP) investigated the Texas Education Agency (TEA) in 2016 and found a monitoring indicator capping special education populations in schools at 8.5% violated federal law (U.S. Department of Education [USDOE], 2018). Texas passed Senate Bill 160 in 2017 to prevent the TEA from requiring a capping indicator for how many children may receive special education services in the state. Meanwhile, the TEA began working to quell the OSEP investigation's fallout by ensuring that all children suspected of having a disability would receive an evaluation to determine their eligibility for special education services.

Background

President Obama signed the Every Student Succeeds Act (ESSA) in December 2015, which revised the No Child Left Behind Act of 2001 (Adler-Greene, 2019; NCLB, 2002). ESSA supporters believed the law would focus educators on preparing all students for college and career readiness to counteract the “devastating consequences” of the NCLB act on the special education population (Adler-Greene, 2019, p. 18). The ESSA was designed for closing achievement gaps, especially among students who were historically underserved, and providing states flexibility to determine state-specific strategies and provisions to advance academic equity and fairness (Chu, 2019; El Moussaoui, 2017). Chu (2019) analyzed states' ESSA plans and revealed that states frequently emphasized access to learning opportunities over outcome equity

as a matter of closing gaps. El Moussaoui (2017) concluded the ESSA improved the likelihood of ensuring every student succeeds academically.

ESSA (2015) supported the laws enacted for ensuring students with disabilities also obtain FAPE. For students with disabilities, the Individuals with Disabilities Education Improvement Act (IDEIA, 2004), formerly the Education for All Handicapped Children Act (EAHCA, 1975) and the Individuals with Disabilities Act (IDEA, 1997), provides the most current federal guidelines for states and local education agencies (LEAs). IDEIA requires children with disabilities to receive FAPE; assists states, LEAs, educators, and parents with accessing the necessary tools to assess and educate children with disabilities effectively; and ensures implementation of early intervention services (USDOE, 2018).

The IDEIA's requirement for FAPE begins with the child find provision (Schanding et al., 2017). The child find provision asserts that LEAs must ensure that all children with disabilities who reside in their service areas and need special education and related services are identified, located, and evaluated (34 Code of Federal Regulations, 2006). For the preschool children, the LEA holds the responsibility for informing parents of their rights to the evaluation for children as young as 3 years of age if the parents suspect a disability in their children (34 Code of Federal Regulations, 2006). As children become school age, and eligible for kindergarten, the students' school shoulders the responsibility to evaluate for suspected disabilities, and this responsibility for evaluation also applies to students who are wards of the state and attending private schools or homeschools (34 Code of Federal Regulations, 2006).

Regulatory guidance on the IDEIA's child find provision was limited, and the identification of children with disabilities was imprecise (Musgrove, 2017; Zirkel, 2018). The fact that states and LEAs suffer penalties for overidentification and disproportionate

identification of ethnic and racial groups caused confusion and interpretive disagreements about the application of the child find provision (DeMatthews & Knight, 2019; Sullivan & Osher, 2019). The variability in law interpretation led to misguided attempts to avoid disproportionality and penalties, such as in Texas. While assuring the appropriate representation of special populations was problematic, vague federal guidance caused individual states to develop diverse interpretations and misinterpretation. The limited guidance and implementation inconsistencies enabled states and LEAs to vary significantly in their disability identification practices, even though states were required to create accountability measures to combat disparities (Chu, 2019). The state accountability systems designed to reform public education tended to produce unintended negative consequences for children with disabilities (DeMatthews & Knight, 2019).

In Texas, the TEA implemented the Performance-Based Monitoring and Analysis System (PBMAS) in 2004 following a \$1.1-billion budget reduction in 2003 (Michals, 2018). PBMAS included an indicator targeting the percentage of students eligible for special education services under federal law (IDEIA). At the time the TEA created this eligibility benchmark, the national average for students identified for special education services was 13%, and in Texas, the average for students identified for special education services was 12% (Rosenthal, 2016). The TEA set its benchmark at 8.5% of students per school district at that time (Michals, 2018). School districts with special education populations over 8.5% were penalized with corrective actions, and students with disabilities subsequently delayed or denied from receiving FAPE; over 200,000 students with disabilities were affected by the Texas PBMAS indicator (DeMatthews & Knight, 2019). Since serving students with disabilities could be costly, TEA saved billions of dollars after Texas schools reduced the number of students served in special education (Michals, 2018).

The percentage of students found eligible for special education services subsequently experienced a significant decline from 11.6% in 2003-2004 to 8.6% in 2016-2017, though the national rate held steady at about 13% (DeMatthews & Knight, 2019; Rosenthal, 2016). Resultantly, Texas delayed or denied services to an estimated 225,000 students over 13 years (Michals, 2018). An investigation by the federal oversight office, OSEP, found the state of Texas noncompliant with the IDEIA's child find provision (USDOE, 2018).

OSEP issued TEA three citations (USDOE, 2018). First, the TEA "failed to ensure that all children with disabilities residing in the State who require special education and related services were identified, located, and evaluated, regardless of the severity of their disability" (TEA, 2018a, p. 4). Next, the "TEA failed to ensure that FAPE was made available to all children with disabilities residing in the State of Texas's mandated age ranges (ages 3 through 21)" (TEA, 2018a, p. 4). Last, the TEA failed "to fulfill its general supervisory and monitoring responsibilities...to ensure that ISDs throughout the State properly implemented the IDEIA child find and FAPE requirements" (TEA, 2018a, p. 4).

On April 23, 2018, after a subsequent state investigation, the Texas Education Agency adopted a strategic plan to evaluate and penalize public schools that followed the original TEA guidance (Rosenthal, 2016). OSEP accepted the TEA solution, or strategic plan, which required implementation by June 30, 2019, and TEA would provide ongoing monitoring annually. LEAs would be audited every 6 years to determine compliance with new directives in the state's strategic plan (TEA, 2018b). Students with disabilities that are not evaluated to receive services are denied FAPE as a violation of their federal rights (Cope-Kasten, 2013; Gilland, 2019). OSEP ruled that LEAs in Texas bypassed special education referrals by both denying and delaying evaluations (DeMatthews & Knight, 2019; Hudson & McKenzie, 2016a; USDOE, 2018). Since

OSEP issued the violations of the IDEIA child find provision in three citations on October 3, 2016, numerous hearings have been held by the TEA (2020) as parents and guardians sought to appeal their children's denial of special education evaluations.

Statement of the Problem

Texas' implementation of the child find provisions can be arduous, and school districts fail to identify students with disabilities for many reasons (DeMatthews & Knight, 2019). Special education practices in Texas remain under scrutiny from the federal government because of LEAs in the state delaying or denying the evaluation of students suspected of disabilities due to the TEA's PBMAS indicator for special education requiring districts to have no more than 8.5% of students in special education from 2004 to 2016 (USDOE, 2018). Texas was issued citations for violating federal law by the OSEP, which determined that Texas did not follow child find provisions found in the IDEIA (2004; USDOE, 2018).

Since the OSEP ruling, the TEA has attempted to mitigate the effects of denying FAPE to hundreds of thousands of students with disabilities (Rosenthal, 2016). The TEA (2018) told OSEP it would ensure a "clear understanding" of IDEIA child find provisions among all LEAs, promote effective models of intervention and instruction, and support high expectations for students with disabilities (p. 2). The TEA has implemented these requirements simultaneously to the rise in due process litigation from child find provision claims, creating an additional burden on LEAs, parents, and students. To date, no research has been conducted on how Texas special education hearing officers have applied the IDEIA child find provision in their rulings since OSEP cited Texas in 2016. LEAs that have not participated in due process cases could benefit from knowing how the IDEIA child find provision has been applied in due process hearings in Texas since 2016 to avoid future due process hearings.

LEAs in Texas must implement the new corrective action requirements set forth by TEA and OSEP. They also must navigate the outcomes of hearings about child find provisions, such as compensatory services, through due process hearings for students that have been denied services. Researchers have ignored special education and accountability policy despite recognition that case law that arises more frequently from the IDEIA child find provision than from eligibility disputes (Zirkel, 2017). However, research into the cases brought before the Texas special education hearing officers could provide information about the status of the application of the child find provision in Texas.

Purpose of the Study

The purpose of this qualitative content analysis study was to describe how special education hearing officers in Texas have attempted to apply the IDEIA child find provision in decisions from due process hearings occurring after the federal OSEP citations that were issued on October 3, 2016. The study sought to determine under what circumstances Texas applies or does not apply the child find provision. The goal of this study was to determine the legal questions, decisions, trends, and legal principles that can be discovered from state agency decisions. The analysis of the hearing officers' decisions about the child find provision provided guidance and insight for educators, administrators, school boards, parents, and policymakers, particularly because the Supreme Court has offered vague guidance (Zirkel, 2020a).

The purpose supported the use of both inductive and deductive reasoning to provide a deeper understanding of case law (Webley, 2010). First, a deductive approach was pursued with an initial code set that was based on previously published studies of special education due process hearings. Special consideration involved coding at the issue-level rather than at the overall result level (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza,

2011; Rickey, 2003; Schanding et al., 2017; Zirkel & Skidmore, 2014). Second, the inductive approach required open coding within each case of study to broaden the opportunities for in-depth analysis of the cases (Webley, 2010). The dual coding approach ensured the data analysis provided rich findings beyond what only predefined codes could provide (Creswell & Poth, 2016).

Research Questions

The study focused on answering the following research questions:

RQ1: What were the legal questions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ2: What were the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ3: What were the trends in the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ4: What were the legal principles for Texas educators that can be discovered from the cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

Significance of the Study

Analyzing due process hearings explained how Texas interprets the federal IDEIA child find provision regulation as LEAs are undergoing an audit to determine compliance with these regulations. In order to understand Texas' interpretation of IDEIA child find, due process hearing analysis was required (Blackwell & Blackwell, 2015). LEAs can benefit from clarifying their processes before they face parent complaints, mediation, and due process hearings (Hudson & McKenzie, 2016a). The research offers information to avoid legal action resulting in legal

fees, settlements, and compensatory services while serving students earlier (Musgrove, 2017; Salhotra, 2018). Blackwell and Blackwell (2015) reiterated the importance of continued research as federal law changes and emphasized that research on due process hearings can benefit a wide variety of stakeholders.

Parents, parent advocates, school administrators, special educators, federal and state lawmakers, and students with disabilities can benefit from understanding the emerging implication of legal requirements in light of new OSEP and TEA guidance (Blackwell et al., 2019). The study findings provided insight into hearing officer interpretations of IDEIA child find provisions and best practices for referral programs to abide by FAPE requirements. An understanding of the application of the child find provision in Texas special education hearings may benefit LEA's and their response to intervention (RTI) decision-making teams and inform LEAs about what actions consist of substantive harm to children who may require special education services. The findings may offer practical guidance to LEAs, and Texas policymakers about the trends in the current hearing decisions about child find provisions affecting school districts. Thus, the study's findings may enable the development of effective special education policies in Texas schools (Webley, 2010).

Definition of Terms

Child find provision. The child find provision of the IDEIA required that states must ensure that all children with disabilities who reside in the state and need special education and related services are identified, located, and evaluated (34 Code of Federal Regulations, 2006).

Disability. A mental or physical impairment that limits a person's movements, senses, or activities (Merriam-Webster, n.d.).

Due process hearing. A due process hearing is a formal legal process that can be requested by district or parent when a parent and the district do not agree about the identification, evaluation, educational placement or services of a student with a disability or when the parties disagree on the provision of a FAPE to the student (TEA, 2019).

Free and appropriate public education. FAPE is a federal provision under IDEIA (2004) that ensures equity in public education opportunities for all children residing in the state between ages 3 and 21, regardless of their public or private school enrollment.

Individualized education program. A written statement for each child with a disability that is developed, reviewed, and revised which includes present levels of academic achievement and functional performance, how the disability affects the child's involvement and progress in the general education curriculum, measurable annual goals, services, accommodations, and modifications which the student needs to make adequate progress (IDEIA, 2004).

Local education agency. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties that is recognized in a state as an administrative agency for its public elementary schools or secondary schools (USDOE, 2020).

Section 504 of the Rehabilitation Act of 1973. A regulatory provision under the Office of Civil Rights which seeks to eliminate discrimination based on disability against students with disabilities. Section 504 requires schools to provide a free appropriate public education (FAPE) to each qualified student with a disability in the school district regardless of the nature or severity of the disability (USDE, 2020b).

Special education hearing officer. Special education hearing officers are private practice attorneys and Administrative Law Judges from the State Office of Administrative Hearings (SOAH) who meet the standards outlined in the Individuals with Disabilities Education Act (IDEA) and additional standards set by the TEA (TEA, 2020b).

Summary

This chapter introduced the study background and problem based on the IDEIA requiring children with disabilities to receive FAPE and LEAs, educators, and parents to educate children with disabilities effectively with intervention services (USDOE, 2020). Chapter 2 provides a synthesis and analysis of the literature to support the purpose of the study.

Chapter 2: Literature Review

In this study, analysis concerned how special education hearing officers in Texas have applied the Individuals with Disabilities Education Improvement Act (IDEIA) child find provision decisions from due process hearings occurring after the federal Office of Special Education Programs (OSEP) citations on October 3, 2016, until the most recently published decisions. Decision analysis of due process hearings provided direction and acumen to LEAs in meeting their child find obligation under IDEIA as they arise. This chapter contains the methods used to find literature and the review of the pertinent literature.

Literature Search Methods

Literature regarding the application of IDEIA's free and appropriate public education (FAPE), child find, due process, and disproportionality regulations were examined for the purpose of this study. All searches were conducted through the following online databases: Business Source Complete, Education Source, LexisNexis, SAGE Journals, HEIN Online, Educational Resources Information Center (ERIC), American Psychological Association (Psych NET). These databases were available through the EBSCOhost database engine. Articles published through June of 2020 were collected. Articles older than 5 years were judged with caution for inclusion. Search terms included *special education, due process, IDEA, IDEIA, FAPE, child find, evaluation, full and individual evaluation, response to intervention or RTI, PBMAS, Texas, and individualized education plan or IEP.*

Conceptual Framework

The legal framework allowed for examining the circumstances of the legal principles applied for the federal IDEIA child find provision in Texas during due process hearings. The research was centered on a black letter law methodology, or doctrinal research, interested in “not

what the law should be but rather on what the law is; and how it can be dissected to understand its very essence” (Lammasniemi, 2018, p. 134). Doctrinal researchers evaluate how the law is applied according to current legal precedents and laws.

Applying black letter law methodology involves adhering to certain underlying assumptions. The assumptions include recognizing the legal system is autonomous and coherent, because if it were not, order and logical connections could not be made. It is assumed that the political and moral origins of legal arguments can be evaluated independently of the legal text. Black letter law draws from legal documents such as case law, state and federal law, government reports, and legal journals. The black letter law approach enables the researcher to find the meaning and scope of relevant legal provisions (Lammasniemi, 2018). Black letter law methodologists are called to ignore the societal implications, along with the moral or political considerations, of the research topic and to provide a strictly legal analysis.

Special Education and Related Legal Issues

Section 504 of the Rehabilitation Act of 1973 established nondiscrimination requirements for federally funded agencies and their programs, including public schools. Under Section 504 in public schools, eligible students are only required to have a plan sufficient enough to ensure reasonable accommodations are provided to students with disabilities. Of note, Section 504 applies to the discrimination of people with disabilities within federally funded programs and applies specifically to ensuring school students receive FAPE. The Americans with Disabilities Act (ADA, 1990) is the civil rights law that prohibits the discrimination of people with disabilities across a spectrum of environments.

In 1975, the Education for All Handicapped Children Act outlined the responsibility of public schools to provide an appropriate education for all students with unique needs at public

expense. Public schools must locate, identify, and evaluate students suspected of disabilities (known as the child find provision), and provide individualized education plans (IEP) for students to be educated in the least restrictive environment (LRE) when they qualify for special education services (Michals, 2018; Schanding et al., 2017). The 1997 Individuals with Disabilities Education Act (IDEA) and its 2004 reauthorization, the Individuals with Disabilities Education Improvement Act (IDEIA) included the assurance of general education curriculum access, the consideration for using assistive technology devices in each IEP, and the provision for transition services for students aging out of public school. Further, the 2004 authorization included providing FAPE for eligible children aged 3 to 21 years, and if the LEA fails to do so, the LEA or state can be sanctioned and lose federal funding (Brizuela, 2010; Michals, 2018).

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 both include students served under IDEIA (2004) but offer a broader definition of disability (Zirkel, 2020a). Section 504 extends “the interpretive standards for the second and third of the three definitional elements of disability: (a) physical or mental impairment that (b) substantially limits (c) one or more major life activities” (Zirkel, 2020a, p. 263). Similar to IDEIA, Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students. Section 504 overlaps coverage for students with disabilities but extends beyond IDEIA’s child find obligation. In Section 504, evaluation requirements are triggered when the district has a reasonable suspicion that because of a broader definition of disability, the student needs special education (Zirkel, 2018).

OSEP has no enforcement responsibility in Section 504, so they are not authorized to monitor its provisions and services in Texas (U.S. Department of Education [USDOE], 2018). However, OSEP did determine Texas students in need of services were being left being serviced under Section 504 rather than being referred for special education evaluation (USDOE, 2018).

Further issues regarding the denial of evaluation to Texas children, OSEP questioned whether children suspected of having disabilities and needing special education services were not receiving services because they were provided dyslexia services under Section 504 rather than IDEA (USDOE, 2018).

Dyslexia services in Texas are governed by the state dyslexia handbook. The handbook states that not only must children have difficulties with reading (indicating potential dyslexia services in Texas), but they must have a second, disabling condition to be referred for special education evaluation under IDEA (USDOE, 2018). This practice is a direct violation of IDEA child find requirements:

To the extent that there are students in Texas whose only disability is dyslexia, who are suspected of needing special education and related services under the IDEA because of dyslexia, and yet are not referred for an evaluation for special education and related services. (USDOE, 2018, p. 11)

The few courts that have addressed child find have confirmed that Section 504 imposes a child find duty if the defendant can show discriminatory intent, a gross misjudgment, bad faith, or “should have known” about the disability (Zirkel, 2018, p. 372).

Every Student Succeeds Act

President Obama signed the Every Student Succeeds Act (ESSA) in December 2015. ESSA replaced the No Child Left Behind Act (NCLB, 2002) of 2001 (Adler-Greene, 2019). The ESSA was designed for closing achievement gaps, especially among students who were historically underserved, and providing states flexibility to determine state-specific strategies and provisions to advance academic equity and fairness (El Moussaoui, 2017). ESSA supporters believed the law would focus educators on preparing all students for college and career readiness

to counteract the “devastating consequences” of NCLB on the special education population (Adler-Greene, 2019, p. 18). Although NCLB was intended to provide an inclusive environment, teachers and administrators worried special education students would impact their adequate yearly progress, determined by standardized testing scores, required to receive their funding. With NCLB’s intense focus on assessment results, teachers of classes made up of special education, and general education students feared those students’ lower scores would indicate that their teaching was not effective (Adler-Greene, 2019).

The ESSA was designed to reduce the special education access disparities by focusing on achievement and opportunity gaps and giving states greater flexibility for ensuring equity (Chu, 2019). El Moussaoui (2017) concluded the ESSA does improve the likelihood of ensuring every student succeeds academically. However, researchers conducting state ESSA plan analyses revealed equity frequently emphasizes access to learning opportunities more than outcomes (Chu, 2019).

Chu (2019) analyzed the 50 states’ ESSA plans and revealed that more than half of the states emphasized equity in access to learning opportunities over equity in outcomes as a matter of closing gaps. Each state sought to improve long-standing equity problems by adopting standards for accountability and testing policy. The USDOE (USDOE) gave state education agencies (SEAs) flexibility to implement accountability policies, but these policies produced uneven results across similar contexts (DeMatthews & Knight, 2019).

Defining equity has been up for debate by researchers and policymakers (Chu, 2019). Despite continuous changes to education policy and reform, the discrepancy in special education identification and service provision still exists between minority and more privileged groups. This concern leads to a discussion of IDEIA.

Individuals With Disabilities Education Improvement Act of 2004

IDEIA (2004) is the current federal education law that protects students with disabilities and their guardians. IDEIA's fundamental goal is the provision of FAPE to all children between the ages of 3 and 21 (Zirkel, 2020a). To do so, several things must happen. First, students with disabilities need to be located, evaluated, and identified. This is called the child find provision of IDEIA. Second, students must be found eligible for special education services. Evaluation determines this eligibility and must contain two prongs: meeting the criteria of disability under IDEIA (e.g., Autism Spectrum Disorder, specific learning disabilities), and requiring special education services to meet FAPE. Although eligibility overlaps with the child find provision, it is also separate (Zirkel, 2020a). Therefore, the primary issues under IDEIA to meet FAPE are the overlapping and interconnected components of child find and eligibility (Zirkel, 2020a).

Compliance is challenging, as IDEIA is difficult to interpret (Gilland, 2019). IDEIA specifically outlines two broad requirements for the entirety of the law that LEAs must meet: procedural and substantive. Procedural requirements include abiding by timelines for evaluation, developing programs for intervention, and including parents in the decision-making process. Substantive requirements include the quality and appropriateness of services, such as the individualized education plan (IEP), types of services provided, and the environments in which services are provided (Blackwell & Blackwell, 2015). LEAs struggle to meet these two requirements, especially when addressing parents as part of the decision-making process. The frequent debate arises from determining how far schools must go to fulfill their IDEIA obligations (Lodaya, 2019).

IDEIA (2004) defined the requirements for highly qualified teachers, accountability and assessment, child find, resolution standards, and standardized manifestation determinations

meetings. Importantly, IDEIA emphasized accountability for schools receiving public funds (Poton, 2017). LEAs are required to provide FAPE with high quality and appropriate services to receive federal funding under IDEIA (Michals, 2018). In addition to meeting these requirements, the federal government allows SEAs to determine the standards for abiding by these requirements. Thus, states' interpretations of the provisions related to IDEIA compliance varies, and their funding levels depend on their applications of IDEIA (Michals, 2018; Poton, 2017). Texas operated under its interpretations of IDEIA and was found to have misinterpreted IDEIA.

The Texas Education Agency (TEA) required each school district to have no more than 8.5% of its students listed under the special education designation. After a 15-month federal investigation by the OSEP, the TEA was found to have violated several IDEIA requirements. These violations include providing FAPE, monitoring LEAs to ensure compliance, and identification and evaluation of students with disabilities (Michals, 2018). The OSEP found the TEA failed at ensuring LEAs were informed about key policies, a critical responsibility of the SEAs under IDEIA (DeMatthews & Knight, 2019). DeMatthews and Knight (2019) discovered that LEAs were intimidated and bullied into staying within the 8.5% benchmark since leaders lacked a clear understanding of key IDEIA and child find provisions related to RTI and identification. District leaders and personnel were found particularly unknowledgeable about identification policies, RTI, and how to integrate Section 504 with IDEIA requirements. Since identification requirements were unclear to LEAs and schools' leaders, students eligible for special education were served under Section 504 for a year before recommendation for evaluation was considered. Consequently, Texas had a disproportionality problem.

Disproportionality

Disproportionality has been long linked to IDEIA regulations and interpretations. Disproportionality refers to both underidentification and overidentification for special education services as well as to the different outcomes affecting marginalized students representing early childhood through 21 years of age (Sullivan & Osher, 2019). The disproportionality variations can be attributed to sociodemographic characteristics and differential access opportunities for participation in special education (Farnsworth, 2018). As recently as 2015, Black students aged 6 to 21 years are 1.4 times more likely to be served under IDEIA. This disproportionality created a concern about racial bias in the identification and referral mechanisms under IDEIA (DeMatthews & Knight, 2019).

Minorities and children in poverty are frequently overidentified with disabilities and are found to require special education. Overidentification is linked to the potential for differential treatment of students of color due to ineffective practices found in both general education and special education programs and the inequitable application of education policies (Farnsworth, 2018; Michals, 2018; Sullivan & Osher, 2019). Misidentification is avoidable, particularly for children of certain ethnicities (DeMatthews & Knight, 2019; Sullivan & Osher, 2019).

States define the parameters of what constitutes significant disproportionality (DeMatthews & Knight, 2019). States interpret IDEIA provisions according to their distinct needs and policies. States define disproportionality and determine if it occurred in local education agencies (LEA) because IDEIA mandated that states monitor special education services and acknowledged disparity by ethnicity as a problem. Thus, state monitoring is necessary for LEAs receiving IDEIA funding because LEA operations are audited by the USDOE and Congress (Sullivan & Osher, 2019).

SEAs are required to identify the disproportionate representation of racial and ethnic groups in SLD categories that result from inappropriate identification mechanisms (DeMatthews & Knight, 2019). Regulations intended to limit overidentification pertain to SLD as the largest category of all students identified with a disability at 38.8%; Black and Hispanic students are frequently overrepresented in SLD categories (Zumeta et al., 2014). Proper use of response to intervention (RTI) by LEAs can reduce the likelihood of students needing special education services because RTI is used for identifying struggling students and providing them support, regardless if they require special education services or not. SEAs are required to proactively identify students with disabilities while using RTI to ensure eligibility decisions made appropriately while remedying racial disproportionality (DeMatthews & Knight, 2019).

An IEP team can award eligibility when children do not make sufficient progress on state-approved grade-level standards and as long as the child find process is based on children's responses to scientific, research-based interventions, such as RTI (DeMatthews & Knight, 2019; Otaiba et al., 2014). There are psychometric concerns about inaccurate identification of reading disabilities in students representing ethnic diversity (Otaiba et al., 2014), so the law provides additional criteria for determining SLD classification in order to curb overidentification. Identification issues occur when less-subjective guidelines are imposed for evaluations, and teachers and evaluators receive more thorough training designed for minimizing the effects of prejudice when determining eligibility (Michals, 2018). Without consistent adherence to these considerations, child find provisions might not be appropriately applied as was the case in Texas.

Until 2016, the TEA imposed an 8.5% maximum special education allocation to the state's LEAs that did not address any special education disproportionalities among Black and English language learning students. The TEA regulated what it considered to be the overall

special education overidentification number. The TEA instituted the 8.5% maximum on the LEAs for special education services because before the special education threshold began, 12% of Texas students were served in special education programs, while 14% of Black students were represented. By 2013-2014, only 8.5% of all students were identified for special education. For example, English language learning students were underserved before the TEA instituted the 8.5% rule, and their lack of representation among special education students was not corrected by the change to the 8.5% rule. Before the cap, 11% of all English language learning students received special education services, but after the cap, the number decreased to 7.5%. However, 11% of all Black students remained eligible for special education in 2013-2014 (Michals, 2018).

Disproportionality in special education identification remained consistently high over multiple decades. Few districts were identified by their SEAs as applying inappropriate identification mechanisms that led to disproportionality (DeMatthews & Knight, 2019). In Texas, the TEA reported as few as 0.16% to 2.0% of LEAs as having disproportionate special education populations from the use of inappropriate identification methods. Disproportionality has implications for FAPE, particularly in Texas.

Free and Appropriate Public Education

FAPE is a central component of special education law, originating from Section 504 of the Rehabilitation Act of 1973 that banned discrimination of individuals with disabilities in any federally funded program. FAPE was left unquestioned until addressed by the Supreme Court in 1982 in a landmark ruling. The Supreme Court decision in the *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) clarified the required level of education that should be provided to students with disabilities (Brizuela, 2010; Dieterich et al.,

2019; Gilland, 2019). The Supreme Court applied FAPE to students with disabilities receiving a meaningful educational benefit (Zirkel, 2020a).

The Supreme Court specifically addressed what specific legal standard should be used to determine if FAPE is satisfied for IDEIA eligible student Amy Rowley who had a hearing impairment and was denied a sign language interpreter by the district (*Board of Education of the Hendrick Hudson School District v. Rowley*, 1982; Dieterich et al., 2019). The lower court judge sided with the parents, and Amy was provided an interpreter. The school district appealed the decision to the Supreme Court, which overturned the original ruling, and determined the district satisfied the FAPE requirement when the student was provided an IEP with sufficient support services. It upheld the intent of the federal law was not to maximize a student's full academic potential, but the school was legally responsible under FAPE to provide services sufficient for some educational benefit (Dieterich et al., 2019).

Based on the precedent set by the Supreme Court in Rowley, there are two procedural components of ensuring FAPE (*Board of Education of the Hendrick Hudson School District v. Rowley*, 1982; Michals, 2018). First, the denial of FAPE cannot cause substantial harm to the child. Second, parents have equal rights in the education decision-making process (Zirkel, 2020a). Thus, FAPE is satisfied by both compliance with IDEIA procedures, and the extent to which an IEP is reasonably calculated to provide the student with disabilities educational benefit by receiving an appropriate education. IDEIA gives students and their guardians the right to challenge school districts when they believe the district does not provide FAPE (Cope-Kasten, 2013). Although LEAs have a responsibility to provide FAPE to all students with disabilities, the nature of FAPE was ambiguous until 2017 when Congress finally outlined a complete substantive definition of FAPE (Calhoun et al., 2019; Gilland, 2019).

Problematically, the 1982 Rowley decision did not describe the level of educational benefit for children with disabilities (Calhoun et al., 2019). Since lower courts varied in their determinations of what constitutes an appropriate education, implementation failures can be difficult to make. However, FAPE is violated by a failure to implement parts or all of the IEP (Brizuela, 2010). The nature of free and public is rarely challenged, even though the boundaries of appropriate are more frequently challenged and debated (Dieterich et al., 2019). Between 1982 and 2017, LEAs were challenged to interpret and comply with special education law, including rulings from landmark court cases (Gilland, 2019). In March of 2017, the Supreme Court ruled on *Endrew F. v. Douglas County School District* (2017) and raised the standard of FAPE by clarifying the earlier Rowley decision and throwing out all lower court precedents that had been made since 1982 (Fisher et al., 2020; Lodaya, 2019; Zirkel, 2020a).

Endrew F. was a student with Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) served under IDEIA. Endrew F.'s parents filed a due process hearing claiming that he was not provided appropriate educational programming because the strategies the school district used to address his behaviors did not improve his learning. The parents argued that Endrew F.'s IEPs carried over annually with the same goals and objectives, indicating he was not making meaningful progress. Endrew F.'s parents withdrew him to a private school for students with ASD and his behaviors improved. Parents requested tuition reimbursement. The district prevailed until the parent appealed to the Supreme Court. The Supreme Court determined that the educational benefit must be more than trivial, clarifying FAPE is required to be "appropriately ambitious in light of his circumstances" (Dieterich et al., 2019, p. 76; *Endrew F. v. Douglas County School District*, 2017).

The Endrew F. decision changed how the term appropriate was defined and added that children must receive meaningful benefits in their schooling. Schools must ensure that children receive IEPs that are appropriately ambitious to allow for learning (Calhoun et al., 2019; *Endrew F. v. Douglas County School District*, 2017). The most frequently applied portion of the Endrew F. ruling is that “an IEP must be reasonably calculated to enable a child to make progress in light of the child’s circumstances” (Dieterich et al., 2019, p. 999; *Endrew F. v. Douglas County School District*, 2017). Since 2017, Endrew F. has been widely referenced in federal and state-level court decisions. However, 90% of the recent IEP-related appeals that reached the courts had not been overturned by district courts, which created confusion about the exact standard required for meeting FAPE, even after Endrew F. (Lodaya, 2019).

Calhoun et al. (2019) found that courts often determined if procedures were followed and deferred educational benefits to educators’ judgments because judges lack the knowledge and experience of applying special education principles and policy. Courts only overturned districts’ decisions about IEP cases when clear violations of mandated policies or procedures occurred (Michals, 2018). The ambiguities about FAPE cause difficulty for school administrators seeking to apply FAPE appropriately (Dieterich et al., 2019).

Texas was one such state in which FAPE procedures were not followed. By 2016, OSEP determined Texas to have violated several IDEIA requirements including providing FAPE, monitoring LEAs to ensure compliance, and identification and evaluation of students with disabilities (Michals, 2018). The TEA forced LEAs to deny FAPE by compelling districts to follow a maximum allowable 8.5% of a student population as special education. OSEP ruled that Texas failed to meet the IDEIA’s child find provision causing “an irreversible, negative impact” on students across Texas, depriving students of their right to FAPE (Michals, 2018, p. 1207). The

8.5% cap was eliminated in 2017 with Texas Senate Bill 160 since the state could not prove to OSEP that the benchmark had not denied even one child the opportunity for FAPE.

Within FAPE, a student has a right to receive special education services in the least restrictive environment (LRE). Therefore, LRE plays a coordinating, but subordinate role for students eligible for special education (Zirkel, 2020a). FAPE is denied when students are placed in educational placements that are more restrictive and hinder their academic, behavioral, social/emotional development by hindering them from having experiences with typically developing peers (Hudson, 2018). The LRE provisions of IDEIA required the following:

Students with disabilities must be educated with their non-disabled peers (a) to the maximum extent appropriate, and (b) the removal or separation of children with disabilities from the regular educational environment may occur only when the severity of the disability is such that, even with the use of supplementary aids and services, satisfactory education cannot be achieved. (20 U.S.C., Sec 1412 [a] [5])

LRE is the guiding principle for the acceptance of students with disabilities in educational settings (Stone, 2019). A general education environment can provide improved communication and social and employment skills over more restrictive placements, and high-quality general education instruction benefits young students and their families and provides positive outcomes for the typically developing peers in their classroom (Bolourian et al., 2020). To deny a student placement in the LRE is to deny a student FAPE (Hudson, 2018).

Fundamental to LRE is the continuum of services and the least restrictive placements (Bolourian et al., 2020). General education is considered the least restrictive placement, and home and hospital instruction represent examples of the most restrictive placement. Students requiring more intensive instruction get more restrictive placement (Zirkel, 2020a).

Consequently, all schools are required to have a continuum of placements available for students with disabilities to meet their individualized instructional needs.

Child Find Provision

The child find provision in IDEIA is brief and refers to the LEA's obligation to "locate, identify, and evaluate" children with disabilities (Zirkel, 2018). Researchers have found two defining additions to the child find provision as follows: (a) triggered upon reasonable suspicion that the child may meet the criteria for eligibility under IDEIA, and (b) necessary to complete within a reasonable period of time. Reasonable suspicion rather than a reasonable evaluation period is most often contested and typically depends on a combination of factors rather than one specific issue, such as a child's RTI progress, participation in general education programs, or educational history. A reasonable period depends on a particular set of case circumstances, and often courts allow about 2 months for obtaining parental consent for the initial evaluation stage. The child find provision overlaps with the evaluation stage, is triggered by parental consent, and is separate from eligibility.

Parents are not the only stakeholders responsible for beginning the referral process or ensuring their children are identified; the burden falls on districts, schools, and SEAs (DeMatthews & Knight, 2019). School staff has a duty to refer a child for special education evaluation if they have any reason to believe a child may have a disability. Additionally, LEAs are responsible for the child find provision even when students in their service area attend private schools or are homeschooled. It is inconsistent with IDEIA to reject a referral from a private school or a parent on the basis that a student has not received any intervention (Zumeta et al., 2014).

Child find violations are frequently ruled as procedural, and therefore, require substantive harm or loss to the students or their parents for a ruling against an LEA (Zirkel, 2018). The definition of harm varies. In the Sixth Circuit Court of Appeals, parents have to demonstrate negligence or no justification for not evaluating (Zirkel, 2018). Analysis of court decisions provides meaning to how OSEP policy interpretations are implemented (DeMatthews & Knight, 2019). The Fifth Circuit Court added another approach that if the child was not eligible for the period in question, the parents were not entitled to the relief from the child find violation.

If a child would not have been eligible for special education based on grade-level expectations at the time of the filing, then parents are not entitled to relief such as compensatory services (Zirkel, 2018). However, it is not enough to just consider a student's progress based on grade-level expectations; even students that advance grade to grade or have passing grades may be eligible for special education and related services. Therefore, students often have to be evaluated to determine if they meet the first prong of eligibility under the IDEIA, meaning they have a disability, before determining if they need special education services (DeMatthews & Knight, 2019).

Even special education directors, commonly the most knowledgeable professionals in an LEA, do not always make the most appropriate decisions about special education eligibility. Hudson and McKenzie (2016b) discovered that despite special education directors' indications that they understood that a referral should occur at any time; only 50% of the directors in the study appeared to comply with IDEIA and OSEP by only referring students when they did not show progress within RTI after placement in Tier 3. However, if the LEA agrees with a parent that a student may be eligible for special education services, the student still must be evaluated.

In Texas, the TEA forced schools to deny FAPE by compelling LEAs only to allow 8.5% of their student populations to be identified for special education. This mandate failed to meet IDEIA's child find provision (Michals, 2018). Texas engaged in the under identification of students entitled to services under IDEIA, including systemic child find provision violations, partly due to the structure of the state's funding systems (Zirkel, 2018).

Under IDEIA's child find provision, LEAs are required to locate children suspected of having disabilities and having the need for special education from ages 3 to 21 years. Infants and toddlers are serviced under Part C of IDEIA, and individuals aged 3 to 21 years are serviced under Part B (Farnsworth, 2018). Part C refers to early childhood intervention (ECI) programs. Locating young children with disabilities presents a unique problem since these children are not enrolled in public schools. Efforts to identify children during preschool lies within parental knowledge of developmental milestones, healthcare, and childcare systems. IDEIA requires a proactive approach by requiring SEAs and LEAs to have processes and procedures that identify the steps taken to meet the child find provision requirements.

First, there is no universal definition of special needs in IDEIA. The state makes these determinations, causing difficulty with determining the discrepancies about which children need services versus those who receive services (Farnsworth, 2018). Second, research indicates a variation in access to healthcare, ECI services, and screening processes prevents universal ECI applications. Not all students have access to ECI, special education, or related services despite that 15% of children aged 3 to 17 years demonstrate developmental delays or disabilities. The variation is attributed to sociodemographic characteristics correlated with differential access opportunities.

Lack of access to support and services for children with disabilities indicates a significant number of children needing ECI may be under identified and underserved (Farnsworth, 2018). The percentage of children served by Part B of the child find provision of the special education law has remained stable at about 6.1% of preschool-aged children and at 8.7% of children aged 6 to 21 years. Even for states with more restrictive eligibility criteria for participation in Part C, the percentage of birth to age three children served via ECI remains less than it should be (Elbaum et al., 2017). Screening and early detection are key channels for finding students suspected of disabilities at an early age and providing them with FAPE opportunities (Farnsworth, 2018). As with students of all ages, for children aged 3 to 5 years in Head Start programs, it is also inconsistent with IDEIA to delay or reject a referral based on a lack of intervention data under the child find provision (Zumeta et al., 2014). RTI is the mechanism by which LEAs generate the intervention data.

Response to Intervention

RTI is a general education program for students who fail to meet grade-level expectations. It is widely agreed that students benefit from the rigorous and individualized interventions that facilitate the ability to learn at on grade level alongside their typically developing peers (Calhoun et al., 2019). The RTI process is not universal or systematic, although researchers and practitioners agree that RTI is multitiered. The interventions in each tier were becoming increasingly more intensive. RTI framework typically consists of three tiers that increase in intensity, but RTI is based on district or local policies and may vary. RTI is implemented in all 50 states. LEAs have autonomy in implementing RTI and progress assessments (Zumeta et al., 2014). RTI is considered to be one of the most significant

developments in evidence-based instruction and data-driven decisions (Hudson & McKenzie, 2016b).

Universal screening assessments are administered three times per year to identify the risk status of students and ensure efficiency in intervening with struggling students (Hudson & McKenzie, 2016b). Universal screening indicates which students need intervention. Ongoing progress monitoring helps decision-makers determine the intensity of the intervention needed. Researchers have found common threads of RTI implementation.

The first tier is RTI applied across all students in the same inclusive classroom environments as a universal intervention and consists of core curriculum instruction with evidence-based interventions (Hudson & McKenzie, 2016b). This tier is provided to a minimum of 80% of all students in the general education classroom. The second tier involves pooling groups of students for targeted interventions. The third tier involves individualized interventions that allow for closely monitoring student learning and progress toward grade-level learning (RTI is considered to be one of the most significant developments in evidence-based instruction and data-driven decisions).

SEAs rarely provide criteria for how students move through RTI tiers to their LEAs, so LEAs have a lot of autonomy in managing their RTI processes. Though RTI is most often aimed at general education, Students in RTI are often suspected of having disabilities and are frequently referred for special education evaluation (Zirkel, 2018). Therefore, LEAs are called to limit the number of days a student can spend in RTI to ensure that students move through all three tiers prior to being referred for special education on suspicion of a disability. Though RTI practices are often similar between school districts, a lack of federal and state specificity in guidance leads to students spending a considerable amount of time in each RTI tier. The movement through all

three tiers over time supports critics' arguments that RTI represents a "wait to fail" model for education. Nonetheless, RTI is a component of a full and individual evaluation under IDEIA (USDOE, 2018).

Having students endure academic failure for years before even gaining access to an evaluation for special education or to a recommendation for special education services eligibility causes harm to students in need of and eligible for special education (Zumeta et al., 2014). Despite research identifying prevention of a learning delay over the remediation of a learning delay, the mean age children identified with reading disabilities is 10 years, which means students have entered third to fifth grade before gaining the special education supports they needed for reaching on-grade reading abilities (Otaiba et al., 2014). Thus, Hudson and McKenzie (2016a) called for LEAs to collect data on how long students remain in the RTI support tiers for ensuring students undergo due process and timely evaluations. Researchers have called for 10 to 18 weeks of intervention, which equals about 50 to 90 school days, as a minimum number of days in RTI.

Implementing RTI often risks adverse child find claims, confusion, and potential conflicts due to the fluid nature of the process and its length (Zumeta et al., 2014). The USDOE offered marginal guidance about RTI longevity (Zirkel, 2018). With the lack of federal directives, there is concern that interventional programs, such as RTI, lead to delays in evaluating children who are eligible for special education and violate the IDEIA's child find provisions (Hudson & McKenzie, 2016a).

Since RTI can be used for eligibility and programming decisions, particularly in the identification of specific learning disabilities, the process for RTI may be valuable within the context of special education evaluation (Hudson & McKenzie, 2016a). Research on the overlap

of RTI and IDEIA child find is limited despite the frequent study of RTI (Zirkel, 2018). Researchers found that despite inadequate progress in RTI tiers, students are not being referred for evaluations (Hudson & McKenzie, 2016b). Despite 80% of districts that report having a policy or practice for referring for evaluation, nearly half, 40%, indicated a referral for evaluation could not happen until the student has failed to progress within the third RTI tier. Zirkel (2018) found that litigation is unlikely if RTI is implemented with fidelity and reasonability with balanced attention according to child find procedures when students are suspected of having specific learning disabilities. Zirkel noted that both RTI and child find provisions can be applied simultaneously and are not mutually exclusive. Though RTI is a general education program, parents are to be informed of each RTI step in a parallel manner with the IDEIA provisions (Hudson & McKenzie, 2016b). SEAs are required to proactively identify students with disabilities while using RTI to support eligibility decisions and are to remedy racial disproportionality (DeMatthews & Knight, 2019; Zumeta et al., 2014).

Decisions in a 2014 case in Louisiana outlined the responsibilities of an LEA to provide parents with the RTI data used to evaluate, identify, and create a student's individualized education plan (IEP). Since the parents were not involved in the RTI process, the LEA was found in noncompliance with the creation of the IEP (Hudson & McKenzie, 2016b). RTI and evaluation procedures can be implemented simultaneously as long as there is no unreasonable delay in identifying a student for special education services under IDEIA (Zirkel, 2018). Researchers recommend a standard of care approach that includes parental involvement and a fast-track option for evaluation as soon as the student is below the established benchmarks that designate progress. OSEP has made it clear that LEAs must address referrals in a timely manner,

and to do this, more efficient classroom-based assessments and student progress monitoring become necessary (Zumeta et al., 2014).

Because OSEP did not define the appropriate period for RTI or adequate progress, Zirkel (2018) advised LEAs to show caution in the process of honoring or denying any parent's request for evaluation for a student under RTI. Either consent must be obtained within a reasonable period, and the evaluations must be completed within the timeline, or the parent must be provided a written refusal as to why there is no suspicion that the child has a disability; the parent can challenge the denial of evaluation via a due process hearing. The results of a parent's due process challenge depend on effective RTI implementation and the two key components of child find, which are reasonable suspicion of disability and a reasonable evaluation period. Zirkel noted that no state court decisions addressed RTI and child find, and practitioners lack knowledge of the extent and nature of applicable case law. Therefore, LEAs must balance their child find provision requirements and timelines for identification carefully with stringent RTI implementation.

Because the RTI model is undefined, significant variation in identification practices and tension between the IDEIA expectation of timely evaluation and the extensive time required for a child to move through RTI tiers (which may be unsuccessful) creates parental frustration (Zumeta et al., 2014). In 2011, all 50 SEA special education directors were reminded of their obligation to "ensure the evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy" (DeMatthews & Knight, 2019, p. 1). The USDOE specifically reminded SEAs that districts can deny a parent's request for evaluation but must do so in writing, along with the rationale for the decision to deny a full and individual evaluation. The USDOE did not support one particular framework for RTI and suggested

applying a core set of RTI characteristics, making it difficult for LEAs to use RTI appropriately and consequently caused the delay or denial of evaluations.

Despite this conflicting guidance, Hudson and McKenzie (2016b) discovered that special education directors indicated they understood that the referral could occur at any time, but only 50% of the directors in the study appeared to comply with IDEIA and OSEP by only referring students when they were not responding to interventions in Tier 3. In 2016, researchers found that despite inadequate progress in RTI tiers, students were not referred for full and individual evaluations. Further, the lack of RTI oversight for SLD determination breached the child find responsibility. Due process is compromised by delaying or denying a full and individual evaluation to a student, particularly when a policy indicates that a student must remain in RTI for a specified number of days prior to receiving a referral for a full and individual evaluation.

The overlapping services of IDEIA and Section 504 do not refer to RTI (DeMatthews & Knight, 2019). However, in 2016 as a response in spite of allegations about the Texas special education cap, the USDOE Office of Civil Rights issued a statement clarifying that RTI or other evidence of intervention cannot be used to delay or deny a full and individual evaluation to a student (Zirkel, 2018). In Texas, the TEA intimidated LEAs to make sure they did not identify more than the 8.5% maximum allowable students in special education, and because LEAs lacked a clear understanding of IDEIA policies related to RTI and identification, they relented and refrained from evaluating students under the child find provisions.

RTI is a critical process for identifying struggling students and providing them support regardless of their need for special education services (DeMatthews & Knight, 2019). The TEA essentially guided LEAs not to identify students with disabilities while using RTI with those students and resisted the need to remedy racial disproportionality in special education. TEA has

claimed that the decrease in identified students was due to improved RTI processes and curriculum and instruction delivery rather than on its imposed 8.5% maximum allowable number of students in special education (Michals, 2018).

In Texas, students were denied evaluations or placed under Section 504 to avoid special education services. In 2004, 1.3% of students in Texas had Section 504 plans, while in 2016 the number was 2.6%. Nationally, the average percentage of students with Section 504 plans was 1.5%. Further, in Texas, parents were not required to be notified when their students attended RTI, and parents had little knowledge of the children's need for additional support. Often, parents of Texas school students were unaware of their children's lack of progress. Even though the USDOE clarified that schools could not require RTI before referring a child for special education services, but Texas continued the implementation of RTI measures to forgo full and individual evaluations (Michals, 2018).

Full and Individual Evaluation and Response to Intervention

Lower courts have developed the ongoing meanings of obligation for a full and individual evaluation. They are specific and two-fold. First, they are triggered by reasonable suspicion. Second, they require the LEA to obtain consent for evaluation from the parent in a reasonable amount of time (Zirkel, 2020a). OSEP often responds to policy letters with informal guidance in the form of letters available through the USDOE (2020). A letter issued on January 21, 2011, addresses timely evaluation for students suspected of having a disability. The letter pointed out that IDEIA allowed parents to request the initiation of an evaluation at any time and that it would be inconsistent with the law's evaluation provisions for an LEA to reject a referral on the basis that a child has not participated in an RTI framework (Zumeta et al., 2014).

Since RTI can be used for eligibility and programming decisions, the process for RTI may be valuable within the context of special education evaluation and although quality interventions are the most promising way of alternative identification, they do not replace evaluation or an IEP (Hudson & McKenzie, 2016a; Schanding et al., 2017; Zumeta et al., 2014). The knowledge gap between getting information concerning procedural requirements from SEAs to LEAs is also legally concerning when soliciting parental permission for testing particularly when despite challenges, LEAs have to evaluate students suspected of having a disability within a “reasonable time” (DeMatthews & Knight, 2019; Hudson & McKenzie, 2016a). Indeed, OSEP reminded the TEA that RTI does not replace the need for a comprehensive evaluation of children suspected of disabilities and in need of special education services (USDOE, 2018).

The primary issues under IDEIA are child find and eligibility, which overlap and are connected by evaluation (Zirkel, 2020a). The child find provision is incredibly involved and begins before a student is referred for special education assessment, such as when a student has been identified for RTI participation. The resources and RTI results in general education that were attempted and documented are part of a student’s academic progress records. Once a student is referred for special education eligibility, they receive a full and individual evaluation. IDEIA eligibility contains the two prongs of meeting the criteria of disability under IDEIA (e.g., Autism Spectrum Disorder, specific learning disability) and access to progressing through the general education curriculum. Thus, eligibility overlaps with the child find provisions but is separate. The eligibility classification system requires educators to make absolute decisions so that students either do or do not have a disability and are or are not in need of special education or related services (Musgrove, 2017). Case law informs child find and eligibility processes since

the Supreme Court has not addressed either issue (Zirkel, 2020a). Case law related to eligibility most frequently relates to the need for specialized services.

Individualized Education Plan

Once a child has been suspected of having a disability, evaluated for the disability, and found to be in need of specialized instruction, an individualized education plan (IEP) to address these needs is developed (Dieterich et al., 2019; Zirkel, 2020a). An IEP must be “reasonably calculated to enable a child to make progress in light of the child’s circumstances” (*Andrew F. v. Douglas County School District*, 2017, p. 999). Parents must have meaningful involvement in the IEP, including participation in developing the IEP, because parent participation has been proven to ensure the IEP is more effective than if the IEP did not include parent participation (Fisher et al., 2020). Special education benefits from collaborative planning in educational decision making between school districts and parents (Blackwell et al., 2019).

If an IEP is not implemented, in part or in whole, FAPE is violated, although it is difficult to determine when a school has failed to implement a provision specified in the IEP (Brizuela, 2010). There are three ways the lower courts determine if the school failed to fully execute an IEP. The first is known as the *per se approach*, in which even a negligible or minimal IEP implementation is viewed as denying a child of FAPE. The second is the *materiality approach*, in which a significant or substantial implementation is sufficient for providing FAPE. The third is a *materiality-benefit approach*, in which denial of FAPE occurs with a less than significant or substantial implementation that results in depriving a child of education opportunity benefit (Zirkel, 2017).

Issues arise when lower courts rule the school does not have the capability of implementing the proposed IEP (Zirkel, 2020a). However, the courts have not developed

standards for this conflict. When making this decision, the courts frequently assign facilities and staff according to the individual needs of the child, and such assignments may include alternative placement for the child or acquisition of additional highly trained staff by the LEA. A medical exception occurs when a physician is required for meeting a student's needs; medical staff is not considered as falling within the scope of the school's functions or the provision of the school's duties to the student.

When FAPE has been denied to a child eligible for special education, such as by a school failing to implement the IEP, hearing officers and judges do not have broad authority to award money damages (Zirkel, 2018, 2020). However, they can offer other forms of restitution or relief. The two primary remedies for denials of FAPE are tuition reimbursement and compensatory education. Unless the parent makes the sole decision to change a child's placement, compensatory services are the most frequently awarded form of relief when FAPE has been denied.

Due Process

The courts do not regard the USDOE's policy interpretations as binding; rather, the courts consider the USDOE's policies and memoranda solely as persuasive documents of guidance that do not carry the same weight as law (Zirkel, 2018, 2020). The primary framework for ensuring children eligible for special education receive FAPE was established by federal law in Section 504 and the ADA as well as the Supreme Court's rulings in relevant cases. In all three of its special education cases, the Supreme Court has ruled that the burden of persuasion lies with the filing party. However, Zirkel (2020) noted that the rulings made in the case law of the lower courts organically formed an evolving framework that includes nuances related to

jurisdictional differences. Additionally, attorneys for school districts rely on historical special education case law to support FAPE-related determinations (Gilland, 2019).

Thus, it is important to look at the structure and interpretation of lower courts' decisions. Research has shown that the variability in policy interpretation influences implementation decisions and practices as school administrators express concerns about law interpretation primarily in an effort to avoid legal problems associated with non-compliance, particularly in regard to FAPE (Chu, 2019; Gilland, 2019). Indeed, each state adopts its own one- or two-tier system of administrative adjudication for ensuring due process for determining whether FAPE has been denied (Connolly et al., 2019). Most states' due process hearing systems are one-tier rather than two-tier; and states tend to use attorney hearing officers and law judges for their systems of due process in FAPE cases (Connolly et al., 2019).

As of March 2018, all but seven states used a one-tier administrative due process hearing system. Among the most populated states, New York was the only state to operate a two-tier due process hearing system (Connolly et al., 2019). In the single-tier hearing system states, either the district or the parent may appeal the hearing officer's decision directly to the state or federal court. The one-tier hearing system likely provides stricter procedural compliance because the IDEIA permits corrective action for procedural errors (Zirkel, 2020a). In a two-tiered hearing system, any hearing appeal moves through another administrative adjudication level with a review officer before relief can be sought through the courts.

Judicial review is available if the administrative hearing opportunities have been exhausted (Zirkel & Skidmore, 2014). Hearing officer decisions fill the gaps in issues not made clear at judicial levels, and in light of information availability, are now more legally significant due to their accessibility because they were difficult to obtain before digital availability via the

Internet (Zirkel, 2018). Concerns have arisen about hearing officers' decisions likely favoring schools, suggesting bias by hearing officers would be at odds with the impartiality requirement in IDEIA (Zirkel & Skidmore, 2014). IDEIA does provide a basic framework for due process, though states have a wide range of interpretations and form their own processes. For example, the minimum qualifications for a hearing officer are impartiality and competency, and hearing officers can be independently contracted professionals or attorneys as well as adjudicative law judges (Connolly et al., 2019).

In the United States, a multi-tiered process is available for FAPE disagreements that cannot be settled between districts and parents, and each process level is progressively more intricate (Blackwell et al., 2019). Each SEA must outline its system of complaint procedures. IDEIA lists three formal dispute resolution procedures: resolution meetings, mediation, and due process hearings although parents can bypass the resolution meetings and mediation by opting directly for a due process hearing (Cope-Kasten, 2013).

Resolution meetings are the most recent addition to due process and were designed as a less adversarial alternative to mediation or hearings (Blackwell & Blackwell, 2015). Resolution meetings are mandatory if a due process hearing has been requested, and all agreements are binding. In a resolution meeting for a complaint, parents first cite their complaint with the SEA, which investigates the issues, communicates with parents and the school district, and submits a decision. During the investigation, parents and districts can engage in mediation, and once the decision is issued, both parties can appeal (Blackwell et al., 2019). If these meetings are not successful, due process with the final judgment made by a hearing officer becomes mandatory, and the findings are legally binding (Blackwell & Blackwell, 2015). If the resolution meeting is

unsuccessful, the parties begin a due process hearing, which is similar to a court proceeding and involves attorneys, witnesses, testimony, and cross-examination.

Mediation is proactive and less adversarial than the hearing option (Blackwell & Blackwell, 2015). During the mediation process, an impartial mediator assigned by the SEA to examine the two parties' differences and develop a compromise. The mediator's decision is nonbinding and can be reviewed or reevaluated at any time (Blackwell et al., 2019). If mediation is refused or unsuccessful, the parties can file for a due process hearing.

The result of a due process hearing is legally binding and enforceable because of the written decision made by the state's hearing officer (Blackwell et al., 2019). Due process is a procedural safeguard under IDEIA. LEAs and parents have the right to a due process hearing related to anything regarding the identification, evaluation, provision of FAPE, and educational placement of a child with a disability (Connolly et al., 2019; Schanding et al., 2017).

The annual average for the number of due process hearings nationwide is 481; however, this number excludes New York, an outlier, because New York has a different structural dynamic between the state and the school system (Blackwell et al., 2019). Due process hearings are costly, time consuming, and ultimately create a further deterioration of parent-LEA relationships that are already strained. Due process hearings can cost an average of \$10,000 to operate with some hearings costing states up to \$50,000 per hearing. Hearing costs to states exceed \$4.8 million annually. Though due process hearings represent the costliest use of time, resources, and relationships between parents and schools, due process hearing analysis provides valuable clarification as to the state's interpretation and applications of IDEIA mandates (Blackwell & Blackwell, 2015; Gilland, 2019).

Due Process and Corrective Action in Texas

In Texas, due process complaints have the following three steps, if needed: mediation, complaint resolution, and a due process hearing. Once a parent has filed a complaint, the first option is to participate in mediation, with a neutral party, or in a complaint resolution session with a TEA representative. Parents can refuse both of these options and proceed directly to a due process hearing (Poton, 2017).

The number of due process hearings related to IDEA-related in Texas is higher than many states (Bailey & Zirkel, 2015). In Texas from 2010 to 2016 over 200 allegations were heard by Texas hearing officers (Hudson, 2018). Between 2011 and 2015, the student eligibility complaints in due process hearings involved eligibility due to autism, emotional disturbances, and other health impairments (Schanding et al., 2017). The most common dispute issues involved the core mandates of FAPE, namely, IEP, evaluation, and placement (Schanding et al., 2017). Consistent with national findings, Texas parents are more likely to prevail when they have attorney representation. However, LEAs in Texas prevail at a much higher rate than parents at 72% of the time (Blackwell et al., 2019; Mueller, 2015).

LEAs' ease with prevailing could be related to the Performance-Based Monitoring and Accountability System (PBMAS), a digital data system in Texas used by LEAs to report on their students' academic performance. PBMAS includes progress indicators for focusing on specific student populations and informing the development of TEA-required district improvement plans when districts' students do not meet the TEA's expectations (DeMatthews & Knight, 2019). TEA monitors PBMAS data to ensure LEAs maintain program compliance and a student performance baseline. However, Texas LEAs provide data to PBMAS to maximize their accountability ratings and reduce their exposure to potential threats.

State accountability systems, such as the TEA's PBMAS have been used for 20 years but often produce "unintended negative consequences" (DeMatthews & Knight, 2019, p. 1). Texas' PBMAS has been used since 2004 and has undergone several revisions. The TEA uses PBMAS data to assign interventions to LEAs and inform LEAs of required corrective actions. Through PBMAS, the TEA assigns a performance level for each indicator that reflects LEA performance relative to the state's mandated accountability standards (USDOE, 2018).

A performance level benchmark was first assigned for the PBMAS indicator representing the percentage of children enrolled in special education in 2005 through which the TEA required districts to keep the percentage of students in special education below 8.5% (USDOE, 2018). Despite the IDEA's child find provisions for identifying, locating, and evaluating children with disabilities who may need special education services, the TEA instituted a 2004 accountability measure Special Education Representation Indicator to PBMAS reporting. At the time that the TEA began this requirement of LEAs limiting the provision of special education services to 8.5% of the student population, Texas' special education population was already below the national average (Michals, 2018). Consequently, Texas LEAs engaged in the under identification of students entitled to special education services under IDEA, including systemic child find provision violations (Zirkel, 2018).

The benchmark was implemented after a \$1.1 billion reduction in the TEA budget that was made by the Texas legislature in 2003 (Michals, 2018). The agency laid off 15% of its employees following the Texas legislative session in 2003. Due to the 8.5% special education percentage benchmark, the average percent of students receiving special education services declined from 11.7% in 2004 to 8.5% in 2015. LEAs denied services to over 225,000 students with disabilities over this 11-year period. Because the federal government funds less than 20% of

special education services, students receiving special education cost twice as much for the state. The state used the benchmark to reduce its overall budget following the 2003 budget cuts as a consequence.

Michals (2018) estimated the TEA saved billions of dollars by requiring LEAs to engage in decreasing the number of students identified for special education. Further, LEA administrators either felt pressured to comply with the TEA directive, were naive, or remained uneducated about the appropriate legal processes for special education evaluation (DeMatthews & Knight, 2019). Indeed, 96% of Texas school districts responded to the 8.5% special education maximum by reducing their populations of students receiving special education services to 8.5% or less.

If the TEA's 8.5% benchmark had not been followed and the state average followed national trends, then 13%, or 250,000, more children eligible for special education would have received services (Salhotra, 2018). Before 8.5% special education maximum in PBMAS, Texas schools already had lower rates of special education enrollment than all other states. Between 2000-2001 and 2004-2005, Texas special education enrollment averaged 11.85%, yet all other states' special education enrollment averaged 13.5% over the same period. After 2004-2005, Texas LEAs produced substantial declines in special education enrollment, and by 2014-2015, Texas was down to 9.0% of students in special education programs. Meanwhile, the rate of special education enrollment in all other states remained relatively stable at the 13.5% average (DeMatthews & Knight, 2019).

Additionally, the TEA rewarded LEAs if they had less than 8.5% special education enrollment (DeMatthews & Knight, 2019). LEAs that did not abide by the special education indicator requirement for 8.5% in special education received lower overall accountability scores

that resulted in the LEAs receiving sanctions. For example, the LEA operating in Laredo received a series of on-site visits and interventions by the TEA due to its failure to adhere to the low percentage of allowed special education students. TEA informed the Laredo superintendent that the overidentification of students for special education by exceeding the 8.5% maximum allowable number of students meant the Laredo school district was out of compliance with PBMAS requirements. Several other school districts across the state received similar sanctions and additional oversight because their percentages of students in special education represented more than 8.5% of their LEAs' total school populations (Michals, 2018). Furthermore, districts with the highest special education enrollment declined at the most significant rates after PBMAS (DeMatthews & Knight, 2019).

Twelve years after the PBMAS special education indicator of 8.5% was adopted, Rosenthal (2016) published an investigative report in the Houston Chronicle and criticized the TEA's 8.5% cap. In short, Rosenthal showed how the TEA's actions denied well over 10,000 children access to special education services in the Houston area. Consequently, the USDOE required TEA to respond to Rosenthal's allegations. The TEA, as would be expected, denied any wrongdoing and responded that the declining special education enrollment was due to improving the overall delivery of education in Texas.

The TEA disagreed with the article and claimed they did not have evidence indicating a systemic denial of special education services to eligible students because of the PBMAS system's thoroughness as a data collection point. The TEA added that the purpose of the indicator was to promote proper eligibility determinations to ensure that only children with actual disabilities that require services provided only by special education would be placed in special education (DeMatthews & Knight, 2019). TEA further justified its PBMAS special

education indicator by insisting the indicator was implemented to address the DOE's concern regarding the overidentification of students with disabilities. An additional anomaly involved Texas as the only state in the nation to implement a measure to address special education overidentification (Michals, 2018).

Interestingly, the concerns highlighted by Rosenthal (2016) should have been raised long before 2016. Between 2005 and 2006, TEA reported low percentages of disproportionate representation by racial and ethnic groups in special education among LEAs with as few as 0.16% to 2.0% showing disproportionality between 2007 and 2014. This low level of disproportionality in identification stood in stark contrast to findings presented by the USDOE to congress in 2016 that documented the opposite with overidentification and disproportionality (DeMatthews & Knight, 2019). Though this disproportionality problem is not entirely like the special education indicator requirement per se, 0% of LEAs being identified with disproportionality (out of 1,200 statewide) should have caused concern about declining identification in special education. By 2015, the USDOE had designated Texas as needing assistance or intervention to ensure proper identification of children with special education eligibility.

The USDOE's (2018) OSEP found in its formal investigation that the TEA was noncompliant with the IDEIA's child find provision. Even more worrisome, the TEA failed at its duties to implement IDEIA and provide FAPE and harmed thousands of children (DeMatthews & Knight, 2019). OSEP issued the TEA three citations (USDOE, 2018). In the first citation, the TEA "failed to ensure that all children with disabilities residing in the State who require special education and related services were identified, located, and evaluated, regardless of the severity of their disability" (TEA, 2018a, p. 4). Children who should have been referred for an evaluation

under IDEIA were provided services elsewhere, even after the student was suspected of having a disability and demonstrated a need for special education services. This directly delayed or denied services (USDOE, 2018).

OSEP found the 8.5% maximum on special education students in LEAs incentivized LEAs not to implement the IDEIA's child find provision properly, violating federal law (USDOE, 2018). The 8.5% rule significantly harmed students who should have received evaluations for special education services. OSEP found LEAs did not communicate with parents about their children's academic needs (Michals, 2018). More concerning, the greatest decline in special education identification in Texas occurred in rural districts, suggesting children in rural school districts were even less likely than students in urban districts to receive needed special education services (DeMatthews & Knight, 2019).

OSEP also admonished the TEA for failing "to ensure that FAPE was made available to all children between the ages 3 through 21 with disabilities" (TEA, 2018a, p. 4). OSEP added that the TEA failed "to fulfill its general supervisory and monitoring responsibilities ... to ensure that [LEAs] throughout the State properly implemented the IDEIA child find and FAPE requirements" (TEA, 2018a, p. 4). The public records evaluated in the investigation showed that LEA and school personnel knowingly and unknowingly acted in ways that delayed and denied special education services to potentially eligible students (DeMatthews & Knight, 2019).

On April 23, 2018, after a subsequent state investigation, the TEA adopted a strategic plan to evaluate and penalize public schools that followed the original TEA guidance to maintain no more than 8.5% of students as special education eligible (Rosenthal, 2016). OSEP accepted the TEA solution, or strategic plan, which required implementation by June 30, 2019, and TEA agreed to provide ongoing annual monitoring. LEAs would be audited every 6 years to determine

compliance with new directives in the state's strategic plan (TEA, 2018b). Texas agreed to improve the systems used to meet the needs identified in Texas. The TEA agreed to involve stakeholders and to use the data provided by LEAs for monitoring (TEA, 2018a).

Thus, in Texas, students with disabilities who were not evaluated to receive services were denied FAPE as a violation of their federal rights (Cope-Kasten, 2013; Gilland, 2019). OSEP ruled that LEAs in Texas bypassed special education referrals by both denying and delaying evaluations even though the TEA's 8.5% benchmark had led to the violations (DeMatthews & Knight, 2019; Hudson & McKenzie, 2016a). OSEP found that some ISDs took actions designed specifically to decrease the percentage of students identified for special education services to 8.5% or below despite a lack of evidence to indicate that students were improperly referred (USDOE, 2018). In particular, OSEP identified Texas LEAs' practices as violating the child find provision of IDEIA, such as when learners received services in the general education environment through RTI, Section 504, or the state's dyslexia program but were not evaluated despite suspicions of a disability being present to indicate the students needed special education services. These actions led OSEP to rule that FAPE was denied.

The TEA and LEAs have an IDEIA obligation to ensure they do not delay or deny students because of the implementation of general education or Section 504 supports. Nonetheless, OSEP found evidence demonstrating a pattern of practices in Texas that did not benefit these students (USDOE, 2018). Since OSEP issued the violations of the IDEIA child find provision in three citations on October 3, 2016, numerous hearings have been held by the TEA (2020) because parents and guardians appealed their children's denial of special education evaluations as they became aware of the state's violations of IDEIA. The corrective actions OSEP required the TEA to implement included the following: (a) documentation that the state

system of supervision meeting the child find provision; (b) making FAPE available to all eligible children suspected of having a disability and who may be in need of special education and related services; (c) a plan and timeline for the TEA to ensure that each LEA can meet the child find provision for students who may have been delayed or denied an evaluation; (d) a requirement that IEP teams consider if compensatory services are required for students who have eligibility for special education but whose full and individual evaluation may have initially been delayed or denied; (e) guidance being provided to LEAs general education and special education teachers that ensure that supports such as RTI, Section 504, and the state's dyslexia program are not used to delay or deny timely evaluations; and (f) a plan and timeline for the TEA to monitor LEAs' implementation of the IDEIA child find requirements (USDOE, 2018).

To receive funding, Texas LEAs are now required to submit assurances that convey special education policies, procedures, and programs as consistent with state and federal requirements (TEA, 2018c). The TEA ensures annually that each LEA distributes information to families of all special education enrolled students regarding the child find provision and FAPE requirements, parent and student rights under IDEIA, and contact information necessary to request an initial evaluation for a student they suspect of having a disability. LEAs must collect and retain data pertaining to requests for evaluation; the data must include the reason for the request if additional services are needed, as well as the timeline for IEP implementation. The TEA ensures that LEAs share resources with parents of students suspected of having disabilities that describe the difference between RTI, dyslexia, Section 504, and special education.

The TEA violation of federal and state education laws since 2004 had lasting, devastating consequences for students with disabilities, the Texas public school system, and the society as a whole despite the USDOE orders that Texas identify students who were denied services during

the 2004 to 2016 period; however, the USDOE did not elaborate on how Texas should remedy the lack of services to denied students who might have been eligible for special education and FAPE (Michals, 2018). In May 2016, the Texas legislature approved Senate Bill 160 that amended the Texas Education Code to prevent the use of any such cap that would prevent children from gaining access to FAPE in the future. Moreover, when the 8.5% special education benchmark was lifted in the 2016-2017 school year, 14,000 additional students received special education services. Michals (2018) noted this sharp increase in identified students provided critical evidence that the benchmark caused the denial of services to many thousands of children each year it was in place. Michals also called for a policy to guarantee a proper evaluation of any student who could prove a denial of evaluation when the 8.5% rule was in effect as the only way to remedy this situation. However, this process could involve evaluating adults who graduated from high school in the intervening years, which would be controversial and could lead to legal action (DeMatthews & Knight, 2019).

Special Education Legal Trends

Researchers showed that the variability in policy interpretation influences implementation decisions and practices as school administrators express concerns about law interpretation primarily in an effort to avoid legal problems associated with non-compliance, particularly in regard to FAPE (Chu, 2019; Gilland, 2019). Gilland (2019) noted that attorneys for school districts rely on the findings from special education case law to support the FAPE determinations made by LEAs. The volume of research on due process cases for special education eligibility has been thin; however, a few researchers, such as Zirkel, have been leading efforts to emphasize the value of content analysis as empirical research.

Zirkel (2018) addressed many of the legal aspects of IDEIA and its implications and thoroughly discussed the legal problems of RTI and child find duties. Zirkel wrote a letter to OSEP about the implementation of RTI and other multitiered systems of support (MTSS) in early 2019 (USDOE, 2019). The OSEP response included clarification on IDEIA's lack of definition of RTI or MTSS, the legality of intervention placement prior to special education eligibility, and RTI as acceptable FAPE.

Zirkel and Skidmore (2014) used a national sample of cases, but the case of the Texas child find issue is specific to the 2016 OSEP citations. Zirkel (2018) also performed a content analysis of national due process hearing results regarding child find and RTI claims over the period from 2008 to 2018. This national study was conducted during some of the 2004 to 2016 period of the TEA's 8.5% special education threshold. While there is overlap in both the years and the search terms, the study focused on answering questions regarding all Texas child find claims that followed after the 2016 OSEP citations regarding the delay or denial of services to Texas children and on the results of administrative hearings into 2020.

Special education litigation is rife in Texas (Blackwell & Blackwell, 2015). Calls for parents to initiate more due process hearings in light of the TEA's 2004 to 2016 special education threshold of 8.5% indicate a potential for ongoing litigation (DeMatthews & Knight, 2019; Michals, 2018). Blackwell and Blackwell (2015) reiterated the importance of continued research on the applications of federal law because of law changes. Due process content analysis can be used to emphasize that research on due process hearings can benefit a wide variety of stakeholders. Because Blackwell and Gomez (2019) stated that Texas, with its high volume of annual due process hearings, is using the due process system as intended, and an analysis of the cases would be beneficial for LEAs, school attorneys, and policymakers. Foundational

descriptive content analysis study methodology in hearing decisions derives from Newcomer and Zirkel (1999), Rickey (2003), Mueller and Carranza (2011), and Cope-Kasten (2013).

Qualitative descriptive content analysis has been used in multiple national examinations of special education due to process hearings in other focus areas by Blackwell and Blackwell (2015), Schanding et al. (2017), Blackwell and Gomez (2019), and Blackwell et al. (2019).

Coding, database use, and analysis were refined by researchers from 2015 to present regarding primary label consistency and continuity (Blackwell & Blackwell, 2015; Blackwell et al., 2019; Blackwell & Gomez, 2019; Gilland, 2019; Newton, 2019; Schanding et al., 2017). Zirkel and Skidmore (2014) recommended making two additions to improve the quality of research: due process hearing results should be coded at the issues level, and researchers should use a multi-point scale to differentiate between prevailing party types (i.e., parent, district, or split between parent and district). This study proposes to use a priori coding based on the previous researchers' due process hearing analyses and recommendations that were followed by emergent open coding to identify any unforeseen data connections that develop (Salehijam, 2018).

Though this study proposes using the established coding framework in the same field by multiple researchers, the secondary open coding structure lends itself to a qualitative approach (Blackwell & Blackwell, 2015; Hall & Wright, 2008; Lock & Seele, 2015; Salehijam, 2018; Schanding et al., 2017). Hudson (2018), Newton (2019), and Creswell and Poth (2016) agreed that documents, such as hearing officer decisions, can be examined to gather meaning and develop empirical knowledge. Furthermore, a critical inquiry of each case entails determining the child find provision conflict that led to the dispute, such as issues derived from the use of RTI, Section 504, and early childhood intervention, about the delay or denial of a full and individual

evaluation for special education eligibility. Content analysis of cases allowed for forming valid and replicable conclusions and recommendations (Kassarjian, 1977; Krippendorff, 2019; Neuendorf, 2001).

Summary

This chapter described the elements of child find, special education, and research on special education. Special considerations related to OSEP's ruling against Texas because of its 8.5% benchmark were explained. The next chapter provides the rationale for the methodology of the study and procedures for completing the qualitative content analysis of the Texas special education hearing decisions from 2016 to present.

Chapter 3: Research Method and Design

Special education practices in Texas remain under scrutiny from the federal government; however, questions arise regarding how Texas is attempting to apply the child find provision to cases in due process in Texas, even though the TEA (2018) told OSEP it would ensure a “clear understanding” (p. 2) of IDEIA child find provisions. The purpose of this study was to describe how special education hearing officers in Texas have attempted to apply the IDEIA child find provision in decisions from due process hearings occurring after the federal OSEP citations that were issued on October 3, 2016 to October 15, 2020. The analysis involved determining under what circumstances Texas has or has not applied the child find provision and the legal questions, decisions, trends, and legal principles that can be discovered from state agency decisions.

The analysis of the hearing officers’ decisions about the child find provision provided guidance and insight for educators, administrators, school boards, parents, and policymakers, particularly because the Supreme Court has offered vague guidance (Zirkel, 2020a). Blackwell and Blackwell (2015) reiterated the importance of continued research as federal law changes, and they emphasized that research on due process hearings can benefit a wide variety of stakeholders. Parents, parent advocates, school administrators, special educators, and students with disabilities can benefit from understanding the emerging implication of legal requirements in light of new OSEP and TEA guidance (Blackwell et al., 2019).

The study addressed the following research questions:

RQ1: What were the legal questions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ2: What were the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ3: What were the trends in the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ4: What were the legal principles for Texas educators that can be discovered from the cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

This chapter includes the study's research design, rationale, instrumentation, data collection and analysis, and ethical considerations.

Research Design and Methods

The aim of this study was to establish emerging themes from Texas special education due process hearings regarding the IDEIA child find provision after Texas was found in violation of federal law in 2016. A legal realism approach was used as a lens from which to analyze the special education hearing officer decisions. Legal realism provides a view of the law through a set of normative meanings found in their legal interpretations, rather than taking the concept of law as black and white, but as a form of precedent that sways subsequent legal decisions and informs policy change (Guastini, 2015; Hall & Wright, 2008; Tiller & Cross, 2006). The black letter law methodology as a foundation of doctrinal research is used to identify the fundamental legal principles on which legal decisions are based, providing the study results potential to lend insight into the current child find provision problem in Texas special education (Lammasniemi, 2018).

Black letter law analysis focuses on what is, rather than what the law should be by dissecting legal documents to their core components to gain insight and logical connections between law and interpretation (Lammasniemi, 2018). Because the study was focused on understanding how Texas special education due process hearing officers apply the IDEIA child

find provision, the use of qualitative content analysis (QCA) was used. QCA provided the design for a black letter law empirical methodology by deriving meaning from indicative and deductive coding categories related to the research questions (Krippendorff, 2019). QCA can be applied to a variety of texts, such as legal documents, statutes, and regulations. It has proven to inform decision making and is best for explaining the nature of a social phenomenon as applied within legal subject areas (Hall & Wright, 2008; Salehijam, 2018; Webley, 2010).

QCA was chosen due to the strength of providing an objective understanding of a large number of decisions, where each decision has roughly the same value to enable a deep understanding of case law (Assarroudi et al., 2018; Hall & Wright, 2008; Krippendorff, 2019; Salehijam, 2018; Schreier et al., 2019). I followed a qualitative content analysis grounded in Creswell and Poth's (2016) acknowledgment of legal documents as a primary resource of qualitative studies and Webley's (2010) description of legal content analysis research as qualitative more than quantitative. Insights into best practice and effects of policy shifts in the legal system can best be examined using in-depth qualitative analysis; thus, the qualitative content analysis approach of analyzing legal documents allowed for providing answers to the research questions (Gilland, 2019; Newton, 2019; Webley, 2010).

According to Webley (2010), "The case-based method of establishing the law through an analysis of precedent is, in fact, a form of qualitative research using documents as source material. But qualitative empirical legal research goes far beyond this kind of research" (p. 1). The use of QCA of due process hearings provides a systematic procedure for reviewing and evaluating hearing officer decisions for ascertaining the implications of the decisions' meanings and developing empirical knowledge (Bowen, 2009; Hudson, 2018). Texas, with its reasonably high volume of annual due process hearings, may provide evidence regarding whether the due

process system has been enacted as intended by IDEIA (Blackwell & Gomez, 2019). Texas state special education hearing officer decisions represent the cases of this research. The QCA was focused on the legal principles of the child find provisions found in outcomes of Texas special education due process hearings after the state was found in violation of IDEIA (2004).

Data Collection

Final orders from due process hearings issued by the Texas Education Agency (TEA) for all cases published from October 3, 2016 to October 15, 2020 constitute the data for this study. All hearings are publicly available from the TEA. The focus of this study was to understand how Texas applies the IDEIA child find provision in due process hearing decisions; therefore, the target population of studies only included documents identified as pertaining to the child find provision. The TEA published all due process hearing results on their website in accordance with the regulations of the USDOE. The data were downloaded from the TEA's (2020) data set of decisions involving the child find provision in accordance with local, state, and federal laws. Once the data were downloaded, they were entered into the Dedoose data analysis application for beginning the deductive and inductive coding processes.

Data Analysis Methods

This study followed the methodological guidance of Zirkel's (2018) national RTI and child find case law review from 2008-2018 and Schanding et al.'s (2017) study on characteristics of Texas students involved in due process hearings from 2011 to 2015. This study was conducted to determine how Texas hearing officers applied the child find provision after the TEA received federal citations for violating the child find requirements outlined in IDEIA. This study used an established QCA approach by engaging an initial a priori deductive coding framework used in the same field by multiple researchers and a secondary inductive open coding structure to allow

for creating of codes during the process (Blackwell & Blackwell, 2015; Hall & Wright, 2008; Lock & Seele, 2015; Salehijam, 2018; Schanding et al., 2017; Webley, 2010).

Schreier et al. (2019) argued for using both deductive and inductive coding structures to capture all important phenomena beyond the predefined codes to capture the nuances of the hearing officers' decisions (Zirkel & Skidmore, 2014). Foundations of the QCA methodology in special education hearing officer decisions derive from Newcomer and Zirkel (1999), Rickey (2003), Mueller and Carranza (2011), and Cope-Kasten (2013). QCA has been applied in multiple examinations of national special education due to process hearings by Blackwell and Blackwell (2015), Schanding et al. (2017), Blackwell and Gomez (2019), and Blackwell et al. (2019). Coding, database use, and analysis were refined by researchers from 2015 to present regarding primary label consistency and continuity (Blackwell & Blackwell, 2015; Blackwell et al., 2019; Blackwell & Gomez, 2019; Gilland, 2019; Newton, 2019; Schanding et al., 2017). Furthermore, Zirkel and Skidmore (2014) recommended coding due process hearing results at the issues level and establishing multiple categories to differentiate between prevailing party types (i.e., parent, district, or split between parent and district). This study first involved the use of a priori coding based on previous due process hearing analyses and recommendations. The second coding process was open coding to find unforeseen data connections that could have been present within each case (Salehijam, 2018).

The design supported the use of both inductive and deductive reasoning to provide a deeper understanding of case law (Webley, 2010). First, a deductive approach was pursued with an initial code set based on previously published studies of special education due process hearings. Special consideration involved coding at the issue-level rather than at the overall result level (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Rickey,

2003; Schanding et al., 2017; Zirkel & Skidmore, 2014). Second, the inductive approach required open coding within each case of study to broaden the opportunities for an in-depth understanding of the cases (Webley, 2010). The dual coding approach ensured the data analysis led to rich findings beyond what only predefined codes could provide (Creswell & Poth, 2016).

Deductive Coding

Given the coding consistency framework in multiple studies, Schanding et al.'s (2017) predetermined codes were used to determine the characteristics of students involved in due process hearings related to the child find provision. Schanding et al.'s codes are the following:

1. Attorney representation of student/family: The representation of the student/family by an identified attorney during the due process hearing. Within this category, some families also had parent advocates during the case; however, those students/families represented solely by advocates were not included in this category.
2. Issues held for school: The number of issues held for the school district by the hearing officer.
3. Issues held for student/family: The number of issues held for the student/family by the hearing officer.
4. Issues held in part for the district and in part for student/ family: The number of issues where a split occurred, indicating that a portion of the issue was held for the district and a portion of the issue was held for the student/family.
5. Prevailing party: The party (either student/family or district) with the majority or the substantial number of issues that prevailed in the case based on the hearing officer's decision.

6. Primary special education eligibility: The primary disability of the student, as noted in the hearing decision. These disability categories are based on the special education regulations of Texas. For those students without an identified special education eligibility, the student was coded as “not eligible.” Some students had protections afforded under Section 504.
7. Issues: Up to three (primary, secondary, and tertiary) issues were identified for each case. The categories for issues were coded based on criteria adapted from Blackwell and Blackwell (2015) and were as follows:
 - a. Evaluation: Evaluation process and procedures for determining areas of need and potential services, including independent education evaluations and the selection/qualifications of evaluators.
 - b. Extended School Year Services (ESYS): Special education and related services provided to eligible students beyond the typical academic calendar.
 - c. Identification: Eligibility determination for special education services.
 - d. IEP: Components and development of the IEP, commonly examined to determine the extent to which the IEP was calculated to provide a FAPE in the LRE. Predominantly, this category addressed the goals, objectives, accommodations, and modifications made to a student’s program of services.
 - e. Placement: Location of special education services for a student, including services provided in general education settings and specialized settings that provide the student access to the general education environment to the appropriate extent; included unilateral placement by parent.

- f. Procedural safeguards: Procedural protections afforded to students, parents, and schools through federal and state special education laws and regulations; included timelines, parental consent, and written notices.
- g. Related services: Developmental, rehabilitative, corrective, and supportive services that are necessary to assist a student in accessing and benefiting from special and general education services; included specialized transportation, occupational therapy, physical therapy, and orientation and mobility services.
- h. Discipline: Removal of a student from the agreed-upon placement due to disciplinary actions; included both in-school and out-of-school suspensions. Also included manifestation determination review (MDR) disputes involving disciplinary actions or issues related to restraint/seclusion.
- i. Transition: Practices and procedures related to transition planning for secondary students to assist in developing the knowledge, skills, and strategies for accessing and benefiting from post-secondary opportunities such as college, employment, independent living, and community participation. (pp. 3–4)

Should a variable not be able to be assigned a code, data were recorded as not indicated and was analyzed during open coding.

Inductive Coding

Coding is an iterative process; therefore, following the a priori rounds of coding, open coding was performed. Open coding is where a researcher identifies potentially relevant data with an open mind that may be used answer the research questions (Merriam & Tisdell, 2015). Grouping data based on open coding allows for themes to emerge naturally within multiple iterations of coding, while I engage in reflection for interpretation (Merriam & Tisdell, 2015).

Once the open coding appears exhaustive, reaching an all-encompassing number of categories, axial coding was used to cluster the information into related category groups and identify patterns (Newton, 2019; Webley, 2010). From the patterns, themes form to represent findings.

Establishing Dependability and Integrity

The online accessibility of the data enabled the replicability of the study's procedures for interpretation, establishing dependability and integrity in the methods of data collection (Saldaña & Omasta, 2017; Webley, 2010). The data were collected directly from the TEA, which was responsible for conducting the due process hearings in regard to the child find provision (TEA, 2020a). The study's analysis can be replicated and duplicated, which provides methodological reliability and validity. The study's QCA methodology follows from the widespread longitudinal use of the deductive coding structure in studies from Newcomer and Zirkel (1999) to present-day findings by Blackwell et al. (2019). Assarroudi et al. (2018) provided assurances about trustworthiness by recognizing the opportunity for recognizing missing texts related to predetermined codes and newly emerging ones, enhancing the trustworthiness of findings. Content analysis in and of itself is a "research technique for making replicable and valid inferences from texts to the contexts of their use" (Krippendorff, 2019, p. 24).

Frequent debriefing sessions with a peer reviewer ensured the accuracy and dependability of the data analysis as well as space for me to present the findings in accordance with QCA best practice (Krippendorff, 2019). External reviews reduce the likelihood that the data interpretation might be biased and allow for checks against my assumptions and potential bias throughout the process. I shared case briefings and coding excerpts directly with the peer reviewer, who read the material and provided feedback related to my coding. The peer reviewer and I demonstrated interrater alignment, suggesting my analysis was accurate. The data set comprised all due

process hearings after the OSEP citations made in 2016 regarding the child find provision in the state of Texas, effectively eliminating the potential for sampling bias (Hall & Wright, 2008). In the debriefing sessions I established a codebook and instructions for application of codes as is standard in QCA of legal texts, and as long as the codebook was in sufficient detail, the analysis was considered replicable (Salehijam, 2018).

Researcher's Role and Positionality

The role of the researcher is important in analysis and data coding (Saldaña & Omasta, 2017). In making inferences researchers rely upon experience to give meaning to the object of study (Corbin & Strauss, 2008). My professional qualifications benefitted me in conducting the due process hearing decision analysis where the child find provision was named.

As a licensed educational diagnostician and certified special education and general education teacher in Texas, I maintained a thorough understanding of decision making related to meeting the requirements of the child find provision of IDEIA. I was often relied upon at a district and campus level to determine if a student might be suspected of having a disability and could be in need of a full and individual evaluation. I then conducted the evaluation and assisted teachers with providing appropriate services for students with disabilities. Though my experience with this process supported the body of knowledge needed to code the data, I was mindful of the ways my bias and experiences could influence the data analysis process (Corbin & Strauss, 2008).

For reducing the influence of bias, Corbin and Strauss (2008) recommended keeping a personal journal during the data gathering and analytic processes to generate a record of thoughts, actions, or feelings. The journal offered a point of reflection for me as the researcher to recognize self-change during all phases of the research process. Further, the journal created the

opportunity for acknowledging biases and recognizing those experiences that enhanced the reflection process, both of which differed from the notion of bracketing beliefs that could affect data analysis, as bracketing could be an impossible task.

Assumptions

Three assumptions were applied to the QCA of the due process hearings analyzed for the study:

1. The TEA (2020) has published all due process hearing results on their website as a data set in accordance with the regulations of the USDOE.
2. All Texas due process hearing cases and the TEA decisions involving the child find provision appear in accordance with local, state, and federal laws.
3. All Texas due process hearing cases and the TEA decisions involving the child find provision provide enough data to answer the research questions.

Limitations

The following limitations affected the ability of the findings to generalize or transfer to other states and locales:

1. The due process hearing officers' decisions were limited by what was included in the opinions and might not include the full nature or context of the decision.
2. The following information was not available from special education due process hearing decisions because these fields of information were redacted according to USDOE regulations: (a) names as well as initials of students and parents; (b) student age; (c) grade of student in the case; (d) the elementary, middle, or high school involved in the case; (e) names (but not titles) of all district and campus personnel; (f) names (but not titles) of all private providers; (g) all other information that could be used to identify a student.

Delimitations

The study was delimited to include only cases that described how special education hearing officers in Texas attempted to apply the IDEIA child find provision in decisions from due process hearings. To be included in the study, a special education case needed to have a decision filed by the special education hearing officer, and the decision had to have been issued after the federal OSEP citations. The first eligible cases were those with decisions filed after October 3, 2016.

Summary

This chapter described the methodology for the qualitative content analysis to determine the trends and decisions related to the child find provision can be found in Texas. The next chapter presents the findings from the data derived from the TEA hearing officer decisions in due process hearings that involved the child find provision after October 3, 2016.

Chapter 4: Data Analysis

Although special education practices in Texas were shifting in light of the citations of noncompliance with the Individuals with Disabilities Education Improvement Act (IDEIA), special education due process hearing officers were tasked with applying the law as it was written. Understanding the law as applied was designed to inform Texas educators on how the child find provision should be applied, regardless of the ever-changing political landscape (Lammasniemi, 2018). To recognize the current cases as a precedent that could sway future legal decisions and inform policy change involved finding the “clear understanding” Texas promised Office of Special Education Programs (OSEP; Guastini, 2015; Hall & Wright, 2008; Texas Education Agency, 2018; Tiller & Cross, 2006). As such, it was advisable to continuously apply and study the legal questions, decisions, trends, and outcomes of federal issues on a state level, such as in this application of the child find provision.

The purpose of this study was to determine under what circumstances Texas applies or does not apply the child find provision. This chapter describes the data collected from the 20 special education due process hearings where the child find provision has been invoked in Texas after the federal government cited the state with corrective action consequences on October 3, 2016, to the time data were collected on October 13, 2020. The cases were available publicly on the Texas Education Agency’s website as a data set and were keyword searched *child find* to eliminate all cases that did not pertain to this provision (TEA, 2020b). Of the 100 cases that spanned the time frame, 20 pertained to the child find provision in that a child find claim was made that required a due process decision. Three of the 20 cases were appealed, and decisions were rendered. Three cases included the words *child find*, but after analysis, were not deemed

child find cases on the issues or decision levels and therefore were not briefed or included in any analysis.

In the efforts of brevity, cases were briefed based on a process described by Statsky and Wernet (1989) and used by Newton (2019). The adapted case brief method used was as follows:

1. Citation: Full citation of the case being briefed
2. Key Petitioner Issues: Provide a specific reference to the rule of law being considered for each issue.
3. Child Find Issues: Provide a specific reference to the child find the provision rule of law being considered.
4. Key Facts: State the facts that were important to the decision of the court
5. General Ruling: Results and disposition of the order and procedural consequence as a result of the court's holding.
6. Child Find Ruling: Results and disposition of the child find provision order and procedural consequence as a result of the court's holding.

Case briefs are lengthy, often representing a “rich source of data about the topic,” and thus, they are located in Appendix A (Dagley, 2012, p.70). Each case then went through multiple coding passes to provide a deeper understanding of the case law (Webley, 2010). In accordance with true Qualitative Content Analysis (QCA), first a deductive approach was applied with an initial code set based on previously published studies of special education due process hearings. Special consideration involved coding at the issue-level rather than at the overall results-level (Blackwell & Blackwell, 2017; Cope-Kasten, 2013; Mueller & Carranza, 2011; Rickey, 2003; Schanding et al., 2017; Zirkel & Skidmore, 2014).

Second, the inductive approach required open coding within each case of study, which broadened the opportunities for an in-depth understanding of the cases (Webley, 2010). The resulting data were grouped and compared in various ways to identify the legal questions, decisions, trends, and outcomes cases where the child find provision was invoked. This chapter provides the data derived from the due process hearing cases, and the analysis as it pertains to the research questions. The impact of the findings is discussed in Chapter 5.

Data Analysis

The analysis followed the methodological guidance of Zirkel's (2018) national RTI and child find case law review from 2008-2018 and Schanding et al.'s (2017) study on Texas students' characteristics in due process hearings from 2011 to 2015. The analysis was conducted to determine how Texas hearing officers applied the child find provision after the TEA received federal citations for violating the child find requirements outlined in IDEIA. I used an established QCA approach by engaging an initial a priori deductive coding framework used in the same field by multiple researchers and a secondary inductive open coding structure to allow for creating of codes during the process (Blackwell & Blackwell, 2015; Hall & Wright, 2008; Lock & Seele, 2015; Salehijam, 2018; Schanding et al., 2017; Webley, 2010).

Foundations of the QCA methodology in special education hearing officer decisions derive from Newcomer and Zirkel (1999), Rickey (2003), Mueller and Carranza (2011), and Cope-Kasten (2013). QCA was applied in multiple examinations of national special education due process hearings by Blackwell and Blackwell (2015), Schanding et al. (2017), Blackwell and Gomez (2019), and Blackwell et al. (2019). Coding, database use, and analysis were refined by researchers from 2015 to present regarding primary label consistency and continuity (Blackwell & Blackwell, 2015; Blackwell et al., 2019; Blackwell & Gomez, 2019; Gilland, 2019; Newton,

2019; Schanding et al., 2017). Furthermore, Zirkel and Skidmore (2014) recommended coding due process hearing results at the issues level and establishing multiple categories to differentiate between prevailing party types (i.e., parent, district, or split between parent and district). The use of a priori coding was based on previous due process hearing analyses and recommendations. The second coding process was open coding to find unforeseen data connections that may be present in each case's data (Salehijam, 2018).

Schreier et al. (2019) argued for using both deductive and inductive coding structures to capture all critical phenomena beyond the predefined codes to capture the nuances of the hearing officers' decisions. Both inductive and deductive reasoning provided a deeper understanding of case law (Webley, 2010; Zirkel & Skidmore, 2014). The data were analyzed in the Dedoose data analysis application for the deductive and inductive coding processes. First, a deductive approach was pursued with an initial code set based on previously published studies of special education due process hearings. Special consideration involved coding at the issue-level rather than at the overall result level (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Rickey, 2003; Schanding et al., 2017; Zirkel & Skidmore, 2014). Second, the inductive approach required open coding within each case of study to broaden the opportunities for an in-depth understanding of the cases (Webley, 2010). The dual coding approach ensured the data analysis provided rich findings beyond what only predefined codes could provide (Creswell & Poth, 2016). The deductive and inductive coding schemes are discussed in the next subsections.

Deductive Coding

Given the coding consistency framework in multiple studies, Schanding et al.'s (2017) predetermined codes were used to determine the characteristics of students involved in due process hearings related to the child find provision. Schanding et al.'s codes are the following:

1. Attorney representation of student/family: The representation of the student/family by an identified attorney during the due process hearing. Within this category, some families also had parent advocates during the case; however, those students/families represented solely by advocates were not included in this category.
2. Issues held for school: The number of issues held for the school district by the hearing officer.
3. Issues held for student/family: The number of issues held for the student/family by the hearing officer.
4. Issues held in part for the district and in part for student/ family: The number of issues where a split occurred, indicating that a portion of the issue was held for the district and a portion of the issue was held for the student/family.
5. Prevailing party: The party (either student/family or district) with the majority or the substantial number of issues that prevailed in the case based on the hearing officer's decision.
6. Primary special education eligibility: The primary disability of the student, as noted in the hearing decision. These disability categories are based on the special education regulations of Texas. For those students without an identified special education eligibility, the student was coded as "not eligible." Some students had protections afforded under Section 504.
7. Issues: Up to three (primary, secondary, and tertiary) issues were identified for each case. The categories for issues were coded based on criteria adapted from Blackwell and Blackwell (2015) and were as follows:

- a. Evaluation: Evaluation process and procedures for determining areas of need and potential services, including independent education evaluations and the selection/qualifications of evaluators.
- b. Extended School Year Services (ESYS): Special education and related services provided to eligible students beyond the typical academic calendar.
- c. Identification: Eligibility determination for special education services.
- d. IEP: Components and development of the IEP, commonly examined to determine the extent to which the IEP was calculated to provide a FAPE in the LRE. Predominantly, this category addressed the goals, objectives, accommodations, and modifications made to a student's program of services.
- e. Placement: Location of special education services for a student, including services provided in general education settings and specialized settings to provide the student access to the general education environment to the appropriate extent; included unilateral placement by a parent.
- f. Procedural safeguards: Procedural protections afforded to students, parents, and schools through federal and state special education laws and regulations; included timelines, parental consent, and written notices.
- g. Related services: Developmental, rehabilitative, corrective, and supportive services that are necessary to assist a student in accessing and benefiting from special and general education services; included specialized transportation, occupational therapy, physical therapy, and orientation and mobility services.
- h. Discipline: Removal of a student from the agreed-upon placement due to disciplinary actions; included both in-school and out-of-school suspensions. Also

included manifestation determination review (MDR) disputes involving disciplinary actions or issues related to restraint/seclusion.

- i. Transition: Practices and procedures related to transition planning for secondary students to assist in developing the knowledge, skills, and strategies for accessing and benefiting from post-secondary opportunities such as college, employment, independent living, and community participation. (pp. 3–4)

When a variable was not able to be assigned a code, the data were recorded as not indicated and analyzed during open coding.

Inductive Coding

Coding is an iterative process; therefore, following the a priori rounds of coding, open coding was performed. Open coding is where a researcher identifies potentially relevant data that may answer the research questions (Merriam & Tisdell, 2015). Grouping data based on open coding allowed for themes to emerge naturally within multiple iterations of coding while I engaged in reflection for interpretation (Merriam & Tisdell, 2015). Once the open coding appeared exhaustive, reaching an all-encompassing number of categories, axial coding was used to cluster the information into related category groups and identify patterns (Newton, 2019; Webley, 2010). From the patterns, themes formed to represent findings that are presented by research question.

Research Question 1

Research Question 1 was the following: What were the legal questions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions? The analysis focused on answering what questions were decided in cases where complainants invoked the IDEIA child find provision. The due process hearing officers

considered various issue topics when determining whether the respondent fulfilled their duty under the IDEIA child find provision. Several categories emerged involving the legal questions that were consistently addressed by hearing officers, including (a) timely referral and subsequent timely evaluation; (b) a comprehensive evaluation; (c) reason to suspect a disability; (d) reason to suspect a need for special education services; (e) reason to suspect a disability in need of special education; and (f) outcome of the evaluation and admission, review, and dismissal committee (ARDC) meeting. Out of the 20 cases in the sample, 24 child find issues were found.

Timely Referral and Subsequent Timely Evaluation. In eight (33.3%) of the 24 child find issues found in the 20-case sample, the due process hearing officers assessed whether or not a referral for evaluation was made in a timely manner after the district had reason to suspect the child may have a disability that may require special education, or in the case of a student already served under special education if an additional disability was suspected and a reevaluation occurred. In the case of *Student, B/N/F Parent, Petitioner v. Lancaster ISD* (2017), the district waited on results from a private therapist while a child could not be in the district. Upon the student's return, maladaptive behavior ensued, so the district immediately requested an initial evaluation. The court deemed the 1-month delay prior to referral as reasonable under the circumstances. Other child find claims concluded that immediately upon suspicion of a disability, such as in *Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD* (2016), along with a suspicion of the need for special education, such as in *Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD* (2018) often due to a lack of progress with general education or Section 504 intervention and/or accommodations, constitutes a timely referral which must be completed within IDEIA timelines. Both *Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent and Student* (2019), *B/N/F Parent and Parent, Petitioner v. Klein ISD* (2018), supported

these claims. The concept still applied even if the student was dismissed from special education previously but is still suspected of having a disability and the need for special education, evidenced by the Abilene ISD (2017) case. In the appeal of the case of *Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD* (2018), the appeals court used the district's pursuance of other evaluations to determine whether or not the district was in compliance with IDEIA, during the controversial special education cap period.

Comprehensive Evaluation. In six (25%) of the 24 child find issues found in the 20-case sample, the due process hearing officers assessed whether or not the evaluation was complete, comprehensive, and if the student was evaluated in all areas of the suspected or previously identified disabilities. Hearing officers ensured that all known or suspected disabilities were covered by the evaluation, including, but not limited to attention deficit hyperactivity disorder (ADHD) or additional health impairments that could require the need for related service evaluations such as physical therapy and behavioral evaluations that require a functional behavioral assessment (FBA) to develop appropriate behavior intervention plans (BIP) and programming for students with behavioral disabilities. In the case of *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD* (2019), the student was identified under Section 504 with a medical doctor's diagnosis of dyslexia, dyscalculia, and dysgraphia. However, once evaluated under IDEIA, the student was not assessed specifically for dyscalculia or dysgraphia. Due to this omission, the parents/student won the claim. In the case of *Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD* (2018), a classroom observation was missing from the evaluation, and the hearing officer made it clear that the student's functioning in the classroom was imperative to a comprehensive evaluation; the commission caused a procedural violation of IDEIA. Likewise, in both *Student, B/N/F Parent, Petitioner v. Abilene ISD* (2017) and *Student,*

B/N/F Parent, Petitioner v. Pearland ISD (2017a), components of the FIE were missing, and thus the entire evaluation was deemed incomplete. Conclusions included reminders that an FBA or other evaluation must be conducted when a child has significant behaviors that are escalating (*Student, B/N/F Parent, Petitioner v. Abilene ISD (2017)*), or for an ADHD evaluation when the student had been identified by an outside psychological evaluation to have the condition (*Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017a*).

Reason to Suspect a Disability. In one (4.2%) of the 24 child find issues found in the 20-case sample, the hearing officer specifically determined that although the student was found to have a specific learning disability (SLD) while in a subsequent grade level, the district had no evidence to suspect the student had an SLD in the grade level that fell within the statute of limitations from the due process filing (*Student, B/N/F Parent, Petitioner v. North East ISD, 2017*). In this case, the petitioner claimed the student had been diagnosed with a specific learning disability based on a psychoeducational evaluation. However, the district prevailed since there was no evidence to warrant suspicion of a disability prior to that evaluation. The student did not earn lower than a passing grade, met all district benchmarks, passed the State of Texas Assessment of Academic Readiness (STAAR), and teachers reported no academic concerns indicating an SLD.

Reason to Suspect a Need for Special Education Services. In two (8.3%) of the 24 child find issues found in the 20-case sample, there was no reason to suspect the need for special education. In *Student, B/N/F Parent, Petitioner v. Lewisville ISD (2018)*, the student was succeeding academically and had no behavioral concerns other than those typical for peers. Hearing officers ruled that evidence must be “persuasive” (p. 11) when the district suspects a disability. Here, the student was succeeding academically and had minimal discipline referrals.

The teacher's testimony indicated the student had good social interactions and was motivated to learn and achieve academically. Further, hearing officers stated that schools do not need to "rush to judgment" (p. 12) for students with a below-average performance who are passing state assessment, have minimal behavioral referrals, and are passing classes with no evidence to indicate any additional concerns (*Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD*, 2019).

The appeal of the Case of *D.H.H. v. Kirbyville Consolidated ISD* (2019) addressed the importance of teacher input in outside evaluations and stressed that the information about educational performance could not solely come from the parents. In this case, the psychologist's own observations in the report undermined his findings. The psychologist stated that the emotional disturbance impacted the student's education performance but also that the pervasive mood of unhappiness was more irritability; however, the psychologist reported that the student had performance similar to peers, spoke in a nondisruptive manner, and participated in group activities. The Fifth Circuit elaborated on this decision, requiring the suspicion to be more than just "likely to indicate a failure" and calling for the need to meet the threshold of probability over the conjecture of possibility (*Fifth Circuit Court Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD*, 2020).

Reason to Suspect a Disability in Need of Special Education. In three (12.5%) of the 24 child find issues found in the 20-case sample, there was no reason to suspect a disability that was in need of special education. This decision essentially combined the two-prong special education eligibility requirement under IDEIA (34 Code of Federal Regulations, 2006). In all of these cases, the hearing officer determined that the student was making adequate progress with general education support and/or Section 504 accommodations (*Student, B/N/F Parent,*

Petitioner v. North East ISD, 2017; Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2017; Student, B/N/F Parent, Petitioner v. Leander ISD, 2017). In *Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD (2017)*, the hearing officer determined that the student, though behind, had made nearly a year's progress with response-to-intervention (RTI) and other academic supports, and therefore the district had no reason to suspect a cognitive deficit. As long as the school collaborates with the parent, adjusts the intervention level and supports, and the student continues to make progress, there is no reason for a district to suspect a disability requiring specialized instruction (*Student, B/N/F Parent, Petitioner v. Leander ISD, 2017*).

The first and third appeals in the case of *William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD (2018a, 2018c)*, which went through five rounds of appeals, also provides insight into the legal questions regarding the application of the two-prong eligibility requirement for special education as it relates to the child find provision. Both the first and third claims still supported the collaboration and intervention questions. However, the third claim overturned the due process decision regarding the student's eligibility. The court rules no harm was done since the district provided to the student ensured the student received appropriate instruction.

Outcome of the Evaluation and ARDC Meeting. In four (16.7%) of the 24 child find issues found in the 20-case sample, determinations were clear that the student must have a disability and have a need for special education services to have been denied free and appropriate public education (FAPE) (*Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD, 2018; Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018; Student, B/N/F Parent, Petitioner v. Lancaster ISD, 2017; Student, B/N/F Parent, Petitioner v. Santa Rosa ISD, 2019*).

In *Student, B/N/F Parent, Petitioner v. Santa Rosa ISD* (2019), the district was never given an Other Health Impairment Form (OHI) for ADHD signed by a physician despite many attempts, so the court determined the law that states the student must be diagnosed by a physician for eligibility was followed and the student was not eligible (19 Tex. Admin. Code § 89.1040, 2015).

In *William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD* (2018a, 2018c), the Fifth Circuit Court of Appeals also upheld these criteria regarding physician diagnosis when it found no denial of FAPE for the student due to a procedural violation when the student was not denied educational opportunity. The third appeal in William argued that the student should have been identified as a student with a specific learning disability since the student had dyslexia. The first and second appeals were overturned, and the court determined that the student should have been eligible, but with the caveat that the student was not denied services, so the identification determination was a procedural violation. The fifth circuit decision sidestepped this ruling and asked the lower court to instead consider if the student was in need of special education in the first place.

Research Question 2

Research Question 2 was the following: What were the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions? The analysis focused on answering what decisions were decided in cases where complainants invoked the IDEIA child find provision such as (a) the issues held for the school district, (b) the issues held for the parent/student, (c) child find prevailing party, and (d) the overall relief granted for the case to the prevailing party.

Issues Held for School District. The prevailing party was found most frequently in favor of the school district in 51 (71.8%) of the 71 decided issues. Issues held for school districts

included procedural requirements, individualized education plan (IEP), child find, least restrictive environment (LRE), placement, identification, independent educational evaluations (IEE), staff training, and discipline.

Procedural. In 11 (21.6%) of the 51 issues held in favor of the school district, the decision involved allegations of a procedural violation. Procedural complaints that districts won included not needing to provide an Autism supplement in the IEP (*Student, B/N/F Parent, Petitioner v. El Paso ISD*, 2018) or Prior Written Notice and a copy of the Procedural Safeguards (*Student, B/N/F Parent, Petitioner v. Lewisville ISD*, 2018; *Case of Student, B/N/F Parent, Petitioner v. Pearland ISD*, 2017b; *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD*, 2017). For five of the issues, the district was found to be in compliance with all procedural requirements (*Student, B/N/F Parent, Petitioner v. Santa Rosa ISD*, 2019; *Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD*, 2017; *Student, B/N/F Parent and Parent, Petitioner v. Klein ISD*, 2018; *Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD*, 2018; *Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD*, 2017). The hearing officer determined parents were given an opportunity for meaningful participation and collaboration (*Student, B/N/F Parent, Petitioner v. Lancaster ISD*, 2017) and that districts are allowed to conduct district staff meetings without the parent in order to prepare a draft IEP, and doing so does not deny parental participation (*Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD*, 2016).

Individualized Education Program (IEP). Nine (17.6%) of the 51 issues held for school districts regarded the IEP, particularly appropriateness (*Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD*, 2017; *Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD*, 2017; *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD*, 2019)

and completeness (*Case of Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018; Student, B/N/F Parent, Petitioner v. Lewisville ISD, 2018*) that also provided required educational benefit (*Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD, 2018*). The court confirmed cases where the IEP was found to have been reasonably calculated to address the student's needs in light of their circumstances (*Student, B/N/F Parent, Petitioner v. Santa Rosa ISD, 2019*), as long as it allowed the student to make meaningful progress (*Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD, 2016*). *Student, B/N/F Parent, Petitioner v. El Paso ISD (2018)* confirmed that the student must be available for implementation of the IEP and that absences did not allow the district to successfully implement the IEP, to no fault of the district.

Evaluation. Nine (17.6%) of the 51 issues held were favored by the school district on evaluation. In addition to the completeness and timeliness of the evaluation, one case took into account the need for evaluation in the first place (*Case of Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018*) while another looked at the results and correctness of the evaluation (*Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2017*).

Child Find. Eight (15.7%) of the 51 issues won by districts were child find issues. Hearing officers stated that the district must have a preponderance of data to support the need for evaluation (*Student, B/N/F Parent, Petitioner v. North East ISD, 2017*) and that a lack of suspicion of an IDEIA defined disability that affects the student's educational performance at the time the decision was made is not a violation of child find provision (*Student, B/N/F Parent, Petitioner v. Leander ISD, 2017*).

Least Restrictive Environment (LRE). LRE issues were held in favor of the district in four (7.8%) of the 51 issues won by districts. The Conroe ISD case (2016) was the most detailed

in reference to the reasoning for the decision. In *Conroe ISD (2016)*, the hearing officer discussed the difference between LRE and where the student needed to receive curriculum and instruction. Since it is not about the amount of time the student would spend in the general education classroom, the issue instead determined that the student was not able to keep up with the modified general education curriculum. However, when the gaps in the prerequisite skills were addressed the student was able to show huge improvements. In this case, the student was receiving a unique program of special education services in the appropriate placement, with the time for addressing prerequisite skills in a special education setting allowed the student to have an opportunity for a meaningful education (*Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD, 2016*).

Other Issues Held. Three (5.9%) of the 51 issues held for the school district were for each placement and identification. Two (3.9%) for IEEs, and one (2%) each for staff training and discipline. *Student, B/N/F Parent, Petitioner v. Abilene ISD (2017)* reinforced that a “stay put” is required when a hearing is filed and that parental disobedience of this order causes delay and, in this case, favor for the district placement. *Student, B/N/F Parent, Petitioner v. Lewisville ISD (2018)* clarified an alternative behavioral placement decision resulting from a manifest determination review (MDR). The district had the authority to implement up to 10 days of the alternate assignment pending an MDR analysis, and though the 20-day alternate assignment did change the student’s placement, the MDR was done in a timely manner and the meeting was held within ten days, thus the placement change was appropriate (*Student, B/N/F Parent, Petitioner v. Lewisville ISD, 2018*).

Two of the three claims of inappropriate identification were found in favor of the district as the student did not have a disability (*Student, B/N/F Parent, Petitioner v. El Paso ISD, 2018*;

Case of Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018; Case of D.H.H. v. Kirbyville Consolidated ISD, 2019). The *Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD* (2016) decision determined the identification was appropriate, and the parent lost the claim. *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD* (2019) raised a counterclaim on the petitioner concerning IEE's, seeking judgment as to whether the FIE was appropriate and therefore the parent was not entitled to an IEE at public expense; the district won. This case had several facets. First, the district improperly evaluated the student, missing the eligibility of both dysgraphia and dyscalculia. The parent sought outside evaluation at private expense, and then the school reevaluated the student properly in all areas of suspected disability. The parent requested an IEE at this time. The court determined the private evaluation must be reimbursed; however, the district got it right the second time, and therefore the last evaluation did not warrant the school to pay for an IEE at public expense. Other issues held for the district were one decision that determined staff was adequately trained due to a lack of evidence introduced to the contrary (*Student, B/N/F Parent, Petitioner v. El Paso ISD, 2018*).

Issues Held for Parent/Student. The prevailing party was found to be the parents/students in 20 (28%) of the 71 issues. The issues won by parents/students involved IEP, evaluation, placement, and one claim each for LRE and IEE. Claims were only won by the parent/student on eight out of the 20 cases in the sample.

Individualized Education Program. Eight (40%) of the 20 issues in which the parent/student prevailed were related to the IEP. Abilene ISD (2017) failed to adequately address the "breadth or extent" (p. 22) of the student's behavioral and educational needs. Correspondingly, Lancaster ISD's (2017) BIP did not adequately address the student's behavioral needs, and Pearland ISD (2017a) also did not meet the behavioral needs of the

student. Since neither Klein ISD (2018) nor Houston ISD (2019) completed a proper, comprehensive evaluation and subsequently did not develop the IEP they were deemed not in compliance and lost the issue. Interestingly, the behavior was the most common mistake made by districts in developing the IEP.

Evaluation. Seven (35%) of the 20 issues in which the parent/student prevailed were related to evaluation, and four issues involved completing the evaluation in a timely manner upon suspicion of disability or within the IDEIA timelines (*Student, B/N/F Parent, Petitioner v. El Paso ISD, 2018; Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017; Student, B/N/F Parent and Parent, Petitioner v. Klein ISD, 2018; Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent, 2019*). The other three involved completeness (*Case of Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018; Case of Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017c; Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017*).

Other Issues Held. Three claims (15%) regarding placement were all claims on the Abilene (2017) case, ultimately resulting in placement at a residential treatment facility. On the issue (5%) won by parents/students on LRE, the district claimed the student was unsuccessful in general education; however, the court deemed that argument by the district to be unfounded and ruled that the student's removal was not conducive to LRE (*Student, B/N/F Parent, Petitioner v. Lancaster ISD, 2017*). On the issue (5%) won by the parent/student on IEE, the district was ruled as not providing information to the parent/student in a timely manner (*Student, B/N/F Parent, Petitioner v. Lancaster ISD, 2017*).

Prevailing Party by Child Find Issue. In 18 (75%) of the 24 child find issues found in the 20-case sample, districts prevailed, while parents/students won in six (25%) of the 24 child find issues found in the 20-case sample. Though 19 of the 20 cases were brought by parents, they

were only 25% likely to win on child find issues. Parents/students won most frequently on districts' failures to identify students' disabilities. Three out of five (60%) child find claims won by parents were on the issue of failing to identify a student with a disability, while the other two claims (40%) were won on evaluation. In four (80%) of the five claims won by parents the student had a documented disability. One student was dismissed from services, but at a later date, the educational need resurfaced (*Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017*), one student was receiving services as a student with an emotional disturbance but had ADHD behaviors (*Case of Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017a*), and two serviced under Section 504 were not making progress (*Student, B/N/F Parent and Parent, Petitioner v. Klein ISD, 2018; Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2019*). The fourth parent/student win was regarding an evaluation that was not completed since the district petitioner sought to override parental consent for adding to the evaluation after consent had been signed *Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent, 2019*).

Overall Relief Granted. In the 11 cases out of 20-case sample where relief was granted to either party, relief was most often as awarded as evaluation. Of the five (54.5%) cases where an evaluation was awarded, the court awarded an in-district evaluation 40% of the time and an independent evaluation 60% of the time. In one case where relief was provided to the district, the district was not required to provide an IEE at public expense because their evaluation was found to be comprehensive and appropriate (*Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD, 2016*). The other forms of relief granted were evenly split as reimbursement for transportation (9.1%), reimbursement for private services (e.g., private speech therapy, tutoring; 9.1%), changes to the IEP (9.1%), changes to placement (9.1%), and compensatory services (9.1%).

Research Question 3

Research Question 3 was the following: What were the trends in the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions? The analysis focused on answering what the trends were in cases where complainants invoked the IDEIA child find provision. Specifically, the trends that emerged were the following: (a) the representation on behalf of the student/parent, (b) participation in a mediation or resolution session prior to the due process hearing, (c) the primary and secondary special education eligibilities of students, (d) if the student received services in Section 504, (e) the predominant due process issues, (f) the specific child find issues brought before the hearing officer, and (g) the relief requested.

Representation on Behalf of Student/Parent. In 16 (80%) cases of the 20-case sample, students/parents had attorney representation, two (10%) were self-represented, and one (5%) had advocate representation. One case (5%) did not mention attorney representation. Regardless of who represented the student/parent, the school districts prevailed in 75% of the cases. The trend simply indicated that students/parents are increasingly likely to file complaints through attorneys.

Participation in Mediation or Resolution Sessions. There are three types of formal procedures for resolving special education disputes: mediation, resolution, and due process hearings (Blackwell & Blackwell, 2015). Of the 20 cases, 15 indicated whether the student/parent and school district participated in mediation or resolution sessions. For those 15 cases, ten (66.7%) participated in resolution sessions, while four (26.7%) participated in mediation sessions. There was a lack of clarity about whether these cases participated in mediation or resolution hearings before entering the due process hearing for five cases. In one

case the student/parent and school district could not agree on a time for the mediation session (*Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD*, 2017).

Mediation does not require litigation, only a neutral third party who assists students/parents and school districts in settling disagreements. This step is optional for students/parents and school districts. A resolution meeting provides a final opportunity to settle disagreements prior to due process, and the district has 15 days from the filing to hold this required session (34 Code of Federal Regulations, 2006). Decisions to waive the resolution hearing process must be in writing, or a mediation session can be held instead. Parents and districts infrequently used the mediation process, which is considered a less adversarial process, and instead decided to move forward with a more litigious decision.

Special Education Eligibility of Students Involved in Due Process Hearings. The primary, secondary, and tertiary eligibility were coded in all 20 cases if they were available. The disability categories are based on the special education regulations of Texas. For students not identified as students with an identified special education disability, the students were coded either under “no disability” or “no educational need.” This deviation in coding from Schanding et al. (2017) was purposeful. The intent was to describe non-eligible students by the Texas two-prong eligibility method. First, a student must be a student with a disability. Second, the student must be in need of special education to access and make progress in the general education curriculum.

Special Education Eligibility. In six (30%) of the 20-case sample, the student was eligible as a student with an Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). Four cases (20%) listed Emotional Disturbance (ED) as the primary eligibility and three cases (15%) involved Specific Learning Disability. Two (10%) were found

not eligible for not having a disability at all while one (5%) was determined to have no educational need and thus was not eligible. One (5%) case had each unspecified behavioral disabilities, vision impairment, and autism listed as primary eligibility. In the seven cases that listed secondary special education eligibility, four (57%) were eligible as a student with an OHI for ADHD, while the remaining three (14.3%) cases were equally split between emotional disturbance, speech impairment, and specific learning disability. One case did not list eligibility. Table 1 summarizes these observations.

Table 1

Students' Special Education Eligibility for Due Process Hearing

Special education eligibility	Primary special education eligibility % (<i>n</i>)
Other health impairment for ADHD	30% (6)
Emotional disturbance	20% (4)
Specific learning disability	15% (3)
No disability	10% (2)
Visual impairment	10% (2)
Unspecified behavior	5% (1)
Autism	5% (1)
No educational need, dyslexia	5% (1)

Note. $N = 20$

Section 504. Sixteen cases mentioned if the student received RTI supports or Section 504 prior to referral to special education. In 12 (70%) of these 16 cases, the student received services under Section 504. All of the students with a primary eligibility of OHI for ADHD received services under Section 504. This frequency of classifying students under Section 504 rather than under special education as an element of the cases is particularly relevant because a key

component to the OSEP citations in Texas involved keeping students under Section 504. By not evaluating these students for special education, the districts denied FAPE to the students and violated the child find provision. Districts prevailed in 8 (66.7%) out of 12 child find cases where the student received Section 504 services, and parents won in three (25%) out of 12 cases. One (8.3%) case was split in favor of the parent/student on timeliness and in favor of the district on evaluation completeness. Of the 12 students involved in the child find due process claims that received Section 504 services, seven (58%) were diagnosed with ADHD, two (16.7%) had dyslexia, and two (16.7%) had unspecified learning problems, one (8.3%) had an emotional disturbance. Although all of the students with a primary eligibility of OHI for ADHD received Section 504 the district only lost one case for a student with ADHD that was receiving Section 504 services which was due the evaluation not being complete due to the district filing the due process claim (Dallas ISD 2019).

Predominant Issues Involved in Due Process Hearings. In five (25%) of the 20-case sample, child find was the predominant issue involved in the due process hearing which include issues such as not evaluating for a disability when there is evidence of such disability (*Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD, 2017; Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2017*); not evaluating a student with a known disability and suspicion of the need special education since Section 504 was insufficient (*Student, B/N/F Parent, Petitioner v. Leander ISD, 2017; Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD, 2018*); and not finding, identifying, and locating a student with a disability that resided in the district, yet did not attend either public or private school (*Case of Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017b*). Five (25%) cases had primary issues about identification, all involving a delay in identification (*Student, B/N/F Parent, Petitioner v. Santa Rosa ISD, 2019*;

Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2019; Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2019; Student, B/N/F Parent and Parent, Petitioner v. Klein ISD, 2018). Four cases (20%) of the 20-case sample involved evaluations not related to child find, such as claims of incomplete evaluations. Three cases (15%) were primarily about the IEP; however, once the facts were presented involved missing parts of the evaluation that led to an insufficient IEP (*Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017*), or no IEP at all (*Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2017; Case of Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017a, 2017c*). Two (10%) cases were about discipline issues with the students. One case (5%) began about placement, but the hearing officer found the primary issue to be about identification (*Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD, 2016*).

Seven (41.2%) of the 17 identified secondary issues involved the IEP. Three (17.6%) of the 17 identified issues were with evaluation, and another three (17.6%) were claims of procedural violations. Two (11.8%) of the 17 issues were about child find's identify and evaluate requirements, while placement and identification each held one (5.9%) of the 17 secondary issues. The most common procedural violation included the claim of lack of meaningful parental participation in six (30%) of the 20 cases. Table 2 summarizes the issues for due process observed among the cases.

Table 2*Issues for Due Process*

Issue type	Primary issues % (n)	Secondary issues % (n)
Child find	25% (5)	11.8% (2)
Identification	25% (5)	5.9% (1)
Evaluation	20% (4)	17.6% (3)
IEP	15% (3)	41.2% (7)
Discipline	10% (2)	0.0% (0)
Placement	5% (1)	5.9% (1)
Procedural violations	0% (0)	17.6% (3)
Total Issues	100% (20)	100% (17)

Child Find Issues. The IDEIA Child Find Provision stated the three components of identify, locate, and evaluate to be necessary, with the caveat that the evaluation and referral for evaluation must be timely. In the 11 (46%) of the 24 child find issues, the evaluation component was the predominant issue. In eight (33.3%) of the 24 child find issues, the identification component was listed as the child find claim. In three (12.5%) of the 24 child find issues, the evaluation was not timely, and in two (8.3%) cases, the parents/students alleged that the district did not locate the student, regardless of the student's enrollment in any school. Table 3 summarizes the observations regarding the child find provision issues for due process.

Table 3*Child Find Provision Issues for Due Process*

Issue type	% (n)
Did not evaluate	46.0% (11)
Did not identify	33.3% (8)
Was not a timely evaluation	12.5% (3)
Did not locate	8.3% (2)
Total issues	100% (24)

Relief Requested. In 11 (13.9%) of 79 requests were compensatory services such as private tutoring and outside counseling. Another 11 (13.9%) of 70 requests included an IEP to match IEE or other outside evaluation results. Other requests included an IEE, change in identification, change in in-district placement, placement in private school, private services that could be tutoring, speech therapy, procedural changes such as asking the district to post the criteria for determining SLD. Reimbursement was requested for evaluation; mileage; private services that included speech therapy, tutoring, physical therapy, and psychological treatment; private school tuition; and attorney's fees to cover legal services and fees involved in the due process hearing. Other requests included alterations to permanent records for removing DAEP placement and not using it in the future or removing a disciplinary incident, staff training, adding required staff to ARDs such as a medically licensed individual, and requests for staff repercussions including criminal charges against the principal and teacher as well as taking action against teaching licenses.

Research Question 4

Research Question 4 was the following: What were the legal principles for Texas educators that can be discovered from the cases decided by Texas due process special education

hearing officers where complainants invoked IDEIA child find provisions? The analysis focused on answering what the principles applied to educators in cases where complainants invoked the IDEIA child find provision. In analyzing the reasoning the court gave for determining why the prevailing party won, legal principles were discovered. Hearing officers sought to determine if the following principles were present in the cases: (a) the district had reason to suspect a disability since no academic, social, or emotional progress was made; (b) the student was making adequate progress with supports, or if the student was not receiving services they needed which could potentially add to the student's academic, social, and emotional difficulties, which falls under the need for special education; (c) the evaluation referral was done in a timely manner; (d) the district comprehensively evaluated in all areas of suspected or known disabilities; (e) if the district had all necessary components of the evaluation based on the evidence they had before evaluation; and (f) the district complied with its child find procedural duties.

Determination of Suspicion of Student Disability. Nine (45%) of the 20 cases specifically looked at the determination of the suspicion of student disability that would lead to evaluation as required under IDEIA. The court inquired four times if the student was making adequate progress with supports, looking for documentation of academic and behavioral progress (*Student, B/N/F Parent, Petitioner v. North East ISD*, 2017). The courts determined that a year's worth of progress was made with response-to-intervention supports, and that was enough to indicate the unlikelihood of a disability (*Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD*, 2017). The courts also look to see if the student was continuously succeeding with general education supports, even though the supports were continuously being adjusted, as long as progress was made that was enough to support not having a disability (*Student, B/N/F Parent, Petitioner v. Leander ISD*, 2017). The courts also performed detailed

evaluations of records. In one case, the student kept making progress, and though the student failed the state assessment (STAAR), the student failed by only one question, and still showed progress from the previous STAAR and had a history of passing the STAAR every year prior (*Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD, 2017*).

The court determined four times that there was no evidence that the student had a disability since the student passed the state's STAAR assessment and did not have any excessive behavioral referrals (*Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2019; Student, B/N/F Parent, Petitioner v. Lancaster ISD, 2017*). The court considered behavioral progress and the acquisition of social skills, which are considered in addition to educational achievement. In one case, the student was well-liked, had few behavioral issues, and did not demonstrate the behavioral or social needs for specially designed instruction (*Student, B/N/F Parent, Petitioner v. Leander ISD, 2017*). In another case, there was even a negative screening for dyslexia by parent request, and no other supporting data indicated the student had a disability (*Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD, 2017*).

In *Student, B/N/F Parent and Parent, Petitioner v. Conroe ISD (2016)*, teacher monitoring led to the recommendation for additional evaluation, which subsequently determined the student was a student with an intellectual disability, a finding which the parent/student sought to overturn. The hearing officer determined that the teacher complied with IDEIA regulations by using data to trigger the suspicion of disability, leading to a timely evaluation and identification.

Determination of Suspicion of Need of Special Education. Five of the 20 cases determined if there was a suspicion that a student with a disability was in need of specially designed instruction through special education. *Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD (2018)* included the judgment that the least restrictive environment was Section

504 with general education support; thus, if the student could be successful there, they did not need the specially designed instruction of special education. Similarly, in *Student, B/N/F Parent, Petitioner v. Santa Rosa ISD* (2019), the officer determined that if a student with a disability, in this case OHI for a redacted health condition, could attend school, learn, and succeed academically and nonacademically, then there was no reason to suspect a need for special education for that condition. In this case, the student was already receiving special education under OHI for ADHD, to which the parents and school agreed the student required specially designed instruction; however, when the due process hearing was brought to the TEA, the child find claim was that the district failed to identify the student as a student with an OHI under the redacted health condition, thus denying FAPE, to which the court findings indicated was not the case.

Two cases determined that the student with a disability receiving services under Section 504 was not making adequate progress and may be in need of special education. In *Student, B/N/F Parent and Parent, Petitioner v. Klein ISD* (2018), the Section 504 eligibility indicated awareness of the student's disability; however, the student's reading level had not improved adequately and the Measures of Academic Progress (MAP) curriculum-based assessment indicated the student was in a low percentile of achievement, which should have been indicators that Section 504 was not sufficiently allowing the student with a disability to access and make progress in the curriculum.

Similarly, in *Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD* (2018), the Section 504 eligibility for dyslexia indicated awareness of the student's disability, but the student's reading level lagged significantly behind grade-level peers. A parent specifically asked if the student had a learning disability during a Section 504 meeting, and the hearing officer

determined that at the time the parent asked the question, the district had a reason to suspect a special education eligibility disability that would include a specific learning disability diagnosis. In an additional case, the Fifth Circuit court's decision supported the other hearing results in that procedural violations did not deny a student FAPE, a lack of educational opportunity does. If the student was making progress, received services, and was identified, then no substantive harm was done even if the child was not receiving special education services as long as the instruction was specially designed for the student and the parent had meaningful input (*Fifth Circuit Court Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD*, 2020).

Student, B/N/F Parent, Petitioner v. Abilene ISD (2017) showed that a student who was once considered to have a speech impairment for which the student received speech therapy and was dismissed from special education could later be reeligible. In this case the student was found later to have a speech impairment that still resulted in academic, social, and emotional needs that required the student to once again receive special education services. The court called the 5-year delay in reassessing the student for their speech needs from 2012 to 2017 was a "failure in Child Find" (p. 31).

Child Find Identify and Locate. Four cases mentioned if there was or was not a timely referral for evaluation after the district suspected a disability in need of special education. The *Student, B/N/F Parent, Petitioner v. Abilene ISD* (2017) case determined that deteriorating grades and behavior are enough to suspect and require a timely referral and evaluation. On two issues where the district prevailed, the district suspected a disability and immediately began a referral once the data had been collected (*Student, B/N/F Parent, Petitioner v. Lancaster ISD*, 2017; *Student, B/N/F Parent, Petitioner v. Lewisville ISD*, 2018). In *Student, B/N/F Parent,*

Petitioner v. Lancaster ISD (2017), the district delayed the evaluation for 1 month while waiting for the student to come back to school after private therapy, but once maladaptive behavior occurred, the district immediately began the referral process. The hearing officer determined the 1-month delay was not considered unreasonable. Correspondingly, in *Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD* (2018), a referral after a 6-month delay following the Section 504 meeting where the student with dyslexia was not making adequate progress and the parent asked if the student had a learning disability, was considered unreasonable. These cases provide insight to what hearing officers deem a reasonable amount of time.

Child Find Evaluation. Hearing officers determined what constitutes a comprehensive evaluation in all areas of suspected disability through seven cases. First, hearing officers determined that consent for evaluation must be received for all areas of suspected disability. In the case of *Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent* (2019), consent was not received for an autism evaluation, which the district suspected after beginning the evaluation. The district sought to override the lack of parental consent in order to complete the evaluation that included an assessment for autism. Dallas ISD was found out of the timeline for the evaluation that it had permission to conduct. The hearing officer stated that consent should have been obtained at the beginning or should have been received again for another evaluation after the agreed-upon evaluation was completed.

In three similar instances regarding the parts of the evaluation, the districts had reason to suspect the students had behavioral issues that would likely require an FBA (*Student, B/N/F Parent, Petitioner v. El Paso ISD*, 2018; *Student, B/N/F Parent, Petitioner v. Abilene ISD*, 2017) and BIP, and a physical condition that might require a physical therapy evaluation, yet the evaluation was not comprehensive since it did not include all areas of evaluation (*Student, B/N/F*

Parent, Petitioner v. El Paso ISD, 2018). For the third evaluation, the required classroom observation was listed but not completed (*Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD*, 2018).

In addition to ensuring a full evaluation, IDEIA specified that a student must be evaluated in all areas of suspected disability. Two case rulings indicated that the district did not meet these requirements. *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD* (2019) evaluated a student who was receiving Section 504 services with the disabilities of dyslexia, dyscalculia, and dysgraphia, and when the FIE was conducted; only dyslexia was addressed. *Student, B/N/F Parent, Petitioner v. Pearland ISD* (2017a) had reason to suspect an additional disability of ADHD during the triennial evaluation, and the evaluation indicated the behaviors were consistent with ADHD; however, despite the student's escalating behaviors, the district did not evaluate for ADHD as additional eligibility despite the suspicion and indication of educational need for special education services for this disability.

Parent/Student petitioners in the case of *Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD* (2017) asked the court to determine if the FIE was complete and thorough using a specific model for determining SLD eligibility. The pattern of strengths and weaknesses model used by evaluators in the FIE determined that the student did not meet the criteria as a student with a specific learning disability. The hearing officer determined that the evaluation was comprehensive and used the correct model of SLD identification in accordance with IDEIA and Texas law.

Procedural Compliance. The cases of *Student, B/N/F Parent, Petitioner v. Pearland ISD* (2017b) and *Student, B/N/F Parent and Parent, Petitioner v. Houston ISD* (2017) were brought by the same parent/student petitioner, and both cases led hearing officers to determine

that both districts met their procedural compliance of child find locate by having clear child find information on the district websites and printed in newspapers. Houston ISD developed an appropriate service plan for the student, and the document was not provided that the parent ever contacted Pearland ISD to seek services while residing inside its district boundaries and sending the child to a private school. This determination indicates that districts meet their child find the obligation to locate students who reside in their districts and may have a disability that requires special education by publishing clear information on their websites, running advertisements in local newspapers, and once contacted, providing the information about consumer rights to parents/students.

Summary

This chapter presented a variety of questions, decisions, trends, and legal questions that can be derived from the due process hearing officer decisions related to the IDEIA child find provision Texas. The final chapter presents the summary and discussion related to the research questions, findings, and conclusion of child find provision related TEA due process hearing officer decisions, recommendations, and suggestions for future research.

Chapter 5: Discussion, Conclusions, and Recommendations

The purpose of this study was to determine under what circumstances Texas due process special education hearing officers apply or do not apply the Individuals with Disabilities Education Improvement Act (IDEIA) child find provision. A detailed examination of the hearing officer decisions was presented in Chapter 4. This concluding chapter presents a summary and discussion of the research questions, findings, and conclusions based on the analysis of the special education hearing officer decisions. The chapter concludes with the recommendations and suggestions for future research.

Summary of the Findings for Each Research Question

The following four research questions were used to narrow the study:

RQ1: What were the legal questions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ2: What were the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ3: What were the trends in the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

RQ4: What were the legal principles for Texas educators that can be discovered from the cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions?

The findings for each research question are discussed individually.

Research Question 1

The first research question was what were the legal questions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find

provisions? The hearing officer decisions were most often focused on three areas: (a) timely referral and evaluation, (b) comprehensive evaluation, and (c) having a reason to suspect that the student has a disability in need of special education.

Timely Referral and Evaluation. Eight (33.3%) of the 24 child find issues decided in the 20-case sample involved timely referrals and evaluation. Once a district has knowledge of a “preponderance” (p. 5) of evidence that a student may have a disability, the child find duty is triggered. If there is no persuasive evidence, then despite any future evaluations that conclude that a child has a disability, the district is in compliance with the IDEIA child find provision (*Student, B/N/F Parent, Petitioner v. North East ISD, 2017, p. 5*). These findings clarify the OSEP response from a letter written by Zirkel in 2019 that RTI represented an acceptable FAPE (USDOE, 2019). Once the student is not making progress through RTI as documented by a preponderance of evidence, then the child find duty is triggered. A preponderance of evidence includes:

- A lack of progress despite general education intervention and/or Section 504 accommodations (*Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent, 2019; Student B/N/F Parent and Parent, Petitioner v. Klein ISD, 2018*).
- Regardless of if the student has been previously identified and dismissed from special education due to no evidence of the disability or no need for special education, the student shows evidence of the need for special education again, causing evaluation to be required (*Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017; Student, B/N/F Parent, Petitioner v. North East ISD, 2017*).

- Data used for evidence of a disability in need of special education include a student's history of grades, state assessment, district benchmarks, previous and current teacher concerns that substantiate a clear probability that a student may have a disability.

Comprehensive Evaluation. Six (25%) of the 24 child find issues decided in the 20-case sample involved whether or not an evaluation was comprehensive. Hearing officers made it clear that an evaluation must be complete and comprehensive and that the student must be assessed in all areas of suspected or previously identified disabilities. A comprehensive evaluation includes:

- Assessing all areas of known disability, such as if the student was considered a student with a disability by either Section 504, previous evaluations, outside evaluations, or physician reports (*Student, B/N/F Parent, Petitioner v. Pearland ISD, 2017a; Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2019*).
- Teacher information and classroom observations that support the results of the evaluation (*Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD, 2018*).
- If the student was suspected of significant or increasing behaviors, completing a functional behavioral assessment, and creating a behavior intervention plan; *Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017*).

Reason to Suspect a Disability in Need of Special Education. Unsurprisingly, six (25%) of the 24 child find issues pertained to IDEIA's two-prong special education eligibility requirements: (1) if the student has an eligibility as a student with an IDEIA disability and, (2) if the student requires the need for specialized instruction to access and make progress in the general education curriculum. Half of six child find decisions regarding the two-prong special education eligibility requirement were evaluated by each prong, while the other half of the issues combined both criteria. Overall, the courts determined:

- The district is not penalized for not evaluating and serving the student under special education if historical information does not support the preponderance of data of a disability at that grade level (*Student, B/N/F Parent, Petitioner v. North East ISD, 2017*).
- The need for special education is evidenced only by persuasive data that the student’s behavior or academic performance is atypical from peers (*Student, B/N/F Parent, Petitioner v. Lewisville ISD, 2018*) and that a district should not “rush to judgment” (p. 12) for students with below-average performance who are passing state assessment, have minimal behavioral referrals, and are passing classes with no further evidence to support a concern (*Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2019*). A suspicion of a disability and a need for special education should be more than just a suspicion that “likely to indicate a failure” (p. 5) rather it should be a probability not merely a possibility (*William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD, 2018b*).
- As long as the school collaborates with the parent, adjusts the intervention level of general education and/or Section 504 supports, and the student continues to make progress, there is no reason for a district to suspect a disability that requires specialized instruction (*Student, B/N/F Parent, Petitioner v. North East ISD, 2017; Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD, 2017; Student, B/N/F Parent, Petitioner v. Leander ISD, 2017*).

Research Question 2

The second research question was what were the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find

provisions? The decisions represented the following three areas: (a) issues held for the prevailing party, (b) child find prevailing party, and (c) relief granted.

Issues Held for the Prevailing Party. The prevailing party was found most frequently in favor of the school district in 51 (71.8%) of the 71 decided issues. Only one case in the 20-case sample was brought by the school district, and the petitioner bears the burden of proof.

Interestingly, the petitioner school district lost that case. Prevailing parties were most likely to win on an issues-level if they contained the following qualities:

- Districts prevailed on all 11 (21.6%) procedural issues out of the 51 overall issues in the 20-case sample because they provided the opportunity for meaningful parental participation, provided Prior Written Notice and a copy of the Procedural Safeguards to parents/students, and because they provided the correct supplements related to the identified disability in the Individualized Education Plan (IEP).
- Prevalence in issues regarding evaluation included timeliness of the start of the evaluation and completeness of the final evaluation, the need for the evaluation, and if all related services that may be needed to have an assessment.
- Prevalence in issues regarding the IEP was most frequently attributed to addressing the “breadth or extent” (*Student, B/N/F Parent, Petitioner v. Abilene ISD, 2017, p. 22*) of the student’s behavioral and educational needs. Behavior was the most common issue found in noncompliance in district IEP issues, but they were most likely to prevail on developing IEPs that provided meaningful educational benefit, allowing the student to make meaningful progress, in light of their circumstances.

Child Find Prevailing Party. Districts were most likely to win on child find issues (75%). Parents were the petitioners in 19 of the 20-case sample, so they bear the burden of proof which often proved difficult in situations where the student did not have a documented disability.

- Parents/students were most likely to win on child find issues regarding identification and evaluation if the district failed to identify students' disabilities, particularly when the disability was already documented, such as if the student was receiving Section 504 or had a physician's diagnosis.
- Districts were most likely to win for having no reason to suspect a disability which may result in the need for special education services, or for having complete, comprehensive evaluations.

Relief Granted. Relief was most often as awarded in the form of an evaluation. The court awarded both in-district and independent evaluations as a relief to both districts and parents/students. Independent evaluations, which are at public expense, were awarded most often in cases where they did not evaluate a known disability (*Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2019*; *Student, B/N/F Parent, Petitioner v. Lancaster ISD, 2017*) or if the evaluation was missing a required component, in this case, a classroom observation (*Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD, 2018*).

Research Question 3

The third research question was what were the trends in the decisions in cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions? The trends in the decisions represented the following three areas: (a) student eligibility, (b) Section 504, and (c) the predominant issues of identification and evaluation.

Student Eligibility. The data showed that half (50%) of students in the 20-case sample had either a primary or secondary eligibility of an Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). The primary student eligibility in the 20-case sample was OHI for ADHD (30%), followed by emotional disturbance (20%) and specific learning disability (15%). Three (15%) were found ineligible either for not having a disability or not needing special education. Of the cases that listed secondary eligibility, the most common was OHI for ADHD (57%).

Section 504. In the OSEP citations to Texas regarding the special education cap, evidence was exposed that students were kept in Section 504 rather than being referred for special education, thus not abiding by the child find provision of IDEIA, in order to keep the numbers of special education students in the program under 8.5%. Correspondingly, 70% of the 20-case sample's students received Section 504 services at some point prior to the hearing. Demographic trends that cross-reference eligibility and child find prevailing party provides insight into populations that may be particularly susceptible to litigation, providing guidance to districts and parents/students into which areas of child find need to be addressed so students are not denied FAPE.

- Of the 12 students involved in the child find due process claims that received Section 504 services, seven (58%) were diagnosed with ADHD, two (16.7%) had dyslexia, two (16.7%) had unspecified learning problems, and one (8.3%) had an emotional disturbance.
- Although all of the students with primary eligibility of OHI for ADHD received Section 504 the district only lost one case for a student with ADHD that was receiving Section 504 services which was due to the evaluation not being complete because the district filed

the due process claim (*Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent, 2019*).

- Parents won both claims where students were provided Section 504 services as either unspecified learning disabilities or reading difficulties. One due to a lack of a timely referral for special education and one due to not assessing all areas of a potential disability (*Student, B/N/F Parent and Parent, Petitioner v. Houston ISD, 2019; Student B/N/F Parent and Parent, Petitioner v. Klein ISD, 2018*)

Predominant Issues. Identification and evaluation were the most frequently cited issues overall and within child find issues, consistent with previous findings (Schanding et al., 2017). The most frequent overall issue involved in due process hearings was child find, followed by identification and evaluation. For example, Schanding et al. (2017) found IEP, evaluation, and placement to be the most common dispute issues. In examined child find claims, the evaluation was the most prevalent problem, followed closely by timely identification once the district has a preponderance of evidence that the student might have a disability requiring special education. Of interest, the most common procedural violation included the claim of lack of meaningful parental participation in six (30%) of the 20 cases.

Research Question 4

The fourth research question was what were the legal principles for Texas educators that can be discovered from the cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions? The three legal principles hearing officers most often focused on were the following: (a) adequate progress with supports, (b) reason to suspect a disability in need of special education, and (c) timely and comprehensive evaluation.

Adequate Progress With Supports. The courts repeatedly looked for evidence of the documentation of academic and behavioral progress as determined by:

- Courts determined that a year's worth of progress was enough to indicate the unlikelihood of a disability. Even if the supports were continually adjusted, as long as the student was making progress, the student was considered unlikely to have a disability.
- The courts also considered behavioral progress and the acquisition of social skills in addition to educational achievement. Data were collected from observations about student behavior that included if the student was well-liked, had few behavioral issues, and did not have the behavioral or social needs for any specially designed instruction.
- Even if the student failed the state assessment once, the courts looked at other data that could support a trend of inadequate progress. If the student failed by only one question, for example, there was no reason to suspect a disability.

Reason to Suspect a Disability in Need of Special Education. If a student is making progress, received services, and was identified, then no substantive harm was done even if the child was not receiving special education services, as long as the instruction was specially designed for the student and the parent had meaningful input into the programming. The court determined several times that a student was in need of special education based on the following information:

- Significantly below reading level, no improvement on curriculum-based assessment, a low percentile of achievement, and importantly, when the parent inquired if the student could have a learning disability, suspicion should have been triggered.
- If the student was able to attend school, learn, and succeed academically and nonacademically.

- A student with a previously identified disability with new difficulty in academic, social, and emotional needs that require the student to once again receive special education services.

Timely and Comprehensive Evaluation. Other than whether districts simply followed IDEIA timelines for evaluation once receiving consent, the courts determined if the referral for evaluation was timely and if the subsequent evaluation was comprehensive.

- The hearing officers determined that deteriorating grades or escalating behavior beyond what is typical for same-age peers, when the student is not responding to general education or Section 504 supports that are provided, is enough to suspect a disability and require a timely referral and evaluation. On two issues where the district prevailed, the district suspected a disability and immediately began a referral once the data had been collected.
- Twice the court discussed what constitutes a timely evaluation. Once when a district delayed the evaluation for 1 month while waiting for the student to come back to school after private therapy and once maladaptive behavior occurred upon reentry, the district immediately began the referral process. In this case, the hearing officer determined the 1-month delay was not unreasonable. On the other hand, in *Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD* (2018), a referral after a 6-month delay following the Section 504 meeting where the student with dyslexia was not making adequate progress and the parent asked if the student had a learning disability, was considered unreasonable. These cases provide insight into what hearing officers deemed a reasonable amount of time, which included districts' responsiveness to suspicion of the disability and the student not making progress.

- The Dallas ISD court (2019) provided perspective into obtaining consent for all parts and possibilities of evaluation at once, rather than only in the suspected areas of evaluation, as more insight into the student could be gained during the evaluation period. In this case, the evaluators suspected Autism after evaluation began, though consent was only given for other areas of the FIE which, by the time of the due process hearing, was out of the required 45 school day timeline for FIE completion. In this case, the district, petitioner, was seeking to ensure that all suspected areas of disability were evaluated, but the court determined that it was too late, and that consent had been given by parents, therefore the evaluations that were consented upon should have been completed within timelines.
- If the student has a documented eligibility, such as through Section 504, a physician diagnosis or letter, or when a parent, teacher, or staff has suggested that a student may have a disability all of those areas should be covered in an evaluation. Districts who failed to do so were found in non-compliance.

Discussion of the Findings

LEAs in Texas were required to implement the new corrective action requirements set forth by TEA and OSEP after the federal OSEP citations were issued on October 3, 2016. In order to understand the delicate balance of how the IDEIA child find provision has been applied in Texas after OSEP citations, a study was necessary. This study effectively described how special education hearing officers in Texas applied the IDEIA child find provision in decisions from due process hearings since October 3, 2016. The study assessed the circumstances under which Texas applies or does not apply the child find provision by answering the research questions regarding the legal questions, decisions, trends, and legal principles that were discovered from state agency decisions.

The federal Office of Special Education Programs (OSEP) called for reform in Texas special education practices, particularly in the balance between the time it takes to determine adequate progress with general education and Section 504 supports, and not delaying or denying a special education evaluation for students in need of services in order to receive Free and Appropriate Public Education (FAPE; DeMatthews & Knight, 2019; Hudson & McKenzie, 2016a; USDOE, 2018). The Texas Education Agency (TEA, 2018b) told OSEP it would ensure a “clear understanding” (p. 2) of IDEIA child find provisions among all Local Education Agencies (LEAs), promote effective models of intervention and instruction, and support high expectations for students with disabilities. The brief child find provision in IDEIA referred to the LEA’s obligation to “locate, identify, and evaluate” children with disabilities (Zirkel, 2018).

Researchers previously found two defining additions to the child find provision as follows: (a) triggered upon reasonable suspicion that the child may meet the criteria for eligibility under IDEIA, and (b) necessary to complete within a reasonable period of time. Reasonable suspicion rather than a reasonable evaluation period was more frequently contested, as supported by this study’s findings, and depended on a combination of factors rather than one specific issue, such as a child’s Response-to-Intervention (RTI) progress, participation in general education programs, or educational history. A reasonable period depends on a particular set of case circumstances, and often courts allow about 2 months for obtaining parental consent for the initial evaluation stage, consistent with the findings of this study. Regardless of the child find trigger, the current findings regarding primary student eligibility are in sharp contrast to Schanding et al. (2017) who examined all special education due process cases between 2011 and 2015 in Texas and found the student eligibility complaints in due process hearings involved eligibility due most often to autism, emotional disturbances, and other health impairments.

However, the current findings regarding child find appear to be directly the result of the OSEP citations and brought forward as a result of other health impairment and ADHD complaints.

A few interesting observations about the cases emerged during the analysis.

Parents/students were most likely to have attorney representation, consistent with previous national and Texas findings (Blackwell et al., 2019; Mueller, 2015, Schanding et al., 2017).

Parents were often more likely to have the required resolution session rather than go through mediation. Mediation is nonbinding and can be reviewed at any time. Because the data regarding mediation were not readily available, not much information on the parties that chose this route rather than resolution was known. Interestingly, in only four (26.6%) of the 15 cases did parents decide to use mediation before moving to a due process hearing.

The findings in this study provide a deeper understanding of the application of Texas special education case law. The data indicated that districts are most often in compliance as long as they provide services and supports that are individualized for their students as long as the districts are continuously monitoring their academic, social, and emotional progress, regardless of the program the student is in (e.g., general education, Section 504, or special education). Importantly, the findings of this study offer insight into where districts are missing the mark and what repercussions they often face for failing to identify, evaluate, and service students with disabilities.

Although Texas has clearly violated FAPE and denied services to students with disabilities, petitioners filing due process hearings must establish a strong burden of proof (USDOE, 2018). One example is that Texas was found to be serving students under Section 504 despite the demonstrated need for special education. Even though the students in the majority of the 20-case sample received Section 504 services at some point in their education, the districts

prevailed in most of the child find issues. Instead, districts most often failed to fulfill the evaluation requirement of child find, often missing the evaluation of one known disability rather than failing to locate the child. It remains unclear and concerning how district evaluators miss a known disability, often for which a student was receiving Section 504 support. Perhaps the vagueness of the Section 504 eligibility criteria or the lack of an IDEIA eligible disability under Section 504 involved misunderstanding about the eligibilities that evaluations must include. Either way, the evidence of the study overwhelmingly displayed the lack of IDEIA knowledge in Section 504 committee decisions as well as a lack of communication between Section 504 and special education teams before and during students' evaluation periods.

The courts made it clear that districts must specifically address the areas in Section 504 for which a student may qualify, such as dyscalculia and dysgraphia, separately from IDEIA-eligible disabilities in the full and individual evaluation (FIE). Even though students with dyscalculia and dysgraphia are not special education eligible in Texas, even though those conditions fall under specific learning disability, if the student is identified with a disability under Section 504, the disability must be addressed in the FIE. This Section 504 mandate applies to students who may have a secondary eligibility, such as ADHD, that could be co-occurring alongside the primary disability, such as autism. Findings indicate that both Section 504 and IDEIA-eligible disabilities must be addressed. Since 2016, the overall percentage of students receiving special education in Texas has risen from 8.6% during the 2014-2015 school year to 10.7% during the 2019-2020 school year (Texas Education Agency, 2020).

Texas is closing the gap, with the national average sitting at 14% of public school enrollment (National Center for Education Statistics, 2020). However, the findings of the study indicate the potential that more students in Section 504 are IDEIA eligible and should be

receiving special education services. Problematically, students eligible for special education may be left in Section 504, thus still denying child find if IDEIA-knowledgeable staff are not directly and thoroughly involved in Section 504 decisions and the documentation of interventions, disabilities suspected, and district and parent concerns. Even more concerning is that the USDOE states that Section 504 meetings are now only required to be held triennially, rather than annually, potentially causing students to only have their Section 504 plan reviewed once per educational level, given that school configurations vary for elementary, intermediate, and secondary grades. If the student does not have their plan reviewed as the data regarding progress or lack thereof occurs, the next school's teams will likely lack access to the thorough history of teacher information, anecdotal notes, classroom observations, or intervention progress, when the child find obligation could have been unknowingly triggered.

The cases' data reinforce the districts need to be thorough when evaluating students, ensuring to assess in all areas of known or suspected disability, and obtaining consent for a full evaluation prior to beginning the evaluation. The Dallas ISD case (2019) results stipulate that it would be prudent to get initial consent from parents for all areas of the FIE prior to evaluation to ensure that all areas of potential disability are covered. Districts must also ensure meaningful and descriptive classroom data are included in the evaluation, such as classroom observations, behavioral progress, social development, and emotional observations. Teacher input and classroom performance were repeatedly called into question, if other data were not cohesive, such as performance across home and school settings or academic progress from one grade to the next.

Decisions trended in favor of the party with the most corresponding data to support their claims. The evidence included a commensurate history of student grades; student progress on

state assessments; a record of intervention successes; and observations that supported a student's behavioral, social, and emotional progress or lack thereof. Unfortunately, this trend makes determining the need for students in lower grades who do not have state assessment or often even do not have grades, much more difficult to identify. This study's limitation was the redaction of the student's grade level; however, since the state of Texas state assessment begins in third grade, studies that reference state assessment information as a data point are an indicator that the grade was third or above.

The research provides actionable standards to which the court held districts liable in determining if a student has been denied FAPE by not being evaluated for special education. This study's findings revealed that districts do understand their procedural requirements but need to refine their practices for determining adequate progress when a student has been identified as having a disability, referring those who aren't in a timely manner, and comprehensively evaluating students in all areas of disability.

Conclusions

The study revealed the following findings and conclusions derived from an analysis of cases decided by Texas due process special education hearing officers where complainants invoked IDEIA child find provisions.

1. Though OSEP has issued corrective action to Texas for keeping students out of special education and denying them FAPE, due process hearings decisions did not reflect district noncompliance in most cases. Instead, most of the child find noncompliance was found when districts failed to evaluate every area of known or suspected disability in the FIE.
2. The bar of the burden of proof on the petitioner is high. A preponderance of persuasive data must be presented that clearly shows that a student is not making progress

commensurate with peers (socially, behaviorally, academically, emotionally) and that general education and Section 504 supports have not been sufficient. Further, the student must be performing worse than just below average. Repeatedly courts urged that districts should not rush to judgment for students with a below-average performance who are passing state assessment, have minimal behavioral referrals, and are passing classes with no evidence to indicate any additional concerns.

3. Classroom and teacher observations, ratings and/or teacher interviews are key in both in-district and out of district private or independent evaluations when determining the educational need and the suspicion of a disability.
4. For students not making progress with their accommodations, those with ADHD and unspecified learning difficulties in Section 504 are more likely than students with other eligibilities to be involved in cases in which the child find provision is violated.

Recommendations

The following recommendations bring mindfulness to teachers, school district employees, educational diagnosticians, licensed specialists in school psychology, and interventionists. These recommendations are based on the findings and from the viewpoint of an educational diagnostician, a special education teacher, and a committee member when academic or behavioral concerns trigger the child find provision. These recommendations apply to school administrators, teachers, parents, interventionists, lawyers, school boards, and policymakers.

1. Teachers must be fully trained in data gathering, interventions, and understanding progress and trends in student social, emotional, and behavioral development in addition to understanding IDEIA eligible disability criteria.

2. Decision-making committees such as RTI teams, referral teams, Section 504 committees, and school administrator teams should be well versed in the nuances of child find and the difference between minimal progress and below-average ability.
3. Parents should remain informed about student progress in regular intervals, as well as have an understanding of intervention progress and the student's needs as they relate to peers.
4. Administrators must frequently review their Section 504 and RTI practices to ensure maximum compliance and understanding of child find, particularly when students are in Section 504 and eligible under Dyslexia, ADHD, or vague unspecified disabilities which are proven to be ripe areas of litigation.
5. Section 504 administrators must understand special education eligibility requirements and have thoroughly documented student progress in the Section 504 program. It would be proactive to have a Section 504 administrator that is well versed in IDEIA, evaluation, and disabilities to aid in decision making regarding student programming and to consider the need for IDEIA evaluation if progress is minimal.
6. Section 504 plans should be revisited annually, rather than triennially, to ensure proper documentation of student progress and to remain in compliance with the child find provision of IDEIA.

Suggestions for Further Research

Based on the findings and subsequent conclusions of this study, the following are suggestions for further research:

1. Although data regarding successful mediation and resolution meetings are not readily available, case studies that focus on successful sessions could provide insight into how to mend parent/student and district relationships prior to exhausting the litigation process.
2. A similar study could be done by examining Section 504 eligibility and student progress to determine what constitutes successfully making adequate progress under general education and Section 504 which could determine if the student needs evaluation under IDEIA.
3. Dyslexia intervention and special education in Texas are rapidly evolving and the intersection of Section 504 and special education for students with dyslexia is a ripe area for quasi-experimental and causal-comparative research.
4. Redacted grade-level information limited the analysis because the data provided no indications of the grade levels of the students. A study of students in grades lower than Grade 3 affected by child find is needed because students under Grade 3 do not take the state assessments in Texas. A replication of this study with grade-level information would be prudent.
5. Due to the emerging nature of the Texas response to the OSEP citations, this type of longitudinal analysis of legal cases should be repeated in 5 to 10 years to determine if and how the decisions by the Texas special education hearing officers have complied with OSEP stipulations.

Summary

This final chapter provided a summary and discussion of the findings derived from the TEA hearing officer decisions in due process hearings that involved the child find provision from October 3, 2016 to October 15, 2020. This chapter included recommendations for educators,

administrators, school boards, parents, and policymakers and concluded with suggestions for future research.

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Appendix A: Case Briefs

Case of Student, B/N/F Parent, and Parent, Petitioner v. Conroe ISD (2016)

Key petitioner issue(s): The district allegedly predetermined the student's placement and did not allow meaningful parent participation in the Individualized Education Program (IEP) process. The district allegedly failed to place the student in the least restrictive environment and the petitioner, therefore, alleges that the district denied the student a Free and Appropriate Public Education (FAPE).

Child find issue(s): Petitioner alleges that the district inappropriately determined through child find that the student was Intellectually Disabled (ID) and added to the student's educational program accordingly.

Key facts: Parents were called the day before the initial Admission, Review, and Dismissal Committee (ARDC) meeting by the educational diagnostician and were advised that the school members of the committee would recommend the student participate in a different program for special education. Parents disagreed with adding the Intellectual Disability to the student's eligibility. Predetermination did not occur during the staff meeting before the ARDC meeting; only a draft IEP was prepared. Parents participated in developing the IEP, and the Full and Individual Evaluation (FIE) of the student was conducted appropriately. The Independent Educational Evaluation (IEE) that was performed at parent expense concluded that ID is an appropriate designation for the student and thus, its inclusion in the IEP was necessary to provide for the student's needs.

General ruling: The Hearing Officer finds that Parents failed to meet their burden of proof on all issues. Child find, FAPE, and parental input in the IEP were not violated.

Child find ruling: The Hearing Officer finds that Parents failed to meet their burden of proof on all issues. Teacher monitoring led to the recommendation for additional evaluations that were needed and led to identifying the student with an Intellectual Disability.

Case of Student, B/N/F Parent, Petitioner v. Abilene ISD (2017)

Key petitioner issue(s): District allegedly failed to evaluate all areas of the student's suspected disability, implement the IEP as written, and to provide FAPE.

Child find issue(s): District allegedly failed to fully evaluate the student in all areas of the student's suspected disability and failed to identify and provide services in all areas of disability.

Key facts: The student was eligible for speech and language services in 2011, but services were discontinued. The 2016 reevaluation reestablished the speech impairment eligibility. The FIE and Functional Behavioral Assessment (FBA) were untimely since the student demonstrated patterns of behavior and academic failure years before it was addressed.

General ruling: The Hearing Officer found in favor of the parent and ordered the student to be placed in a residential treatment facility. The student was to receive compensatory services for the district's failure to provide FAPE.

Child find ruling: The child find issue was affirmed. The district failed to properly evaluate the student when it did not perform the FBA and, therefore, an appropriate FIE until the 2016 evaluation. The delay in reassessing the student for their speech needs from 2012 to 2017 is a "failure in child find" (p. 31). Because the student did not receive speech services after they were dismissed, the lack of services and support added to the student's academic difficulties and low self-esteem. The delay by the district in not conducting an FIE until December 2016 was also against child find. Without speech identification, the full extent of the student's "complex

and significant difficulties across multiple domains” (p. 20) was not known. Thus, the IEPs prepared were ineffective, and FAPE was denied.

Case of Student, B/N/F Parent, Petitioner v. North East ISD (2017)

Key petitioner issue(s): District allegedly denied the student FAPE when it failed to timely identify the student as a student with a disability in need of special education, did not provide a timely or appropriate evaluation of all areas of suspected disability, or develop appropriate IEPs. The district allegedly did not develop or implement a data-based behavior intervention plan (BIP) that provided positive supports for the student.

Child find issue(s): Allegedly, the district denied the student FAPE when it did not evaluate the student in a timely manner, provide appropriate evaluations in all areas of suspected disability, did not provide appropriate IEPs, or provide a data-based BIP that provided positive support.

Key facts: The district did not dispute that the student had a diagnosis for ADHD, but the dispute is whether the district had a reason to suspect the student was in need of special education and related services. A key component is that the district was aware the student had ADHD and thus, should have had reason to suspect the student was a student with an Other Health Impairment (OHI).

General ruling: There was insufficient evidence that the district had a reason to suspect the student had a specific learning disability (SLD) while the student was in *** grade. There is no credible evidence to support that the district had reason to suspect the student had an SLD. Further, the student had very few behavioral issues, and for the issues that did arise, general education supports and interventions were appropriate and effective. The student passed all courses, state assessments, and exhibited no unusual behaviors.

Child find ruling: The petitioner (parent) did not meet the burden of proof on all issues. The student's ability to perform well with and without Section 504 accommodations supports the findings that the student did not require special education or related services under IDEA.

Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD (2017)

Key petitioner issue(s): Parent (Petitioner) alleged the district denied FAPE which is a violation of its child find duty, failed to comply with IDEA's procedural requirements, failed to conduct an appropriate FIE, and failed to develop an appropriate IEP which met the student's educational needs. The district's counterclaim sought to establish the FIE was appropriate and while the petitioner could get an Independent Educational Evaluation (IEE) and personal expense, the district did not need to provide the requested IEE at public expense.

Child find issue(s): District allegedly incorrectly determined that the student should be dismissed from special education. The evaluation that claimed the student did not meet eligibility for an SLD was improper. District allegedly failed to provide a proper and comprehensive evaluation of the student when the parent requested it.

Key facts: The student came to CCISD as a first grader identified with a speech and language disability. The prior district created an IEP. In September 2015, the IEP was accepted. In October 2015, parents expressed concerns about their reading and writing abilities. Over the next 2 school years, the student received speech and language services and treatment for dyslexia in an RTI program, moving to Tier 2 in November 2015. An annual review was requested in April 2016 after the parent requested an evaluation for SLD. A meeting to discuss the request determined the student did not need to be tested because the student was making progress and passing. The district sent a Notice of Action that the student would not be tested for an SLD along with the Notice of Procedural Safeguards. The student would be continually provided Tier

2a RTI and declined the parent request to move the student to Tier 2b because the student was making progress. Parent met with the Director of Special Education to request SLD testing, but the data only supported a dyslexia screener, which is not an evaluation specific to special education. In May 2016, the parent signed the second Notice of Action declining testing for SLD and was provided the Notice of Procedural Safeguards. Also, in May, the district sent the parents a notice of proposal to evaluate including determination of needed evaluation data. The ARDC's special request was in response to the parent request. The parent signed permission for a dyslexia screening. Also, in May 2016, the student's physician determined it was unlikely the student had ADHD and recommended the student be evaluated for an SLD. Later that month the district suggested that the parents wait until after the dyslexia testing was complete. The parent signed consent for an FIE, but testing was discontinued due to the student's lack of attention, inability to focus, and trouble following directions. At the end of the year, the student met state standards in most subjects and was making progress. A REED was conducted in September 2016. The student no longer met the criteria as a student with a speech impairment and did not meet the criteria as a student with SLD as they had no cognitive weaknesses. The parent requested an IEE in December 2016 in all areas. Since the evaluation had not been reviewed at an ARD, the district asked the parent to wait for the ARDC to make its determination. Parents were unavailable for five attempts at rescheduling. They filed a complaint in January 2017. In February 2017, the ARDC found the student to no longer have a speech impairment and did not meet eligibility as a student with SLD, however since a complaint was filed in January 2017, the student was required to stay put and continued to receive services. IEE's were again requested in March 2017. The IEE returned with student eligibility for services, to which the district disagreed with the evaluation, stating there had been no concerns in the school setting.

General ruling: All petitioner claims and relief were denied.

Child find ruling: District's FIE was appropriate, and therefore placement and FAPE was in accordance with IDEIA. The district had no reason to suspect a disability as the student made a year's progress since the beginning of the year as a result of RTI and support services. This verdict was appealed.

**Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student,
Petitioners v. Copperas Cove ISD (2018a)**

This case sought to add additional evidence from the newer outside evaluation reports. However, new assessments were not deemed appropriate to introduce. They sought to find W.V. eligible for special education under SLD eligibility, and since the student moved to North Carolina and was placed in private school, though likely to return to CCISD, parents sought private school tuition reimbursement, to which the court allowed the discussion. During this appeal, parents offered reports referencing the number of students eligible under Indicator 10, directly related to the TEA special education cap, though neither the report nor the district was found to be improper or in violation of the DOE. In fact, CCISD did find W.V. eligible for services during that period and offered him services, making the argument moot. The judge did recommend the plaintiff's claims for reimbursement for private tutoring and evaluations be properly exhausted.

**Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student,
Petitioners v. Copperas Cove ISD (2018b)**

Plaintiffs seek to show that the district delayed the FIE by using RTI instead of evaluation; however, the district responds that they did not suspect a disability, nor did they suspect the student cannot be assisted by any means other than special education. The judge

sided with the district and further concluded that the evidence from the district that W.V. was progressing and supported the ruling. Parents dispute that he “may have been failing to make sufficient progress” (p. 5); however, the judge referred to the Fifth Circuit requirements of the suspicion to be more than “likely indicate a failure,” requiring it to be probable rather than just possible (p. 5). Parents also claimed the district deliberately sabotaged the FIE to ensure W.V. would not be eligible as a student with SLD, to which the court found no evidence.

**Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student,
Petitioners v. Copperas Cove ISD (2018c)**

Parents appealed the decision again citing six reasons: the SLD assessment was delayed, dispute that W.V. did not qualify SLD or SI, failing to evaluate assistive technology, using a reading program that did not demonstrate positive results, and using the program because it was not research-based. Only the child find results were summarized as they pertain to this case. Parents were found to correctly allege that the district inappropriately did not qualify W.V. as a student with an SLD because he already was identified as a student with dyslexia. The court claims that was because SLD and related disorders include dyslexia. The district disputes that the law does not require a finding of SLD when dyslexia is diagnosed. While the court agreed, they state the following

[T]he Child Find provision itself suggests that diagnostic labels alone should not be determinative when considering whether a remedy furthers IDEA's purposes. The position that the diagnostic label affixed to a child should determine whether they have prevailed under the IDEA reflects a preoccupation with labels that [IDEA] do[es] not share. (p. 4)

Overall determining that a student should not be denied services for lack of a label. The court states that since W.V. had already been diagnosed with an eligible condition, he bypassed the need for additional testing to determine SLD, thus, the district procedurally violated IDEIA and the SEHO was overturned. The court notes that W.V. was not injured by this procedural violation because he received services.

Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD (2019)

CCISD continued to support that it had no wrongdoing by not identifying W.V. as SLD when he was dyslexic. In this case, the parents seek to show that W.V., who now based on the last ruling has eligibility, was in need of special education. The courts find that his accommodations are not minor or related services, but that he was receiving specially designed instruction. However, no harm was done since W.V. continued to receive this instruction even though not under special education.

Fifth Circuit Court Case of William V. and Jenny V., as Parents/Guardians/B/N/F of W.V., Student, Petitioners v. Copperas Cove ISD (2020)

The Fifth Circuit reminded the court that procedural violations alone do not violate FAPE unless they result in the loss of educational opportunity. Appellants argued that the district court erred when it found that the failure to classify W.V. as having an SLD did not deny him educational opportunity. The court disagreed and stated that he made more than minimal progress under his IEPs. The parents appealed if the district delayed W.V.'s FIE, if W.V. had a speech impairment, and whether or not W.V. was improperly evaluated for assistive technology. The court finds parents ignored the findings of fact and agrees with all prior decisions, effectively agreeing with CCISD.

Case of Student, B/N/F Parent, Petitioner v. Pearland ISD (2017a)

Key petitioner issue(s): Petitioner alleges the district failed to timely and comprehensively evaluate the student in all areas of suspected disability.

Child find issue(s): Petitioner alleges the district failed to timely and comprehensively evaluate the student in all areas of suspected disability.

Key facts: The student had a triennial reevaluation that determined the student continued to qualify as a student with an emotional disability. The cognitive and intellectual abilities were determined to be average and assistive technology was not needed. A psychological evaluation raised the possibility that the student may also have an Other Health Impairment of ADHD.

Child find ruling: The reevaluation in 2016 was appropriate but did not evaluate all areas of suspected disability. The district had reason to know or suspect that the student should have been assessed for OHI of ADHD. The assistive technology evaluation was appropriate, but the lack of ADHD assessment for the purpose of OHI eligibility violated child find. The remedy is an assessment for ADHD to determine if the student qualifies as a student with an OHI.

Case of Student, B/N/F Parent, Petitioner v. Lancaster ISD (2017)

Key petitioner issue(s): Key petitioner issues involved timely evaluation and identification, whether the district was a direct cause of a lack of academic, emotional, mental, and physical progress, whether or not the district unilaterally changed student placement, if the district failed to provide FAPE, an appropriate IEP and BIP, appropriate social skills and behavioral goals, among others.

Child find issue(s): Correct identification and a timely evaluation.

Key facts: The outside evaluation that was completed concluded that the student's behavior was much more problematic than peers and occurred more frequently than student

peers. The outside evaluation concluded the student had ADHD. The Section 504 plan was revised after the district received the evaluation which included more structure due to continued tantrums. Concurrently the student's BIP was updated. After a lengthy tantrum, the school psychologist helped develop strategies for the student. The district Special Education Director recommended a teacher be added to the classroom to add in-class support. The director stated if that did not work, a referral for evaluation for special education should be made. Neither recommendation was implemented. The district had reason to suspect the student had a disability with educational need. The student was evaluated for an emotional disturbance but did not qualify.

General ruling: The referral was reasonably timed, however, the FIE was insufficient. It did not provide the ARDC with the information required in order to properly create an IEP.

Child find ruling: The docket states that the threshold for suspicion of a student having a disability and the suspicion that the student may need special education and related services is "relatively low" (p. 11). The second issue is whether the district evaluated the student within a reasonable time after the notice of behavior was likely to indicate a disability. The hearing officer concluded that the district did not violate the child find provision of IDEIA. There was little evidence that the district had reasons to suspect the student had a disability. The court concludes that at the time of the new behavior as evidenced by the Section 504 changes alongside the outside evaluation, that the district had a reason to suspect the student had a disability and had reason to request a special education evaluation. The evaluator did not develop a "sufficient understanding of the extent of the student's behavior" (p. 14), as they did not include many incidents or the other reports requested.

Case of Student, B/N/F Parent, Petitioner v. Leander ISD (2017)

Key petitioner issue(s): The district allegedly unreasonably refused the petitioner's request for a special education evaluation and failed to identify the student's disabilities.

Child find issue(s): In addition to the refusal to evaluate, the district allegedly took inadequate measures to identify the student's disabilities.

Key facts: The student was identified as a student with dyslexia and ADHD. The student participated in a dyslexia program but was later dismissed and placed on monitor status. The student experienced difficulty keeping up with assignments, with focus, and with mood swings, which affected major life activities such as reading. Both the mother and student requested an evaluation but it was denied due to lack of suspicion for an educational need. In a Section 504 meeting, the parent noted that the student suffered from a medical condition, for which a physician provided a letter with an active diagnosis soon after. It was found that the diagnostician did not review some relevant information including that the district considered conducting an evaluation in 2012 and that the parent provided consent. There was no evidence that an evaluation was ever conducted, and that only a brief meeting was held with the student prior to making the decision to deny the request for FIE. The student struggled enough to require intervention, and direct input from the teacher was sought regarding how dyslexia affected the student. All of the information was not considered, and the diagnostician's decision to decline the request for evaluation was unreasonably or improperly made. Although at the time of the decision the student had passed all classes and state assessment, had acceptable behavior, good social skills, and had patterns common with other general education students.

Child find ruling: A denial for an FIE should be based on more than if a student is passing classes and state assessments, especially when a disability is known and is being

addressed by Section 504 accommodations. The hearing officer finds that the petitioner failed to prove that the decision to deny the request for the FIE was unreasonable. A similar pattern of the student was observed by many other general education students so it did not raise the suspicion of other disabilities and medical information had not been provided.

Case of Student, B/N/F Parent and Parent, Petitioner v. Houston ISD (2017)

This case was filed concurrently with the Pearland ISD case below. (2017)

Key petitioner issue(s): Parents notified the school district that the student was attending a private school within HISD District boundaries and requesting evaluation for special education. An ARDC met and determined that an evaluation was not warranted because the student did not meet criteria under IDEIA as a student with visual impairment because the committee concluded that the student adequately functioned in school despite vision loss. The parents disagree.

Child find issue(s): Allegedly failed to comply with the child find obligations and the petitioner sought an order to exempt the 1-year statute of limitations as the student was placed in private schools in the 2010-2011 school year and therefore the petitioner believe they're entitled to reimbursement of the cost of the private school for years since 2010.

Key facts: HISD was notified in 2016 that there was a student attending private school within their boundaries and the parent questioned evaluation for special education. It was determined by the ARDC that an evaluation of the student did not meet the criteria under IDEIA as a student with a visual impairment. The student switched private schools but was still within the boundary of HISD. At this time, the district recommended an orientation and mobility assessment. The district completed this FIE at the new private school in October 2016, and the district recommended eligibility as a student with a visual impairment. Parents disagreed with the evaluation and requested an IEE at the district expense, which was granted. The district holds

that it has no further obligations to a student not enrolled in the district, only an obligation to provide proportionate share services to students attending private schools within district bounds. Districts are not required to meet any other IDEIA requirements under proportionate share, they are only required to identify eligible students and to develop a service plan which concluded that due process hearings are not appropriate in these instances.

General and Child find ruling: Evidence showed that the petitioner had their notice of the right to file claims for IDEIA violations at least 2 years before the claims were brought. Additionally, the respondent met its obligations under the law to provide an IEE at public expense. Any other claims are moot.

Case of Student, B/N/F Parent, Petitioner v. Pearland ISD (2017b)

This case was filed concurrently with the Houston ISD case above. (2017)

Key petitioner issue(s): The district allegedly did not identify, locate, and serve the student with FAPE.

Child find issue(s): The petitioner argues that the district did not meet its child find duty because the student was not found, identified, or offered an IEP.

Key facts: The parents should have known about their rights to seek Services several years before moving into the district because of dealings with Houston ISD in the year prior to the move. The parents do not seek enrollment or seek evaluation until May of 2017. Additionally, the district's information on child find in special education is readily available. The information the parents received from HISD is relevant to their position in the matter of their experience. The district did what was required of it when the student eventually sought appropriate interaction. The district had no opportunity to timely evaluate the student, it was not known that the student and a private school placement needed an IEP.

General and Child find ruling: All claims by the petitioner are denied.

Case of Student, B/N/F Parent and Parent, Petitioner v. Killeen ISD (2017)

Key petitioner issue(s): Petitioner alleges that the district denied the student FAPE by failing to identify the student as eligible for special education based on the disability of OHI for ADHD and an emotional disturbance. The petitioner alleges that the district failed to provide parents with written criteria for qualifying as a student with a specific learning disability.

Petitioner alleges that the district failed to comply with all procedural requirements of IDEIA including provisions of Prior Written Notice which impeded parents' opportunity to participate in the decision-making process. They also alleged that the FIE failed to meet IDEIA requirements for an FIE, which is to identify all areas of eligibility. Subsequently, the IEP was not designed to meet the student's unique educational needs because it failed to identify all necessary disabilities.

Child find issue(s): An FIE was improperly conducted. It is not disputed that the student is eligible as a student with an OHI for ADHD and has an emotional disturbance; however, the district did not timely identify the student with an SLD.

Key facts: The student was identified with ADHD and was provided with Section 504 accommodations. However, the existence of a disability does not automatically trigger a duty to conduct an FIE. When the child find duty is triggered the school district has a reason to suspect a disability where a student may need special education services. At that time, the district must evaluate this issue within a reasonable amount of time. Evidence shows that the District had no reason to suspect the student needed special education to address the ADHD. The student was screened for dyslexia in 2013 and did not qualify. In 2014 a private evaluation was conducted that showed a student did not have a specific learning disability. In late 2014 an FIE showed the student had no IDEIA eligibility for disabilities, including OHI or SLD. The following year an

IEE showed that the student did not meet eligibility criteria for an SLD or any other area. In the ARDC meeting in 2015 parents agreed. The district's 2016 offer to conduct an FIE was declined by parents, as they had just filed a complaint. The district had no reason to suspect an emotional disturbance. The parent claimed the student's absences were due to the emotional disturbance, however the parent had informed the school that it was due to illness and often provided doctors notes for an excused absence. A psychologist evaluation in 2016 was received which concluded the student may have an ODD diagnosis based only on the student's behavior at home, not at school. When the district received the evaluation, they conducted an FIE, which was completed in a timely manner in late 2016. The student was found to have OHI and ED.

General and child find ruling: The FIE was appropriate, timely, and correctly identified the student as a child with OHI and ED and not an SLD. Petitioner could not challenge the appropriateness of the FIE other than to say how the student was assessed for SLD. It was not proven that the FIE was incomplete or insufficient the hearing officer found the FIE compiled with all IDEIA requirements

Case of Student, B/N/F Parent, Petitioner v. Pearland ISD (2017c)

Key petitioner issue(s): The petitioner alleges that the district denied the student FAPE by not designing an IEP necessary to encompass all of the student's needs, including a BIP to address behavioral issues. Additionally, it is alleged that the district did not provide the student's educational program in the least restrictive environment.

Child find issue(s): Petitioner alleges that the district failed to timely and comprehensively evaluate the student in all areas of suspected disability and need.

Key facts: The student was found eligible as a student with an emotional disturbance and to exhibit characteristics of ADHD. The student began receiving homebound services, and after

an incident resulting in an MDR, continued home placement as the violation was found to be a manifestation of their disability.

General and child find ruling: Since the student was never evaluated for ADHD, the district is found in violation of the child find provision.

Case of Student, B/N/F Parent, Petitioner v. El Paso ISD (2018)

Key petitioner issue(s): District allegedly did not appropriately or timely identify all of the student's disabilities. Did the district subsequently devise and implement an appropriate IEP that challenged the student? Can FAPE be provided or does the student need to be placed in a residential care and treatment facility?

Child find issue(s): Petitioner alleges that the district failed to evaluate the student in all areas of disability by not identifying the student with ASD.

Key facts: The district had notice that the student potentially had a physical condition that required special education services. The student was served under Section 504 and was served in a homebound setting. As soon as the student was placed in homebound, the FIE process began. Behavior and physical therapy (PT) were not assessed in a timely manner. As a related service PT falls under special education, therefore the district was obligated to evaluate in all areas related to the suspected disability, which included a PT evaluation. Doctor's reports indicate the student had been provided services for 2 school years, which the court deemed as educationally harmful and very restrictive. The student was found to have a medical diagnosis and ADHD. A formal ASD evaluation was requested. The district did not consult with the medical and psychological providers who were treating the student while the district was conducting its evaluation. The student qualified ED, SLD, and SI. An FBA was not conducted despite records of significant behavior issues.

General ruling: Child Find was violated, however, in all other claims the petitioner did not meet the burden of proof.

Child find ruling: The district had reason to suspect the student had behavior and health issues potentially requiring evaluations for PT, with an FBA, and a BIP for the student to benefit from special education. Although the district FIE was done in a timely manner, these were child find violations.

Case of Student, B/N/F Parent, Petitioner v. Kirbyville Consolidated ISD (2018)

Background: The parties appeared for a due process hearing on October 25, 2017, after filing a request for a due process hearing on October 4, 2016. A second request was filed on March 15, 2017. The requests from the petitioners and respondents were moved until August 29, 2017. Due to a natural disaster in the region the hearing was moved to September 18, 2018. All information is consolidated in this docket. Another docket was issued at the end of 2018, and that information follows.

Key petitioner issue(s): Petitioner alleges that the district failed to timely and appropriately evaluate the student, develop an appropriate IEP, violated the student's and parent's procedural rights, and failed to protect the student and parent from bullying, harassment, discrimination, and retaliation. An additional issue raised was whether the 2016 evaluation was appropriate. The petitioner also requested that the hearing officer determine if the petitioner's due process hearing request was unreasonable, groundless, or done in bad faith.

Child find issue(s): Appropriateness and timeliness of the FIE.

Key facts: The parent believed the student should have been evaluated as early as 2014, upon enrollment. The student was placed on RTI tier II for reading intervention and made progress. The student had mostly A's and B's and passed STAAR all years except one test in one

grade. The student had sporadic discipline referrals and behavior fluctuated. Most behaviors manifested at home. The district obtained consent for an evaluation immediately upon the parent's request. Prior, the district had no reason to suspect a disability or that the child was in need of special education. The report was completed in accordance with Texas law, 45 school days. Petitioner argues that a classroom observation was not present in the FIE though the district listed a classroom observation as one source of data/assessment. Interpretations of teacher ratings from the draft to the final version of the FIE vary. One teacher's ratings were included in the draft and not in the final version.

General ruling: The student was not eligible for special education services from either the private or district's evaluation.

Child find ruling: The district expert's validity is questioned due to the omission of data in the final report and the lack of classroom observation. This portion of the FIE was inappropriate. The hearing officer's decision was appealed in the *D.H.H v. Kirbyville Consolidated School District Case*.

Case of D.H.H. v. Kirbyville Consolidated ISD (2019)

Claim: Plaintiffs argue that KCISD refuses to identify D.H.H. as needing special education, violating the child find duties as D.H.H. is eligible for special education and needs and IEP. They additionally seek compensatory services and reimbursement for attorney's fees.

Respondent's position: D.H.H. does not require special education services.

Key points: The Special Education Hearing Officer (SEHO) discounted the psychologist's findings that the student's emotional disturbance adversely impacts the student's educational performance in light of the psychologist's own observations which indicated that the student spoke to peers in a nondisruptive manner, participated in a group activity, and considered

the student's performance to be similar to other students. He additionally indicated that the pervasive mood of unhappiness was more irritability rather than unhappiness. He also stated that the majority of the information in the report came from parents, and administrators and teachers were not interviewed to ascertain if the information was correct. The court finds in favor of the school district and agrees with the SEHO. Further, parents allege that the student has a learning disability based on a "stray comment" in the IEE that "we also have a somebody who has a reading disability," based on the fact that D.H.H. was receiving RTI. Since there was no cognitive weakness or instructional concerns, the IEE's conclusions, and the SEHO all found that D.H.H. does not have a learning disability. The court agreed and found in favor of the school district.

Findings: The court finds in favor of KCISD on all issues and is in agreement with the SEHO's findings in the due process hearing. Additionally, KCISD's lack of child find violation is evidenced by its diligence in pursuing other claims and requests for evaluations. Nineteen consents for evaluation for special education services were provided to KCISD to which KCISD determined all 19 were eligible in the same year. The district actively sought and qualified other children for special education in the same years that D.H.H. exhibited disciplinary and academic struggles, thus the point is moot.

Case of Student, B/N/F Parent and Parent, Petitioner v. Kirbyville ISD (2018)

Key petitioner issue(s): Petitioner believes the student should have been identified as eligible for special education, but even though the student was not eligible, the student is still entitled to disciplinary protections under IDEIA. Petitioner makes other claims solely for purposes of administration exhaustion, including alleged Section 504 violations.

Child find issue(s): The district did not evaluate the child as having a disability.

Key facts: The student received 504 accommodations and had not received any disciplinary sanctions during the previous school year. The student was involved in a planned fight. Section 504 MDR determined the petitioner's behavior was not due to the petitioner's disability. The student was placed in DAEP. The parent requested an expedited IDEIA due process hearing to challenge the disciplinary placement.

General ruling: The student did not require SDI and therefore does not require special education.

Child find ruling: The district did not have reason to suspect the student required SDI because the student performed typically academically, behaviorally, and socially with very few accommodations.

Case of Student, B/N/F Parent, Petitioner v. Lewisville ISD (2018)

Key petitioner issue(s): District allegedly failed to hold an MDR within the IDEIA timeframe and further, the letter failed to contain the procedural safeguards. The petitioner sought to find if sending a student to disciplinary school for 20 days constitutes a change in placement.

Child find issue(s): Prior to the incident, was the child find duty violated?

Key facts: The student enrolled in the district in the fall of 2015 and had multiple discipline issues during that school year. In February, the district learned that the student either received services under Section 504 or special education at the previous school. The district requested information from the father because they did not have records from the previous school regarding services. In July the school received the previous IEP. Not all necessary information was included. The district notified the father that more information was needed. In August 2016, the district contacted the previous district and records were sent. The IEP did not

require a BIP and the district determined that it needed additional information to determine whether or not other disabilities existed. The parent filed a due process claim in July 2016 and the district offered to conduct an FIE in the areas of OHI, Autism, emotional disturbance, and specific learning disability. The parent did not provide consent. The student withdrew and enrolled elsewhere. A second attempt for assessment was also declined. In March 2017, the student was determined to be eligible for Section 504 services. The parent requested a psycho-educational evaluation. The student did not meet the criteria and the parent disagreed. The parent requested an FBA which was completed in May 2017. The report said the student had no difficulty at the current district and recommended a BIP. After an incident on the first day of school, the administrator and the diagnostician called the parent and suggested a referral for special education. The parent did not want to pursue that route. In September, parents participated in a Section 504 meeting but hung up before the meeting was complete. The meeting was rescheduled and did not include a BIP. The parent requested special education evaluation including a homebound assessment. The initial FIE was completed in November 2017 and the student was eligible under OHI, however, the assessment recommended assessment for ED which could not be completed due to student absences. After a non-consensus MDR, another psychological evaluation was requested.

General ruling: The MDR was held less than 10 school days from the disciplinary decisions and was not in violation of IDEIA. Procedural safeguards were proven to have been sent that day. Petitioner did not meet their burden of proof. While the district has 10 days of DAEP placement to constitute a change of placement, the district also has up to 10 days of assignment pending the MDR analysis.

Child find ruling: Petitioner's evidence is not persuasive that the district had a reason to suspect the student had a disability and was in need of special education. Petitioner failed to meet their burden of proof.

Case of Student, B/N/F Parent and Parent, Petitioner v. Klein ISD (2018)

Key petitioner issue(s): Petitioner alleges the district failed to provide FAPE, failed to meet its child find obligation for an evaluation conducted in a timely manner, whether the IEP was reasonably calculated to provide FAPE, or whether the district failed to comply with the procedural rights of the students and parents.

Child find issue(s): The district allegedly did not evaluate the student in a timely manner.

Key facts: The district did not complete an FIE until January 2018 and finally reached a consensus in March 2018. The district had reason to suspect the student needed special education by April 2017 as the student had been receiving Section 504 services as a student with dyslexia. Between the reading level, MAP assessment, and interventions, the district had reason to suspect the need for special education. It took 30 days for the school to respond to the request for evaluation and to obtain consent. The process should have taken no more than 15 school days.

General ruling: Petitioner did not meet the burden of proof for the exceptions to the 1-year statute of limitations in Texas, however, they prevailed on all other issues.

Child find ruling: District failed to meet its child find duty in a timely manner.

Case of Student, B/N/F Parent and Parent, Petitioner v. Northwest ISD (2018)

Key petitioner issue(s): Petitioner alleges that district failed to timely evaluate and identify the student in all areas of suspected disability, thus denying FAPE. All aspects of Prior Written Notice were not included, and parents were not able to participate as meaningful participants.

Child find issue(s): Petitioners allege that the district failed to evaluate and identify the student in all areas of need.

Key facts: The student was receiving Section 504 services for dyslexia. The first year with accommodations, the student made progress in reading but did not pass the state assessment. The following year, the student made minimal progress in reading and did not meet state assessments or end of year reading expectations. During the Section 504 meeting, the parents expressed concern. In October, parents requested, and the district granted, an FIE. The parent disagreed with the FIE and requested an IEE which was completed in April 2017. However, in February the ARDC identified the student eligible for special education services and proposed an IEP. Parents consented to initial placement. The student's initial proposed IEP lacked specific details about the present levels of performance. The parent disagreed with the goals and objectives proposed. The district did not address the content of the student's dyslexia services and programming as part of the ARD meetings.

General ruling: Though the parent asserts the ED is related to learning struggles, the student exhibited no behavior concerns or signs of depression or other indication of ED at school. Since teacher observations are "most instructive when determining the impact of a disability" (p. 15) the burden of proof on the OHI suspicion of eligibility is not met.

Child find ruling: The district had reason to suspect the student might have a learning disability and might need special education services by at least March of 2016. The district failed to timely evaluate the student for SLD, however, had no reason to suspect ED or OHI. The student was provided FAPE. The parent's inquiry about a possible learning disability in March of 2016 at the student's section 504 meeting meant the district at that time had reason to suspect

a disability. Since the referral did not occur until October, a 6-month delay, the district violated child find.

Case of Dallas ISD, Petitioner v. Student, B/N/F Parent and Parent (2019)

Key petitioner issue(s): District sought to proceed with its proposed FIE in all suspected areas of disability, including autism, without parental consent. Respondents seek an order to direct the district to finalize testing in areas where parents have already consented.

Child find issue(s): District failed to complete FIE within timelines.

Key facts: The teacher contacted parents in September 2018 to inform parents that the student had academic concerns as well as concerns with behavior, such as putting their head down, not doing work, making noises, and falling out of the chair. The parent requested an FIE, including OT and speech evaluations. Parent rating scales indicate mild social skills concerns and significant concerns in emotional and self-esteem areas. The teacher rated the student as poor or having no strengths in most areas except disposition and adapting to new situations. The student was evaluated in January 2019 and was found to have dyslexia, handwriting concerns, and ADHD combined type. Section 504 was recommended and the parent consented. Based on the sensory seeking results of the OT evaluation, the district sought an autism evaluation, but parents were unaware of the evaluator's suspicion of autism until February 2019. Timelines were extended until the student received glasses. The parent asked the district to not proceed with the autism evaluation but wanted the FIE completed in the other areas in which the parent had already provided consent. District responded that the evaluation could not be complete without evaluating all areas of suspected disability. District took the refusal as a revocation of consent. The student qualified with OHI for ADHD and SLD based on dyslexia.

General ruling: Since the suspected eligibility of autism could be attributed to the identified eligibility of ADHD, the district did not show it was essential to override the lack of parental consent. The information gathered in February was sufficient to develop programming for the already identified needs.

Child find ruling: The district failed to evaluate the student within a reasonable time after the school had notice of behavior likely to indicate a disability.

Case of Student, B/N/F Parent and Parent, Petitioner v. Houston ISD (2019)

Key petitioner issue(s): Did the district evaluate in a timely manner or was the student denied FAPE? District counterclaims to find if the district's FIE was appropriate and therefore the parent is not entitled to a publicly funded IEE.

Child find issue(s): Was the student evaluated in a timely manner and should the district have conducted an FIE at an earlier date and should the student also be identified with dysgraphia and dyscalculia as additional eligibilities under IDEIA.

Key facts: A neuro-visual evaluation was conducted, and classroom accommodations were recommended. The student's teacher began the special education referral process within the first nine weeks of the 2015-2016 school year. Parents called a Section 504 meeting in August 2015, and after the student was referred for Section 504 evaluation in November. RTI was initiated during the FIE referral process and the FIE was completed in January 2016. It determined the student was not eligible for special education although the student had normative academic deficits, criteria for SLD was not met. The student received Section 504 accommodations and dyslexic services under Section 504 in January 2016. Despite tutoring and grade promotion, grades did not accurately reflect the student's academic skills and the student did not make any significant academic progress. A Section 504 reevaluation was requested to

determine if the student had dysgraphia or dyscalculia, and 1 year later, the student was eligible for Section 504 accommodations under dysgraphia, dyslexia, dyscalculia, and a vision disorder. A second FIE was requested in March 2018 and it was completed in June of the same year. The student made very little progress from 2016 to the 2018 evaluation. The student was eligible under SLD for basic reading, reading fluency, reading comprehension, math calculation, and written expression. Parents withdrew the student prior to receiving any special education services. An ARD meeting was held and the ARDC, without the parents in attendance as they declined to attend, agreed on services. Parents never consented to the initial provision of services.

General ruling: The assessment was appropriate, and parents are not granted a publicly funded IEE. The student was denied FAPE from January through August.

Child find ruling: Though the student had passing grades and advanced from grade to grade, the student's math and reading levels lagged significantly behind peers. With this, the district should have suspected the student needed special education at the beginning of the 2017-2018 school year and should have initiated a special education referral prior to June 2018. As far as the student not being identified with other conditions, 2018 identified the student with dyslexia and an SLD and in need of special education. The FIE did not address dyscalculia or dysgraphia despite Section 504 listing those as eligibilities. Even though the proposed IEP did not separately identify the conditions, the proposed schedule included the appropriate supports, therefore there was no need to specifically identify the student as a student with dysgraphia and/or dyscalculia. There is no evidence to support an OHI condition of ADHD and does not support a child find violation.

Case of Student, B/N/F Parent and Parent, Petitioner v. Copperas Cove ISD (2019)

Key petitioner issue(s): Petitioner alleges that the district failed to meet its child find duty by failing to identify and provide a timely and comprehensive evaluation. If that is determined to be true, then it must be determined if FAPE, meaningful parental participation, and an appropriate IEP and BIP were denied as a result.

Child find issue(s): Same as above.

Key facts: The student attended school in the district from 2011-2012 to the end of the 2016-2017 school year. The student attended another school in the 2017-2018 school year and reenrolled in the 2018-2019 school year. The student withdrew in January of that year before the student was removed and placed elsewhere. During 2016-2017 the student's grades declined and they had difficulty staying on task and subsequently received several behavioral referrals (one to three per month). In January 2017 the student's psychologists submitted a letter requesting the district assess the student for Section 504 Services because the student had been diagnosed with ADHD earlier in the month. The district completed an evaluation for Section 504 in March 2017, the student was eligible and received accommodations. The student was withdrawn the following year but parents report that the student had challenging behavior at home. The student was diagnosed with Autism. When the student reenrolled, the parents did not provide educational records from previous years and the district was unable to obtain records from the previous years and the district was unable to obtain records from the previous school district. In September the district held a Section 504 meeting to reestablished 504 services, however before the meeting the parents informed the district about the diagnosis of autism. The district updated the 504 plan to indicate that eligibility. The student was restrained in 2018 when the behavior escalated to physical aggression. As a result, the 504 committee met and adjusted his accommodations. Two

days after the restraint, the parents requested an FIE. Thirteen days after the request, it was granted and it was requested that the parent sign consent. Fifteen school days after the evaluation was requested, the district sent a notice of action to the parents indicating that it had not obtained their consent. One year later, the parents came to the school for a resolution meeting and signed consent. The evaluation began in January 2019, but the student withdrew to private school before it was complete. The evaluation was completed in April 2019 and it was determined that the student met the criteria for SLD in reading comprehension. Additionally, the student would be eligible under OHI for ADHD with a physician's completion of the appropriate paperwork.

Child find ruling: The district did not have reason to suspect the student had a disability requiring special education and related services prior to the request for an FIE. The student was evaluated within a reasonable time. The student withdrew during the 2017-2018 school year and attended homeschool and no records were available. The student had passed state assessment for the 2 years prior to withdrawing to homeschool and until the restraint incident, the student had been passing all classes. Additionally, the student had 2 months of school without a behavioral referral. After the incident, the district agreed to perform the requested evaluation within 13 days, a reasonable timeframe. This ruling was appealed in the *Amanda P. v. Copperas Cove ISD* verdict.

Case of Amanda P. v. Copperas Cove ISD (2020)

Claim: Parents appealed the hearing officer rulings with the argument that since the student was eligible for special education upon enrollment at CCISD, the court should look into the IEP reevaluation procedural requirements. They argue that CCISD had notice of the possibility that the student had an SLD in reading and writing when the student moved from another state since they were provided an IEP and evaluation which noted specialized instruction

in those subject areas. Additionally, they report that the student failed to make appropriate progress in reading, which is why the evaluation for a reading disability was requested. Instead of an evaluation, a dyslexia screener was applied, rather than a full SLD evaluation. A full FIE was not obtained until the IEE in 2018. Parents contend that the general education dyslexia services do not constitute special education under IDEIA and therefore the student was denied FAPE.

Respondent's position: CCISD claims they were unaware of the IEPs from the previous state were deficient and that the evaluation had been completed 2 years prior. Additionally, CCISD claims they timely and appropriately evaluated the student for dyslexia as they did not suspect the student needed special education. Once the screener and subsequent evaluation determined the student had dyslexia, dyslexia services began. Last, CCISD claims the IEE lacks credibility because he recommended accommodations already being provided to the student, did not know the student was already receiving special education, and had not seen the existing IEPs.

Key points: Parents point out that the procedural violation was made by completing a dyslexia screener rather than an evaluation, causing an 8-month delay in services, and as a result, the student suffered substantive harm. Additionally, since the evaluation was not a full evaluation for a specific learning disability, it did not meet reevaluation requirements.

Findings: The court finds that the parents did not show substantive harm to the student as CCISD complied with its obligations under IDEIA. There was no indicator that the student had dyslexia prior to the screening and CCISD chose the screener so it would not take a longer time to complete. Rather, the CCISD policy is to first conduct a screener. This did not constitute a child find violation. Parents also failed to show that CCISD violated IDEIA by delaying the evaluation as CCISD was not demonstrated to act with an unreasonable delay (there was a

screeners, an ARD, the dyslexia evaluation, summer break, and another ARD to discuss test findings). CCISD was not idly standing by during this timeframe. The court finds in favor of CCISD.

Case of Student, B/N/F Parent, Petitioner v. Santa Rosa ISD (2019)

Key petitioner issue(s): Petitioner alleges that the district failed to identify or delayed identifying the student as a student with an OHI due to ADHD. Additionally, they seek to determine if the district failed to provide the information related to an IEE in a timely manner and if the proposed IEP was proposed in a relevant time frame.

Child find issue(s): If an evaluation of OHI for ADHD was delayed or denied. The student was identified under another health condition but allegedly should have also been eligible under OHI for ADHD.

Key facts: The student was diagnosed with ADHD. A psychological evaluation was conducted in 2014 and recommendations included counseling. An FIE was conducted in January 2015. The evaluation results included low average functioning in math and reading comprehension. The student did not require AT at this time. The FIE acknowledged a prior diagnosis of ADHD. From 2014-2015 to the 2016-2017 school year, the student had multiple discipline referrals. The most severe offense in 2017 resulted in a 12-day DAEP assignment. An FBA was completed. In June 2017, parents filed a complaint about the placement. An annual ARD was held in September 2017, and the student was reading two levels below grade level but passed state assessment. A BIP has been in place since the student began with the district special education program. In 2017, parents received notice of expulsion, and the school board recommended time at the Juvenile Justice Alternative Education Program (JJAEP). An MDR was conducted, and the student received days for out-of-school suspension and days at DAEP.

An ARD was held to change placement to JJAEP, and the parent did not respond to notices or participate. The student never went to JJAEP and was assigned to DAEP for the remainder of the year. An updated assessment was requested in 2018. The student made behavioral progress, but the assessment indicated conduct disorder. The reevaluation concluded that the student met the criteria for OHI for ADHD. The parent requested IEE due to not agreeing with the achievement, IQ, and psychological portions of the FIE. The IEE was completed in December 2018. The parent did not finish the IEE process.

General ruling: All petitioner claims are dismissed.

Child find ruling: The district had no reason to suspect the student needed special education, and the petitioner failed to produce an OHI form signed by a physician for any diagnosis.

Appendix B: IRB Approval

ABILENE CHRISTIAN UNIVERSITY

Educating Students for Christian Service and Leadership Throughout the World

Office of Research and Sponsored Programs
320 Hardin Administration Building, ACU Box 29103, Abilene, Texas 79699-9103
325-674-2885



October 20, 2020

Katherine M. Crites
Department of Education
Abilene Christian University

Dear Katherine,

On behalf of the Institutional Review Board, I am pleased to inform you that your project titled "Child Find Provision Due Process Hearings: An Analysis of Decisions by Texas Education Agency After the 2016 Corrective Actions by the Federal Office of Special Education Programs",

(IRB# 20-168) is exempt from review under Federal Policy for the Protection of Human Subjects as:

- Non-research, and
- Non-human research

Based on:

* The research does not involve interaction or intervention with living individuals, and the information being collected is not individually identifiable [45 CFR 46.102(f)(2)]

If at any time the details of this project change, please resubmit to the IRB so the committee can determine whether or not the exempt status is still applicable.

I wish you well with your work.

Sincerely,

Megan Roth

Megan Roth, Ph.D.
Director of Research and Sponsored Programs