

Trends in Special Education Case Law: Frequency and Outcomes of Published Court Decisions 1998–2012

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- **This article determines the frequency and outcomes of published court decisions under the Individuals with Disabilities Education Act for students from pre-K through grade 12, starting in January 1998 and ending in December 2012.**
- **The frequency of these decisions trended upward during the 15-year period, particularly during the most recent 5-year interval.**
- **The conclusive outcomes favored districts 3:1 both overall and on a relatively consistent longitudinal basis; however, the intermediate outcomes partially ameliorated this pronounced prodistrict tendency.**
- **The Second Circuit region (New York, Vermont, and Connecticut) had the highest volume of cases, and the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming) had the lowest.**
- **The Eighth Circuit (North Dakota, South Dakota, Nevada, Minnesota, Iowa, Missouri, and Arkansas), was the leader in the prodistrict outcomes, and the D.C. Circuit was the most district-favorable circuit court region.**

The Individuals with Disabilities Education Act (IDEA) obligates school districts to identify students with disabilities and provide them with a free and appropriate public education (FAPE), which includes specially designed instruction. Identification, FAPE, least restrictive environment (LRE), and various other issues under the IDEA sometimes become a source of contention between parents and school districts. The IDEA provides both the parent and the school district with the right to file a due process complaint on “any matter relating to the identification, evaluation or educational placement of the child [with disability], or the provision of [FAPE] to such child” (§1415(b)(6)(A)) and the right of appeal to “any State court of competent jurisdiction or in a [federal] district court” (§1415(i)(2)(A)).

The primary dispute resolution mechanism under the IDEA is adjudicative and consists of two levels. First is the administrative level in the form of an impartial hearing officer’s decision. Under the IDEA provision for due process hearings (§1415(g)), 40 states and the District of Columbia have a one-tier

system that is limited to the hearing officer level, whereas the rest of the states have a two-tier system that provides a second officer-review tier to the administrative dispute resolution system. The second level includes court action in the state or federal courts with published court cases under the IDEA as the culminating level of case law. There are three levels of the federal judiciary: 1) the trial level court, 2) the intermediary or appellate court, and 3) the highest court. The federal district courts are at the trial level. The appellate court level consists of 13 federal circuit courts of appeal, with the majority of them covering several states in one geographic area. One exception is the federal court of appeals for the D.C. Circuit, which is limited to the District of Columbia. The other is the Federal Circuit that deals with more specialized areas such as copyright or taxes. The highest level of the federal judiciary is the U.S. Supreme Court. Although having concurrent jurisdiction with federal courts under the IDEA, state courts have relatively few of these cases. The state courts also generally have three levels, but the names of the levels vary widely from state to state.

Previous Research

Previous studies of the overall trends in special education litigation have focused on the two primary variables—frequency and outcomes. *Frequency* refers to the total number of adjudicated cases (i.e., those resulting in a written decision after the IDEA's required proceedings). *Outcomes* refers to the extent that these decisions are in favor of parents or school districts, based on a sufficiently systematic quantitative scale. However, the relevant research to date that provides national data has been limited in scope, methodology, and recency.

Frequency Studies

The national analyses of the frequency of special education litigation at the judicial level have been largely limited to earlier decades and have varied in scope (e.g., IDEA cases or special education litigation more generally) and solely national or also by regions. For example, Maloney and Shenker (1995) provided a brief tabulation of judicial decisions for the period 1978–1994 in the *Individuals with Disabilities Education Law Report* (IDELR), a specialized database that includes both published and unpublished court decisions as well as hearing and review officer decisions under the IDEA and other disability-related laws. Though making clear that their analysis was limited to court decisions, Maloney and Shenker did not provide any methodological information and inferably did not sort out non-IDEA cases, such as those exclusively specific to Section 504, negligence, and teacher termination. Their frequency results were on a yearly basis, showing largely an upward trend but with occasional and inconsistent downturns that may have been absorbed within larger units of time. Using decades instead, specifically from 1970 to 2009, Zirkel and Johnson (2011) found, based largely on published court decisions in the Westlaw database, that the overall volume of education litigation in state and federal courts remained relatively level, but the segment of special education litigation rose dramatically. Providing equivalent case coverage to Lexis, its competing legal reporting service, Westlaw's key number indexing system is a particularly efficient search for such a broad-based frequency analysis. However, Zirkel and Johnson explained that this system had limitations in not extending uniformly to the unpublished decisions. In a subsequent national study specifically focused on IDEA litigation,

Newcomer and Zirkel (1999) confirmed that the frequency of these decisions in state and federal courts increased between 1975 and 1995. Subsequently, Zirkel and D'Angelo (2002) found that the frequency of IDEA decisions in IDELR between 1977 and 2000 trended upward until the final 3-year period, 1998–2000. Moreover, analyzing these decisions by federal circuit regions, they found that the high-volume regions were the Second, Third, and Seventh circuits and that the low-volume regions were the Tenth and D.C. circuits. The other national frequency studies were limited to specific issue categories of special education litigation, such as tuition reimbursement (Mayes & Zirkel, 2001) and autism (Zirkel, 2001). However, none of the previous studies focused specifically on officially published court decisions, which are those that courts recognize as the primary source of authority under the doctrine of *stare decisis*, known more commonly as precedent. More specifically, courts tend to give higher weight to previous decisions that are officially published, with those by higher courts within the same jurisdiction having a binding effect and those from other jurisdictions often serving as persuasive but without binding authority. Thus, the officially published decisions serve as the recognizable tip of the litigation iceberg, which includes a murkier mass of below-the-surface levels of unpublished, largely lower court decisions and—in special education—hearing and review officer decisions (Zirkel & Machin, 2012).

Outcome Studies

Empirical studies of outcomes at the judicial level of special education adjudication have been similarly limited, particularly in terms of precision of the outcome scale. For example, Maloney and Shenker's (1995) tabulation of decisions for the period 1978–1994 used a simplistic two-category scale, reporting that schools won in 54% of the cases and parents won in the remaining 46%. It is unclear what they did with court decisions with mixed or inconclusive rulings. Moreover, their case coverage extended without any distinctions to unpublished court decisions and to cases under disabilities laws beyond the IDEA. At the national level, there are only two outcome studies for court decisions specific to the IDEA and based on a more differentiated scale. First, in their aforementioned study, Zirkel and Newcomer (1996) reported the outcomes of court decisions for the period 1975–1995 according to the following five-category scale, which included modification of

hearing officer decisions: complete district wins, 40%; modified district wins, 10%; split decisions, 11%; modified parent wins, 12%; and complete parent wins, 29%. Second, in their subsequent study of IDEA court decisions in IDELR, Zirkel and D'Angelo (2002) used a more direct but less precise three-category scale: in favor of school districts, 56%; mixed, 9%; and in favor of parents, 35%. The mixed category was based on the IDELR designation of "(P)", explained only as partially in favor of the parent. According to this study, the judicial outcomes for 3-year intervals in the period 1989–2000, on average, remained relatively stable. When analyzed on a regional basis, the judicial outcomes were, on average, particularly district-friendly in the Fourth and Fifth Circuit regions and parent-friendly in the D.C. Circuit.

Method

The purpose of this quantitative study was to determine the frequency and outcomes of published court decisions under the IDEA for students from pre-K through grade 12, starting in January 1998 and ending in December 2012. Published in this context refers to the court decisions appearing in the official reports, or bound volumes, of the federal courts and the state appellate courts. The limited exception was the inclusion of decisions published in the *Federal Appendix*, which, oddly, is an official publication of unpublished decisions; we opted to include these decisions because they are from the federal appeals courts, and these courts' rules allow the citation of these decisions (e.g., Coyle, 2004). Specifically, the questions of the study were as follows:

1. What is the longitudinal trend in the frequency of published court decisions in special education?
2. What is the overall distribution of these decisions in terms of their outcomes?
3. What is the longitudinal trend in the outcomes of these decisions?
4. What is the longitudinal trend of these decisions by federal circuit court region in terms of (a) frequency, and (b) outcomes?

Data Collection

The database was Zirkel's (2014b) annotated case law compilation of the published court decisions in special education available on the website of the National Association of State Directors of Special Education. The scope of the analysis was court decisions under the

IDEA from January 1, 1998, to December 31, 2012. Zirkel's compilation is systematically exhaustive of these court decisions concerning the issues of direct and primary interest to educators, such as identification, FAPE, LRE, and discipline. It does not extend to those concerning technical adjudicative issues, which are more directly and primarily of interest to litigators, such as jurisdiction, statute of limitations, and additional evidence. Finally, the hybrid category of attorneys' fees is limited to a sampling of the representative issues, such as eligibility for and the scope of these fee awards. More specifically, Zirkel's compilation summarized rulings for published cases under the IDEA within the broad issue categories of identification, appropriate education, related services, LRE, discipline, attorneys' fees, tuition reimbursement, compensatory education, tort-type damages, and miscellaneous other IDEA-related issues. Largely due to the overlap between the appropriate education and tuition reimbursement categories, 36 (4.2%) of the 809 cases have rulings in more than one category, resulting in a total of 845 rulings.

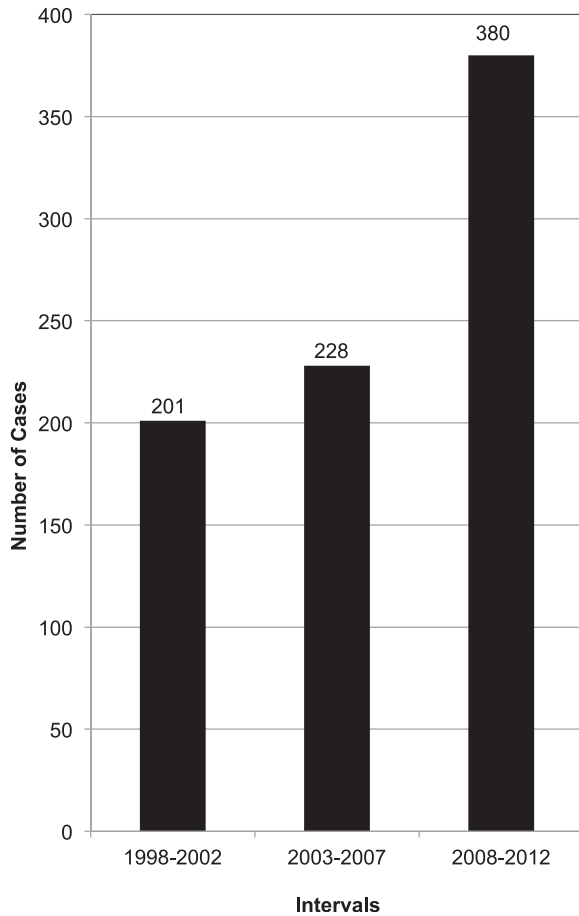
Data Analysis

The relevant variables recorded for each decision on a spreadsheet were (a) the date of the decision, (b) the state of origin (for placement in the federal circuit court regions), and (c) the outcome for each case according to the following five-category continuum:

- 1 = *conclusively in favor of district* (i.e., district won completely all of the major issues)
- 2 = *inconclusively in favor of district* (e.g., remand for more information or denial in response to parent's motion for summary judgment, thus preserving the matter for further judicial proceedings)
- 3 = *mixed* (i.e., combination of conclusive or inconclusive rulings in favor of both parties)
- 4 = *inconclusively in favor of parent* (e.g., remand for more information or denial in response to district's motion for dismissal or summary judgment, thus preserving the matter for further judicial proceedings)
- 5 = *conclusively in favor of parent* (i.e., parent won completely all of the major issues)

This five-category scale is a modified version of the Lupini and Zirkel (2003) outcome scale, which was based on the court decision as a whole. The unit of analysis in the present study is the court decision, or case, rather than the successively more narrow units

Figure 1. Frequency of cases per 5-year intervals during the period 1998–2012.



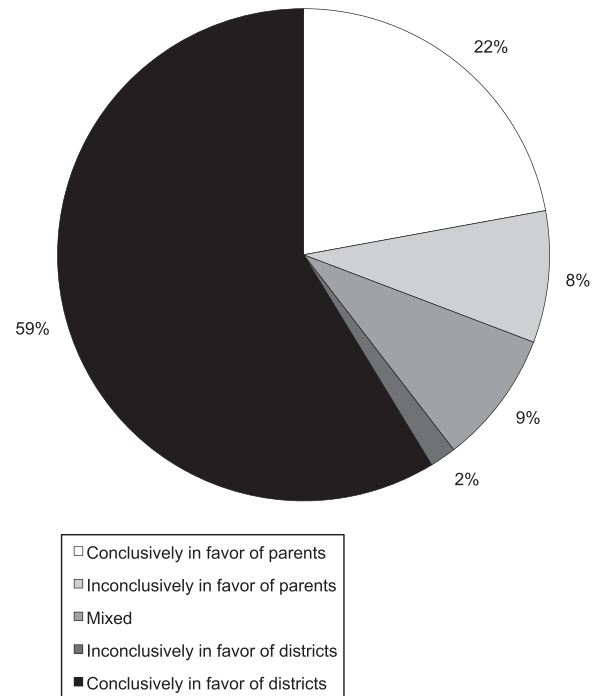
of each claim or category ruling. For the limited number of court cases with rulings in more than one category, we conflated them to arrive at the overall case outcome. For example, if under the FAPE category the ruling was 5 (*conclusively in favor of parent*), but under the Tuition Reimbursement category the ruling was 1 (*conclusively in favor of the district*), the outcome entry was 1 because the overall outcome was that the parent did not ultimately obtain remedial relief. We used percentages to analyze the data on frequency and outcome of court decisions.

Results

For the total of 809 published court decisions during 1998–2012, Figure 1 shows the longitudinal frequency per 5-year intervals.

Review of Figure 1 shows that the overall trend line is upward, with a particular upsurge for the most recent interval. More specifically, the increase from

Figure 2. Percentage distribution of outcomes of cases during the period 1998–2012.



the first 1998–2002 interval ($n = 220$) to the second 2003–2007 interval ($n = 228$) was negligible, whereas the increase for the last interval 2008–2012 ($n = 380$) amounted to approximately 67%.

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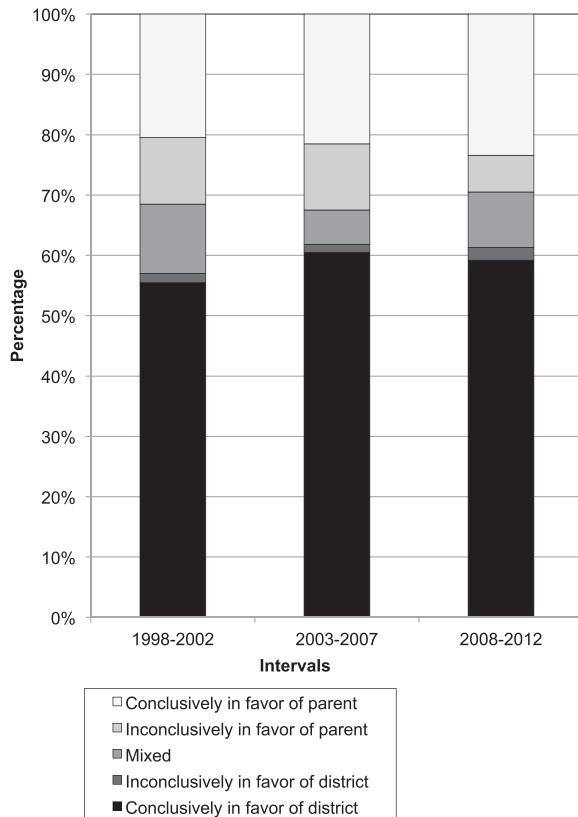
For the overall outcomes, Figure 2 shows the overall percentage distribution of the cases according to the aforementioned five-category scale.

Examining this distribution in terms of the typical polar positions of conclusive wins and losses reveals that the outcomes clearly favored districts on almost a 3:1 ratio (i.e., 59% to 22%).

However, the remaining intermediate categories totaled 19%, which partially closed the gap to the extent that the parents partially won 8%, another 9% were inconclusive decisions pending further proceedings, and 2% were mixed.

In response to the third question of the study, Figure 3 shows the longitudinal trend of outcomes in

Figure 3. Longitudinal outcome trend of cases per 5-year intervals during the period 1998–2012.



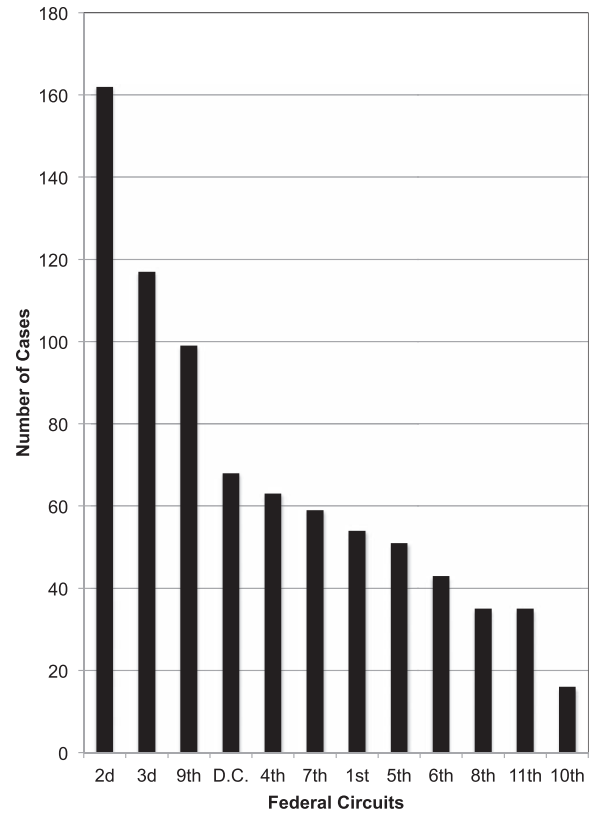
the 5-year intervals of the overall 15-year period according to the five aforementioned categories.

Review of *Figure 3* reveals a relatively stable outcomes trend, particularly with regard to the proportion of decisions conclusively in favor of parents, which ranged from 21% to 23%. The differences were largely attributable to the decreased, then increased, proportions for the intermediate outcome categories as a group. Inversely correlated to these fluctuations of this intermediate group, the proportion of complete district wins increased from 56% to 61% and then slightly decreased in the most recent 5-year interval to 59%.

Figure 4 shows the regional trend of the frequency of the published court cases in special education litigation for the entire period based on the jurisdictional boundaries of the federal circuit courts of appeals. These regional frequencies appear from high volume to low.

The highest volume of cases is for the combination of states—Connecticut, New York, and Vermont—within the Second Circuit ($n = 162$), followed in order by the regions of the Third Circuit

Figure 4. Frequency of cases decided by federal circuit regions during the period 1998–2012.

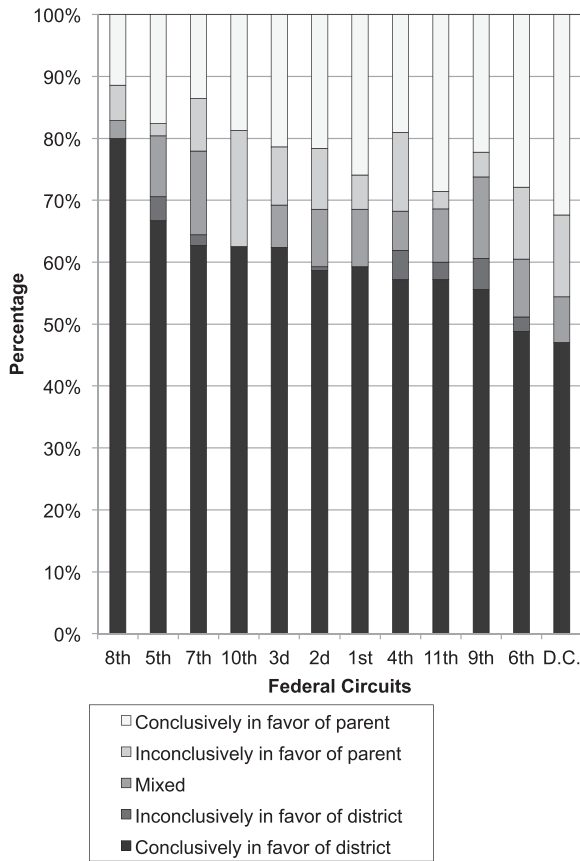


($n = 117$), which encompasses Delaware, New Jersey, Pennsylvania; the Ninth Circuit ($n = 99$), which consists of a nine-state region in the Far West including California and Hawaii; and the D.C. Circuit ($n = 68$). Conversely, the lowest number of cases was within the jurisdictional boundaries of the Tenth Circuit ($n = 16$), which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. Indeed, the Second Circuit region accounted for the same number of decisions as the regions of the Fifth, Sixth, Eighth, and Eleventh Circuits combined.

Figure 5 shows the corresponding regional trend for the outcomes of the cases, according to the five-category scale, and is arrayed from the most district-friendly circuit court region to the least district-friendly circuit court region in terms of outcomes conclusively in favor of districts.

The overall outcomes of all the federal circuit court regions were, on balance, district-friendly. The courts in the Eighth Circuit, which encompasses North Dakota, South Dakota, Nevada, Minnesota, Iowa, Missouri, and Arkansas, and those in the Fifth Circuit, which is in the Southwest, were the leaders in

Figure 5. Outcomes of cases by federal circuit regions during the period 1998–2012.



the outcomes' skew in favor of districts. On the other side, the D.C. Circuit and the Sixth Circuit, which encompasses Kentucky, Michigan, Ohio, and Tennessee, were the least skewed; the conclusive decisions in favor of districts was close to 50%, but the corresponding percentage conclusively in favor of parents were approximately 30% in each of these two regions. In general, the respective segments attributable to decisions conclusively in favor of parents were not the inverse mirror image of the corresponding conclusively-for-district percentages due to the varying distribution of the intervening outcome categories.

Discussion

The first finding was that the published special education decisions trended upward during the 15-year period of the study, particularly during the most recent 5-year interval. This upward trajectory fits with Zirkel and Johnson's (2011) findings for the earlier and overlapping period ending in 2009, even though their

analysis only addressed special education case law as a secondary matter. This trend line is also consistent as a continuation of the general trajectory of previous studies that extended to unpublished decisions (Maloney & Shenker, 1995; Zirkel & D'Angelo, 2002). Thus, the present more precise and up-to-date trend analysis confirms that special education litigation continues to be a growth industry.

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The second and third questions of the study have a merged answer—the conclusive outcomes favor districts almost 3:1 both overall and on a relatively consistent longitudinal basis. This ratio is more severe than the outcomes trend of earlier studies extending to unpublished court decisions (e.g., Maloney & Shenker, 1995; Zirkel & D'Angelo, 2002), suggesting that for the published case law, at least, the courts are noticeably district-friendly. Some of our explanations are tentative. We take a closer look at the IDEA modifications and cases at the circuit court level for further explanation and support. Part of the explanation for these results lies in the continuation of the larger judicial pattern of judicial deference to school district actions. For example, in *Hazelwood School District v. Kuhlmeier* (1988), the Supreme Court recited "our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges" (p. 273). More specific to special education, in *Board of Education v. Rowley* (1982), the Court concluded that "it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding [under the IDEA]" (pp. 207–208). The *Rowley* Court's emphasis has been on procedural compliance.

Another contribution to this disparity in outcomes could be attributed to the IDEA 2004 amendments codification (i.e., converting case law into legislation itself; Zirkel, 20136), in which Congress expressly provided in IDEA 2004 that—with a limited exception—a hearing officer may only find a denial of FAPE for procedural violations that "[i]mpeded the child's right to FAPE" or "[c]aused a

deprivation of educational benefit" (20 U.S.C. §1415(f)(3)(E)), thus effectively connecting the procedural compliance standard to the substantive benefit standard. The limited exception is where the district has "[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of [FAPE]."

Also, in interacting with the recent amendments of the IDEA, the courts have not only resisted heightening the relatively relaxed *Rowley* substantive standard (Blau, 2007; Daniel, 2008) but also have eroded rather than tightened *Rowley's* procedural standard for FAPE (Zirkel, 2013b). The courts have tended to sweep various issues such as measurable goals and transition services under the procedural umbrella, "thus subjecting them to the district-favorable no-harm-no-foul approach" (Zirkel, 2013a, p. 70).

Moreover, according to Zirkel (2008), despite the persistent efforts of parent attorneys on the consecutive amendments to the original Act, the lower courts have resolutely refused to raise *Rowley's* substantive standard. The Ninth Circuit Court of Appeals recently reversed the only outlier decision, thus making consistent the long line of published court decisions that have retained the relatively low substantive floor for FAPE (*J.L. v. Mercer Island School District*, 2010).

In another relevant aspect of *Rowley*, the lower courts have interpreted its concluding dicta about leaving the choice of "educational method ... to state and local educational agencies" (p. 207) as generally establishing a deference to their expertise, which starts at the hearing and review officer levels, to districts (Zirkel, 2008, 2013a). This general expansion of the *Rowley* dicta goes well beyond methodological issues and ignores the dicta's tandem phrase "in cooperation with the parents ... of the child" (p. 207). For example, in applying the *Rowley* reasonably calculated test to an individualized education program (IEP) that the parents had successfully challenged at the hearing, the Seventh Circuit Court of Appeals correctively concluded,

The hearing officer substituted her judgment for that of the school administrators. The hearing officer thought the administrators were mistaken and they may have been. However, the administrators were not unreasonable. (*Alex R. v. Forrestville Valley Community Unit School District*, 2004, p. 611)

Similarly, in upholding a district's extended school year policy for students with disabilities, a

federal district court cited *Rowley* for "the strong deference" accorded to local and state education authorities (*McQueen v. Colorado Springs School District No. 11*, 2006, p. 1309).

The addition in IDEA 2004 of the requirement that the IEP statement of the special education and related services for the child be based on "peer-reviewed research to the extent practicable" (20 U.S.C. §1414(d)(1)(A)(i)(IV)) has not become the corresponding "lever for ... elevation of the substantive standard for FAPE" (Zirkel, 2008). Instead, as Etscheidt and Curran (2010) recently canvassed and as additional, published court decisions (e.g., *B.H. v. W. Clermont Board of Education*, 2011; *Doe v. Hampden-Wilbraham Regional School District*, 2010) have confirmed, the bulk of the case law has taken a district-deferential view of this language, resulting in the prevailing precedents continuing the relatively relaxed substantive standard under *Rowley* (Zirkel, 2013a).

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Another, even less visible factor warrants consideration in interpreting the overall and longitudinal outcome results. Significant disparities at the initial stage of special education litigation, which is at the due process hearing level, between complaint filings and adjudicated decisions, strongly suggest that the published cases are a partially skewed sample. Exemplifying the disparity, both the early national compilations (Ahearn, 2002) and the more recent ones (Zeller, 2012) reveal that the number of due process filings exceed the number of adjudicated hearings by at least a 3:1 ratio. Moreover, during the period of this study, both the provisions of the IDEA, such as the new requirement for a resolution session (§14159f)(1)(B)), and the investment of the National Center on Dispute Resolution in Special Education, which has received U.S. Department of Education funding since 1998, have increased the options and use of alternative dispute resolution mechanisms that have contributed to the increase in informal and formal settlements. According to recent research (Zirkel, 2014a), some of the initial filings have resulted in withdrawn or

abandoned cases and others subsequently have been filtered out via unappealed impartial hearing or review officer decisions. The prevailing standard of appealing to the federal circuit courts of appeal is abuse of discretion (i.e., the appealing party would have to show that the district court is not just wrong but clearly in error), which decreases the odds of a successful appeal under the IDEA. On balance it is more likely that the closer cases are the ones subject to the published court decisions (Zirkel, 2013a). Thus, the published decisions—which serve as the official precedents—are both a reflection and a contributor of a continuing case law outcomes trend in favor of districts.

At the initial level of judicial review under the IDEA, the judge decides the case without a jury. The decision is usually based solely on the record from the hearing/review process, although in an occasional case the judge takes additional evidence where requested and deemed necessary. The IDEA's judicial review provision also grants the judge broad equitable authority to "grant such relief as the court determines appropriate" (§1415(i)(2)(C)). Under this statutory framework, the courts have established that (a) the judge provides "due weight" to the decision of the administrative adjudication, with notable deference to the hearing/review officer's factual findings (e.g., *D.K. v. Abington School District*, 2012); (b) most cases are decided under the procedural posture of a summary judgment motion (e.g., *M.H. v. New York City Department of Education*, 2012); (c) the remedies include tuition reimbursement and compensatory education but do not extend to money damages (e.g., *C.O. v. Portland Public Schools*, 2012).

Based on the high proportion of summary judgment rulings and the appeals to the higher courts in the state or federal judicial systems, with the first appellate level as a matter of right but the highest appellate level—such as a petition for certiorari to the U.S. Supreme Court—being discretionary to the court and most often denied, the outcomes of various cases may be inconclusive. More specifically, inconclusive decisions are in favor of one party or the other—depending on which party files and which party wins the motion—but only to the extent of gaining the right to further proceedings, which may ultimately go in either party's conclusive favor.

Another part of the explanation could be the impact of ideology (i.e., the conservativeness or liberalness) of judges on their decisions. The issue has

been a focus of research on outcomes of federal court decisions. A meta-analysis study found the impact of ideology to be significant in the cases decided at the Supreme Court (Pinello, 1999). At the circuit court of appeals level, ideology is a factor in predicting judicial outcomes but it explains only a small portion of circuit judges' voting behavior and has lesser explanatory power than legal factors (Cross, 2003). Still, there is limited research about circuit courts of appeals and uncertainty about the magnitude of the ideological effect at this level (Yung, 2011). These studies examined circuit court cases overall (civil and criminal), hence future research studies on the effect of ideology in court rulings under IDEA are warranted.

However, the five-category outcome scale reveals the significance of the intermediate outcomes, which, together, account for approximately one fifth of the cases that lacked either any (e.g., Maloney & Shenker, 1995) or sufficiently nuanced (e.g., Zirkel & D'Angelo, 2002) differentiation in the previous research specific to special education case law. These variously shaded gray—rather than black and white—categories serve, in effect, as a swing factor in interpretation of the outcome results. From the polar perspectives of the parties, a mixed or inconclusive outcome may mean that the district has not been the winner in these cases. The reason for a mixed outcome is that the parent partially succeeded, which may entail the costs of implementing a remedy but also—if sufficient to meet the relatively relaxed standard for "prevailing" status—paying for the parent's attorneys' fees (e.g., *Doe v. Boston Public Schools*, 2008; *L.M. v. Capistrano Unified School District*, 2011). The reason for the inconclusive cases is that it increases the parent's leverage for a settlement, which may similarly provide for remedial implementation and—depending on the individual case—attorneys' fees. For example, in the at least partially analogous field of disability discrimination in employment, studies have found that the majority of such cases result in settlements (e.g., Moss, Ullman, Swanson, Ranney & Burriss, 2005; Nielsen, Nelson, & Lancaster, 2010; Siegelman & Donohue, 1990). Moreover, IDEA is different from the usual adjudicative framework. Specifically, because the impartial hearing takes the place of the trial, with the limited and only partial exception being in the relatively infrequent cases where the court exercises its discretion under the IDEA to take additional evidence (§1415(i)(2)(C); *R.G. v. Downingtown Area School District*, 2013), summary

judgment in IDEA cases often amounts to no more than “a pragmatic procedural mechanism” for judicial review (e.g., *M.W. v. New York City Department of Education*, 2013, p. 138). Thus, the specific category of inconclusive outcomes for the parent arguably equates to a win for the parents when based on denial of the district’s summary judgment, with the parent not filing an opposing motion for such summary disposition.

The final major finding of notable variability among the circuit court regions in terms of both frequency and outcomes both reinforces and improves previous research. For frequency, the leading position of the Second Circuit region is consistent with Zirkel and D’Angelo’s (2002) earlier case law sampling, which extended to unpublished decisions. Moreover, this position appears to be largely attributable to New York’s dominant position in the Second Circuit in comparison to the size and population of its other two states—Connecticut and Vermont.

Reflecting not only its population density, but also litigious propensity (Earnest, 1999), New York occupies the top spot not only for impartial hearings under the IDEA (Zirkel & Gischlar, 2008) but also other areas of school law litigation, such as school negligence cases (Zirkel & Clark, 2008). Conversely, the opposite polar position of the Tenth circuit region is consistent with previous results (Zirkel & D’Angelo, 2002) reflecting the relative stability of these region’s results at the opposite ends of the frequency continuum in both litigiousness (Earnest, 1999) and enrollment (Zirkel & Gischlar, 2008) factors in light of the composition of this region, including, for example, Utah and Wyoming. However, these regions are partially arbitrary, based on Congress’s allocation of the federal circuits, thus neither fitting the broader divisions, such as the Northeast and the Midwest, or smaller, more homogeneous areas, such as individual states or New England. In any event, these regions should not be confused with the case law of each respective federal appeals court, although its outcome trend may be one of the contributing factors to the volume of the published IDEA cases in its jurisdiction.

For outcomes, the courts in the Eighth Circuit represent the leading position for decisions that were conclusive wins for the school district. There were 27 cases (out of 35 for this circuit court region) decided at the circuit court level. Our data show that, with one exception (*Neosho R-C Sch. Dist. v. Clark*, 2003), all the cases filed under appropriate education category in

this circuit court resulted in conclusive wins for the school districts. Our closer examination of a cross section of the recent cases at the circuit court of appeals level shows that the Eighth Circuit has afforded considerable deference to the views of educators. According to Goetz, Pust, and Reilly (2011), the Eighth Circuit Court of Appeals differs from other circuit courts in its interpretation of FAPE. In principle, if the school district tried to educate a student with a disability and the student received no benefit, the school district provided FAPE by attempting to do so (Goetz et al., 2011). This interpretation is in contrast to *Rowley* standard of “some educational benefit.” Also, without speculating, one of the determining factors could be the cumulative effect of these legal decisions, with each case serving as the precedent for the next one.

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The intermediate positions also reflected various not particularly dramatic changes in rank order, reflecting at least in part (a) the cross-pollination of IDEA case law among the circuits as the organic development of these statutory interpretations evolve and mature, and (b) the variability of the intermediate outcome categories. At the other extreme, however, both the earlier and present regional comparisons agree on the position of the limited and unusual region of the D.C. Circuit. However, the relative parent-friendly pattern is less pronounced for the recent period. The shift may be attributable to one or more of various concomitant developments, although determining whether they are causal contributors is speculative. These developments include (a) the reorganization of the state education agency and its separation from the D.C. Public Schools; (b) the proliferation of charter schools in the District; (c) ongoing court supervision as a result of class action suits; and (d) responses to abuses in the litigation system, including private placements. Finally, as reflected in the overall outcome distribution, the D.C. circuit region had a

somewhat balanced division of outcomes with almost half the cases favoring the school district and the rest favoring parents and inconclusively in favor of parents. The only other circuit with a less prodistrict slant was the Sixth Circuit; however, Zirkel and D'Angelo's (2002) earlier analysis found the Ninth Circuit to be in this more balanced position.

Conclusions and Recommendations

The upward longitudinal trend in the volume of published cases filed under the IDEA continues from earlier periods, particularly during the most recent 5-year interval of this study. Parents of children with special needs continue to seek redress and remedy for the education of their children from the courts. Such a finding underscores the need in the field of special education for educational leaders and teachers who possess the necessary knowledge, skills, and dispositions to meet the needs of children with disabilities. Additionally, it highlights an area of continued opportunity for attorneys to consider expanding the training on special education litigation in their practice. Finally, the continued growth in special education litigation is a signal for both school districts and parents to choose collaboration in providing the education students with disabilities need rather than engage in litigation.

Even though the frequency of the cases is on the rise, it is clear that school districts continue to experience more favorable decisions in courts under the IDEA compared with parents. Although it may be tempting to point at judges as being biased, the larger problem is political rather than judicial (Zirkel, 2013b). "If parents seek a level playing field in litigation, the proper place to achieve this balance is in the policy-making forum, that is, federal and state special education legislation and regulations, which provide the framework for litigation" (Zirkel, 2013b, p. 73).

From the methodological standpoint, the use of the five-category scale provides for more precise and nuanced measurement of outcomes than the limited dichotomous conception. The three variably shaded intermediate categories reveal varied levels of winning outcomes for the parents. The recommended follow-up research should include similar more refined quantitative analyses, including multicategory outcome measurement, and complementary qualitative studies of unpublished IDEA case law,

impartial hearing/review officer decisions, and—most difficult and unexplored to date—withdrawals and settlements at each stage, including in the wake of this study's results, inconclusive adjudicated outcomes. Moreover, both qualitative and quantitative analyses of the corresponding frequency and outcomes of the complaint traffic at the alternate avenues for students covered by the IDEA and/or Section 504 (Zirkel & McGuire, 2010) merit corresponding and comparative attention.

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