Longitudinal Trends in Special Education Case Law: An Updated Analysis

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- **As the follow-up to an earlier examination of the frequency and outcomes trends of published court decisions under the IDEA for P–12 students, this updated analysis covers the 25-year period ending on December 31, 2022.**
- **The frequency trend for the most recent 10 years reversed the upward trajectory of the previous 15 years.**
- **The outcomes trend for the most recent 10 years continued the approximate 2:1 ratio in favor of school districts for the completely conclusive rulings, with variance among the 5-year intervals and the intermediate outcome categories, such as inconclusive rulings.**
- **For the 25-year period, the frequency of the decisions was highest in Second Circuit region (Connecticut, New York, and Vermont) and lowest in the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming).**
- **The corresponding outcomes for the entire period was most district-favorable in the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nevada, North Dakota, and South Dakota) and Fifth Circuit (Louisiana, Mississippi, and Texas) regions, and the least district-skewed in the D.C. and Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee) regions.**

Key words: Law, IDEA, IDEA Court Decisions, Special Education Case Law, Judicial Trends.

The Individuals with Disabilities Education Act (IDEA) includes not only a rather detailed set of largely procedural obligations for school districts but also an extensive adjudication mechanism that starts with a due process hearing and culminates in court decisions. The tip of this adjudicative "iceberg" consists of officially published court decisions, which are the most visible and which have the highest precedential weight (e.g., Zirkel & Machin, 2012). The successively lower, less frozen, and larger levels of this iceberg consist of unpublished court decisions, hearing and review officer decisions, and the entirely subsurface dispositions of settlements and withdrawals/abandonments (e.g., Zirkel, in press). As a limited example, for due process hearings under the IDEA from 2012 to 2017, the ratio of filings to decisions varied widely from state to state but averaged overall 19-to-1 (Zirkel & Gullo, 2020), with the remainder being either settlements or withdrawals/abandonments but without reliable data as to the specific proportion for each. The boundaries and accessibility of the decisions and dispositions also generally decrease at the descending subsidiary levels. For example, for the federal appellate courts, which is the highest level below the Supreme Court, the "unpublished" category, which is neither precise nor uniform in its usage, include those successively larger numbers of decisions that were (a) unofficially published in the *Federal Appendix*, which appeared from 2001 to the end of 2021; (b) reported in the Westlaw electronic database but not in the *Federal Appendix*, and (c) tracked in the courts' PACER docketing database (e.g., Brown et al., 2021).

Given not only their higher precedential weight but also their clearer general boundary and accessibility, officially published court decisions are the most appropriate choice for tracking national trends of the frequency and, particularly, the outcomes of case law in special education. For example, as part of a more complex multi-factor process, they have radiating and interactive effects with both hearing officer decisions

and settlements. Consequently, having updated trends data as to these published court decisions' frequency and outcomes, is useful for special education leaders and other stakeholders under the IDEA, although they should be interpreted in the context of the overall litigation iceberg under the IDEA.

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A previous article in *JSEL*, which is the predecessor to the present analysis, tracked the frequency and outcomes of the IDEA's published court decisions for the fifteen-year period ending in 2012 (Karanxha & Zirkel, 2014). This follow-up analysis extends the period for an additional ten years ending on December 31, 2022. More specifically, this article summarizes the results of the predecessor analysis along with related previous research and presents the updated findings for frequency and outcomes both on a national level and disaggregated by the regions of the federal circuits.

Previous Research

Per the general pattern of previous pertinent empirical analyses, "frequency" refers to the number of final court decisions with a written opinion under the IDEA, here limited to those that are officially published. Thus, the unit of analysis is the latest available court decision in the case, not any earlier decisions in the proceedings of the case nor the component issue category rulings within the decision. Similarly, per the prevailing pattern, "outcomes" refers to the direction of the court's decision in relation to the two parties in the case—the parents and the school district. However, representing those previous analyses that opted for a more precise outcomes measure than the binary categories of winning and losing, the outcomes were differentiated into five categories that included inconclusive as well as mixed decisions.

Frequency Analyses

Although much easier to tabulate than outcomes, frequency analyses of court decisions have been relatively few at the national level and for more than limited period. The two leading, successive examples used commercial databases that extended to limited and neither identical nor defined segments of unpublished decisions. The earlier national frequency analysis, which extended beyond the IDEA to court decisions under Section 504, found an upward trajectory for the period ending at the turn of the century (Zirkel & D'Angelo, 2002). The most recent national analysis only traced the special education cases, including without differentiation those under legal bases other than the IDEA, as part of a wider examination of K–12 public school cases from 1940 to 2019. More specifically, Zirkel and Frisch (2023) found that the trajectory for the overall K–12 case law in the combination of state and federal courts was upward from the 1940s to the 1970s and relatively level since then, whereas the special education segment shifted almost entirely to the federal courts and had a clearly upward trajectory from the 1970s until reaching an approximate plateau in 2000–2009 that largely continued in 2010–2019.

Due to its focus on not only frequency but also outcomes trends, the Karanxha & Zirkel (2014) predecessor analysis limited its scope to the more precisely bounded and completely accessible population of officially published decisions. The limited, marginal exception was the inclusion of federal appellate cases that were published in the aforementioned *Federal Appendix* based on their high judicial level and the intervening change in the federal court rules to allow their citation, despite their unofficial status. Within this specific scope of IDEA court decisions for the period 1998–2012, they found an upward trajectory for the three successive five-year intervals ending in 2012, with a particular upsurge in the most recent of the three intervals. Moreover, they found that the regional distribution ranged, in descending order, from the Second, Third, and Ninth Circuits at the top to the Eighth, Eleventh, and Tenth Circuits at the bottom.

Outcomes Analyses

Empirical analyses of outcomes of IDEA cases at the judicial level have been even more limited than those of frequency, especially for periods sufficient for longitudinal trends. The use of an overly simplified two-category scale, which does not address inconclusive and mixed outcomes, is a particular limitation of most of the previous analyses. As a partial exception, Zirkel and D'Angelo (2002)

included an intermediate mixed category, but it did not address inconclusive decisions, such as those limited to the court denying the defendant's motion for dismissal or either party's motion for summary judgment or remanding the case for further proceedings. They found the following overall outcomes distribution for IDEA and Section 504 court decisions generically the period of 1977–2000: 39% for parents, 9% mixed, and 56% for school districts.

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Providing a lengthier period, a differentiated outcomes measure, and a more precise and uniform population, the predecessor to the present analysis used a five-category scale for published IDEA court decisions in the fifteen-year period ending in 2012, resulting in the following outcomes distribution: 22% conclusively in favor of parents; 8% inconclusively in favor of parents; 9% mixed; 2% inconclusive in favor of districts; and 59% conclusively in favor of districts (Karanxha & Zirkel, 2014). Moreover, they found that this distribution was relatively stable across the three five-year intervals and that the skew toward districts was most pronounced for the decisions in the Eighth Circuit, which covers the seven states from North Dakota and Minnesota down to Arkansas, and the Fifth Circuit, which comprises Texas, Louisiana, and Mississippi. Conversely, the district-favorable skew was least pronounced for the decisions within the Sixth Circuit, which covers the four states from Michigan down to Tennessee, and the D.C. Circuit.

Method

As an update of the predecessor analysis (Karanxha & Zirkel, 2014), the purpose of this quantitative study is twofold: (1) to determine the frequency and outcomes of published court decisions under the IDEA for the most recent ten-year period, which is from October 2012–December 31, 2022; and (2) to analyze the frequency and outcomes for the total period of the last 25 years (January 1998–December 2022). Following the same approach as in the previous article, the scope was limited to officially published and *Federal Appendix* decisions under the IDEA. Following the template of the predecessor analysis, the questions 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 the updated compilation of IDEA court decisions that is available at the first author's website, *perryzirkel.com*. This compilation is systematically exhaustive of the officially published and Federal Appendix court decisions concerning the IDEA issue categories of direct and primary interest to educators, such as identification, free appropriate public education (FAPE), least restrictive environment (LRE), discipline, and remedies, such as tuition reimbursement and compensatory education. It does not extend to those decisions limited to technical adjudicative issues, which are more directly and primarily of interest to litigators, such as jurisdiction, statute of limitations, exhaustion, 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. Primarily attributable to the overlap between the FAPE and tuition reimbursement categories, 99 (8%) of the 1,322 decisions have rulings for more than one issue category, resulting in a total of 1,421 issue category rulings.

Moreover, because we used the April 2023 version of the compilation, the data collection of the published decisions for the last few months of 2022 was complete due to the very limited time lag for official publication that is attributable to the technological speed of the underlying Westlaw and Lexis electronic databases.

Data Analysis

The frequency count was based on the decision as the unit of analysis, thus excluding the additional

rulings for those cases cited in more than one category. The decisions were the latest available published decision.

Also as in the predecessor analysis, the inconclusive outcome category represented the latest published decisions that were specifically preserved for further judicial proceedings at the same level or upon remand if not settled or appealed. The valence of the inconclusive decisions was designated based on the moving party. For example, a decision limited to denial of the district's motion for summary judgement resulted in categorization as inconclusive in favor of the parent, whereas a decision limited to denial of the parent's motion for summary judgement was designated as inconclusive in favor of the district.

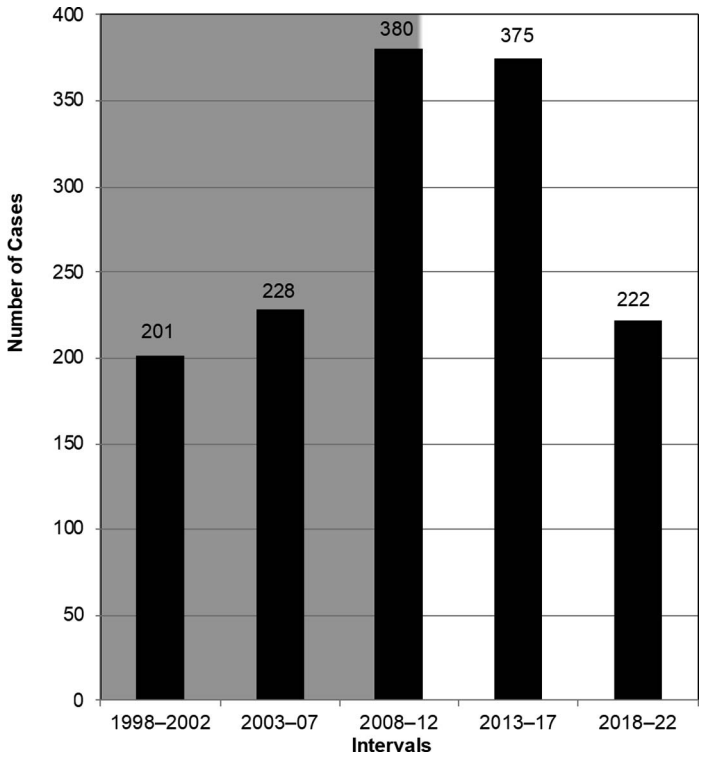
For the limited number of court decisions with more than one issue category ruling, we combined the separate rulings into the mixed category, with the exception of those that warranted conflation into another category. For example, if under the FAPE category the ruling was 5 (conclusively in favor of parent), but under the Tuition Reimbursement category the ruling was 1 (conclusively in favor of the district), the outcome entry for the analysis was 1 because the overall outcome was that the parent did not ultimately obtain remedial relief.

In sum, the outcomes scale was as follows, with the polar numbers being merely arbitrary for convenience due to the nominal categorical nature of the scale:

1. *conclusively in district's favor* (i.e., district won completely in all of the issue category rulings)
2. *inconclusively in district's favor* (e.g., denial of parent's motion for summary judgment)
3. *mixed* (i.e., combination of conclusive or inconclusive rulings in favor of both parties)
4. *inconclusively in parent's favor* (e.g., denial of district's motion for dismissal or summary judgment or granting of parent's motion for a preliminary injunction)
5. *conclusively in parent's favor* (i.e., parent won completely all of the issue category rulings)

Finally, in addition to the predecessor analysis's use of percentages and ratios to analyze the data on frequency and outcome of court cases, per analogous other analyses (e.g., Zirkel & D'Angelo, 2002; Zirkel & Skidmore, 2014), we calculated averages merely for convenience of an abbreviated supplementary indicator of outcomes as if this 1-to-5 categorical scale were ordinal or interval, with due circumspection for both direction and imprecision.

Figure 1
Frequency per Five-Year Intervals During the Period 1998–2022



Resulting Trends

For the total of 1,322 published court decisions during 1998–2022, Figure 1 shows the longitudinal frequency per five-year intervals in response to research question #1. The fifteen-year period of the predecessor article in shaded in grey to make clear the difference from the most recent ten-year period.

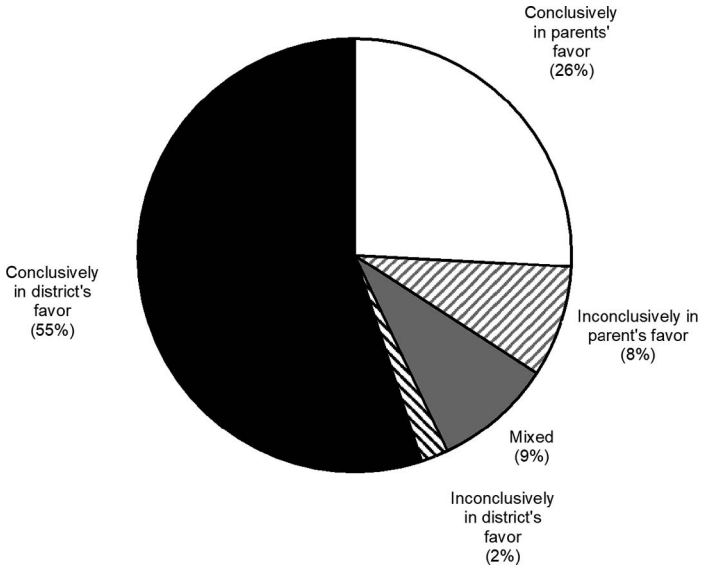
Review of Figure 1 shows that the upward trajectory for the previous fifteen-year period reversed during the most recent ten-year period. As a result, the frequency for the most recent five-year interval, which ended in 2022, has returned to the level within the range of the first two intervals, which started in 1998.

For the overall outcomes in response to the second research question, Figure 2 shows the overall percentage distribution of the cases according to the aforementioned five-category scale in the 1998–2022 period.

Figure 2 reveals for the conclusive outcomes an approximately 2:1 ratio, or specifically 55% to 26%

Figure 2

Percentage Distribution of Outcomes of Cases During the Period 1998–2022



distribution, in favor of school districts. The three intermediate outcomes categories, which accounted together for 19% of the court decisions, provided partial mitigation of this district-favorable skew, largely depending on the interpretation of the various mixed outcomes. The 8% distribution of the inconclusive decisions in the parents' direction compared with 2% in the districts' direction provided a more limited contribution to this mitigation, because its effect was limited to preserving the case for further proceedings, with the only marked leverage being for settlement.

In response to the third question of the study, Figure 3 shows the longitudinal trend of outcomes in the same intervals of the overall twenty-five-year period according to the five-category scale. Again, the shading differentiates the period of the predecessor analysis from that of this ten-year update. The numbers at the top of each bar represent the aforementioned cautious averaging of the 1 (district side) to 5 (parent side) outcomes categories, with 3.0 being the approximated indicator of an equal balance.

Review of Figure 3 reveals that the relatively stable district-skewed outcomes distribution during the prior fifteen-year period moderated to a limited extent toward parents. This effect was evident in the white segments, representing the percentage of decisions conclusively in favor of parents, for the successive bars. However, a closer look, starting with a comparison of the black segments for the first and last intervals, reveals that the moderating effect is not particularly pronounced or consistent. Although more limited in their size and effect, the changes in the intermediate outcome categories contribute to

Figure 3

Longitudinal Outcome Trend of Cases per Five-Year Intervals During the Period 1998–2022

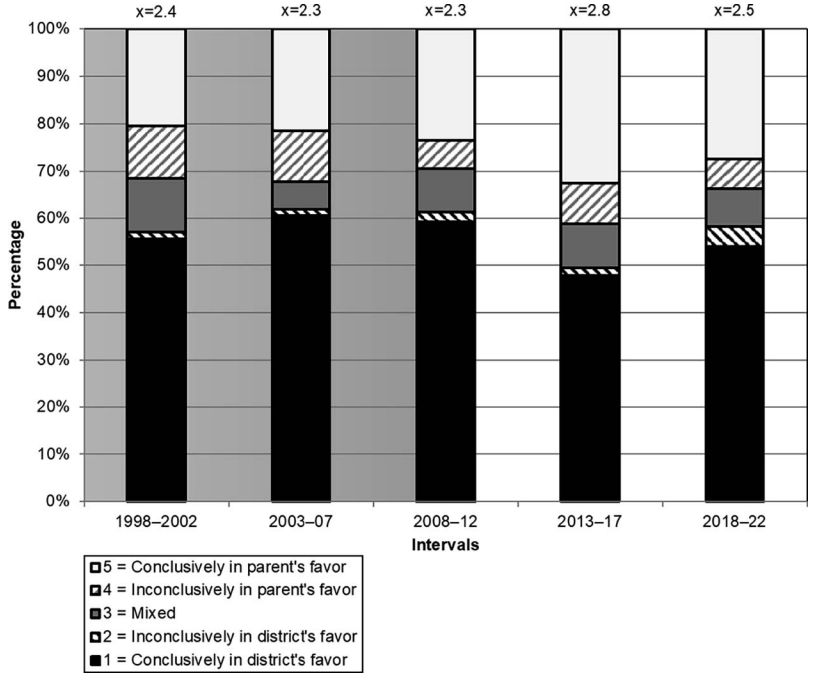
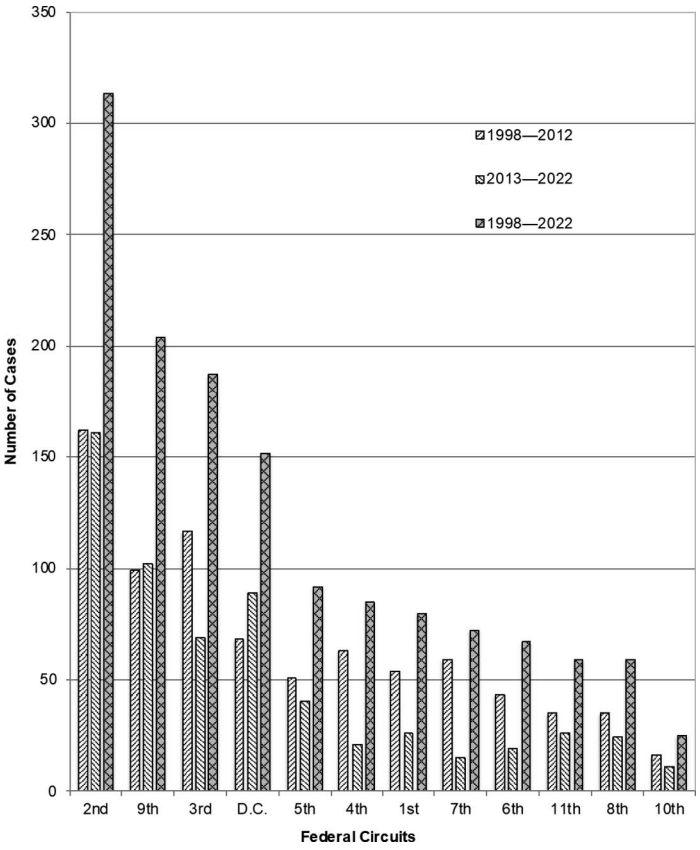


Figure 4

Frequency of Distribution Decided by Federal Circuits During the Period 1998–2022



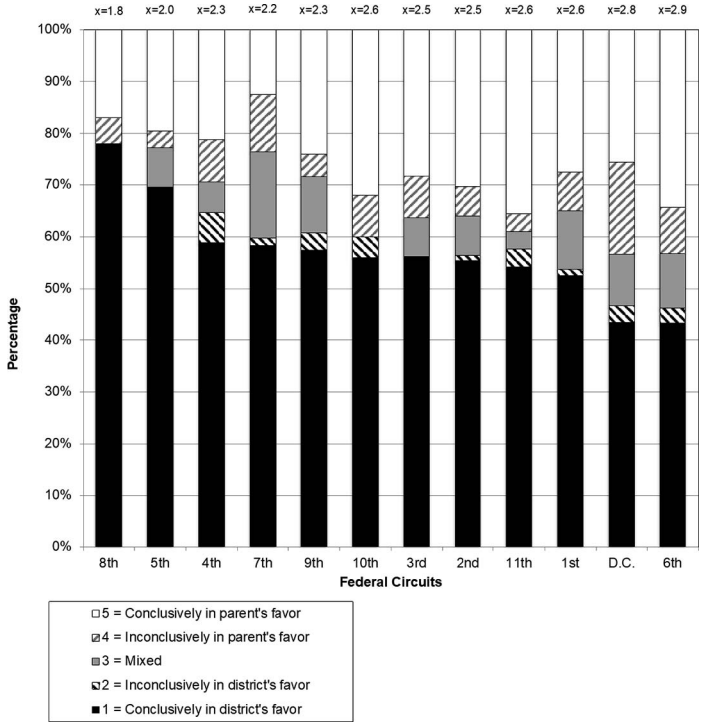
this limited moderation. Alternatively focusing on the conclusive segments of the bars for the last two intervals, the relatively notable moderation in the district skew during 2013–2017 shifted back closer to the previous pattern during 2018–2022. Although only imprecise approximations, the averages at the top of each bar also reflect this varying but limited skew toward the district side of the 1-to-5 scale.

For the first part of question #4, Figure 4 shows the regional trend of the frequency of the published court cases under the IDEA within the jurisdictional boundaries of each federal circuit court of appeals. The triad of bars for each circuit court region is for the first fifteen-year period, the most recent ten-year period, and the total for the twenty-five years. These regional circuits are in descending order of total frequency.

For the totals, the Second Circuit region, anchored by New York, was by far in first place, whereas the Tenth Circuit region, which covers the six states from Wyoming down to New Mexico, was clearly in last place. Within the two successive segments of the total period, with the second

Figure 5

Percentage Outcomes of Cases by Federal Circuits During 1998–2022



segment being only two-thirds the length of the first segment, the pronounced changes in ranking included the marked drops in position of the Third, Fourth, and Seventh Circuit regions and the upward movement of the Ninth and D.C. Circuit regions.

Finally, for the second part of the fourth question, Figure 5 presents the outcomes distribution for each circuit court region.

This final figure reveals that, in descending order, the courts in the Eighth and Fifth Circuit regions had the most district-favorable outcomes distributions, whereas the courts in the D.C. and Sixth Circuit regions were at the opposite end with a much more limited skew. The approximated averages at the top of each bar illustrate the varying effects of the inevitably imprecise weighting of the intermediate outcomes.

Discussion

The interpretation of the findings warrants a cautionary reminder of the context of the IDEA's litigation "iceberg." Like the effect of climate change on this frozen metaphor, the changes in the most clearly visible tip will correlate to a notable but imperfect extent with the successive lower levels extending down to in the much larger subsurface segment, with variable dynamic interactions with the

air above and the water below the surface. For IDEA adjudication, the resulting fluid-like internal changes among these levels include the melting and refreezing effects of appeals from one level to the next and both remands and settlements before and after the successive decisions. Moreover, for the IDEA's dispute resolution process, the decisional strata extend to the alternative investigative channels of the state complaint process and, based on the overlapping coverage of Section 504, the corresponding Office for Civil Rights complaint resolution process (e.g., Zirkel & McGuire, 2012). Finally, this limited snapshot amounts to a few frames of a much larger motion picture based on the variability and fluidity of (a) the interactions with the non-decisional alternate dispute resolution processes, including mediation and IEP facilitation; (b) the formal and informal practices of the various state and local education agencies; and (c) the changing environment of society, exemplified most recently by the COVID-19 pandemic and its sequelae.

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Yet, examining the trends in this proverbial tip of the IDEA litigation iceberg are worthwhile based on the ready visibility and relative accessibility of these published court decisions and, more importantly, their precedential effect on the various other levels via the jurisprudential doctrine of *stare decisis* (e.g., Dobbins, 2010). For both practical and empirical purposes, this relatively clear snapshot serves as a springboard for prudent leadership consideration and future research directions.

Within this larger context, the finding in response to research question #1 of the reversal of the upward trajectory of these published court decisions fits with Zirkel and Frisch's (2023) finding of a plateau effect for IDEA court decisions more generally as of 2000–2019. The reduction in the frequency level of the published decisions for the 2018–2022 interval may be attributable to the effect of the COVID-19 pandemic, which was after the Zirkel and Frisch coverage and which thus yielded a thud rather than a boom in the IDEA's adjudicative pipeline (e.g., Zirkel, 2023). Whether reduction in the latest interval is an artifact of the pandemic, it appears that the explosion in special education litigation has ended but the remaining level is still relatively high. In short, "legalization" remains an institutionalized feature of special education more prominently than the rest of P–12 education (Neal & Kirp, 1985).

The finding in response to question #2 of a ratio of 55% for districts to 26% for parents in the conclusive decisions for the entire twenty-five-year period represents a moderate mitigation of the 59% to 22% district skew for the earlier, fifteen-year segment (Karanxha & Zirkel, 2014). Nevertheless, for the overall 25-year period, the ratio remains more than 2:1 in favor of districts for these conclusive decisions. This relatively stable skew aligns with recent empirical findings that the Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1* (2017) reinforced rather than elevated the outcomes pattern originated in *Board of Education v. Rowley* (1982) for FAPE, which is the principal category of IDEA litigation (e.g., Connolly & Wasserman, 2021; Moran, 2020).

Conversely, the proportions for each of the intermediate outcomes remained identical between the earlier segment and the overall period. Although subject to closer examination in follow-up research, the constant 9% in the mixed category represents combinations of partial conclusive rulings and inconclusive rulings for both parties, thus not particularly affecting the overall precedential picture. However, the combined 11% of inconclusive rulings, although nominally skewed toward parents, may have an overall net effect that principally incentivizes settlements. For example, Holben and Zirkel's (2020) analysis of bullying litigation, which included but extended well beyond the IDEA and Section 504, found that two-thirds of the inconclusive rulings resulted in settlements, with the remainder resulting in abandonment/withdrawal (21%), conclusive unpublished decisions for districts (9%), and conclusive unpublished decisions for parents (3%). As an example from another partially analogous area of litigation, analyses of employment discrimination court decisions, including those based on Section 504 and the Americans with Disabilities Act (ADA), found that the ultimate disposition was a relatively but not overwhelmingly high proportion of settlements and an imbalanced, low proportion conclusively for the plaintiffs (e.g., Moss et al., 2005; Neilsen & Lancaster, 2010). Yet, as more than one scholar has observed, the specific contents of

settlements, including the extent of relief for plaintiffs, are largely cloaked in confidentiality (e.g., Fromm, 2001).

This finding of a limited moderating shift of the district-skew does not appear to signal a significant change in the contours of IDEA litigation more generally. Instead, in tandem with the change in the frequency trend, the overall pattern seems to represent relative stability since the early years (e.g., Zirkel & D'Angelo, 2002). The relatively long period since the 2004 amendments of the IDEA in comparison to the previous intervals of eleven, four, seven, and seven years, especially with the next reauthorization in sight, and the overall conservative leaning of the federal judiciary would seem to support this interpretation of relative stabilization rather than a dramatic outcomes shift.

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The finding in response to the fourth question of a predominance of relatively few circuits, led by the Second Circuit region with New York as the hub, fits with the finding of "two worlds" of special education litigation in research tracking the more general jurisdictional distribution of due process hearings (e.g., Zirkel & D'Angelo, 2002; Zirkel & Gullo, 2020) and court decisions under the IDEA (Bailey & Zirkel, 2015; Zirkel & D'Angelo, 2002). More specifically, the Second, Ninth, Third, and D.C. Circuit regions account for three-quarters of all of the published decisions during the 25-year period, thus also dominating the overall outcomes pattern.

The secondary finding of changes in the position of various circuit court regions from the first to the second segments of the overall twenty-five-year period appears to be attributable to the usual fluctuations in the traffic pattern rather than any dramatic circuit-specific development.

The finding in response to the final research question of a rather wide variance in the extent of the district-favorable skew among the circuit court regions confirms earlier outcomes comparisons among these regions (e.g., Zirkel & D'Angelo, 2002). Moreover, although only partially aligning with Zirkel and D'Angelo's findings for the early period of 1989–2000, which found that the Fourth, Fifth, and Tenth Circuit regions were the most district-favorable, the difference is likely due to their less differentiated outcomes scale and their more general scope, which was not limited to officially published court decisions. In contrast, the findings here for the overall twenty-five-year period largely correlated, especially at the polar positions, with the pattern found for the fifteen-year segment covered in our predecessor analysis (Karanxha & Zirkel, 2014). Within the intermediate area between the opposing polar sides, some of the circuit regions changed positions in one direction or another as compared with the period of the predecessor analysis, but these changes were probably due to the relatively restricted variance in their outcomes distributions. Overall, the difference in the outcomes among these regions, which are not at all limited to the decisions of the appellate level in each circuit, was likely attributable to the more general outcome patterns for the federal circuits, which depend on multiple factors that include but extend well beyond ideology (e.g., Yung, 2012).

For scholars, the recommended areas for follow-up research include more intensive exploration, including qualitative analyses, of (a) the inconclusive outcomes, (b) the regional outcomes differences, and (c) the extent of the precedential effect on due process hearing decisions and settlements. Conversely, it would be useful to extend the quantitative analyses to not only the specific major issue categories, such as the FAPE cases and the possible effect of *Endrew F.*, but also to wider and more obfuscated layer of unpublished decisions

For practitioners, the overriding lesson is twofold. First, stay legally current as to litigation trends at both the macro and micro levels. At the macro-level, these trends include the frequency and outcomes of court decisions for pertinent special education issue categories nationally and in your jurisdiction. This update reveals, for example, that the major escalation of IDEA court decisions has reversed direction during the overall twenty-five-year period, but the reduced level is still substantial and significant in comparison to the previous twenty-five years. Conversely, on an overall basis the outcomes continue to be in favor of school districts, but (a) the parents conclusively win approximately 25% of the published court decisions; (b) the inconclusive and mixed decisions account for approximately another 20%, providing leverage for

settlements and, for the mixed decisions that included conclusive rulings for parents, the basis for attorneys' fees; and (c) the published decisions amount to a relatively limited and imperfectly representative segment of the IDEA litigation.

At the micro-level, the awareness of trends needs to include specific IDEA issues, such as denials of FAPE based on material failures to implement the IEP that became pronounced during the pandemic and continue due to post-pandemic teacher shortage, and the pertinent developments at the various levels of the litigation iceberg, including the settlement and other alternate dispute resolution processes of the IDEA and the overlapping Section 504 adjudicative and investigative avenues. For example, during and after the pandemic, litigation on behalf students with IDEA IEPs has expanded under Section 504 and the ADA for money damages, a remedy not available under the IDEA, and for particular issues, such as vaccination or bullying.

Second and more importantly, make sure to differentiate these judicial trends from the higher level of professional best-practice norms, which should proactively remain the focus of special education leaders (e.g., Zirkel & Yell, 2023). The continuing emphasis on an effective investment in such proactive policies and practices, which clearly exceed legal requirements, build trust and collaboration with parents, thus fostering a reduction in costly, calloused, and notably "ponderous" litigation process under the IDEA (*Honig v. Doe*, 1988, p. 322). Ultimately, parents, districts, and students with and without disabilities benefit best from a win-win approach that solves problems creatively and effectively, with an emphasis on education rather than litigation.

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