AN ANALYSIS OF TEXAS SPECIAL EDUCATION DUE PROCESS HEARINGS
FROM SEPTEMBER 1, 1983, TO SEPTEMBER 1, 1992:
IMPLICATIONS FOR THE ADMINISTRATION OF
SPECIAL EDUCATION PROGRAMS

DISSERTATION

Presented to the Graduate Council of the
University of North Texas in Partial
Fulfillment of the Requirements

For the Degree of

DOCTOR OF EDUCATION

By

Paula J. Webb, B.S., M.A.
Denton, Texas
August, 1994
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The purpose of this study was to assess the effects of selected characteristics on the outcomes of those special education due process hearings brought forth in the state of Texas from September 1, 1983, to September 1, 1992. A further purpose was to determine if district characteristics of size or location affect the likelihood of a district's becoming involved in a special education due process hearing.

Data for the study was collected for all special education due process hearings conducted in the State of Texas from September 1, 1983, to September 1, 1992. A coding system was used to record the data for the study and the Chi-square test of independence was used to determine whether a relationship existed between the selected variable (hearing issue, disability classifications and restrictiveness of placement) and hearing outcome. The frequency of involvement in hearings for districts of
various size and urban characteristics was displayed as a percentage.

Results from the study indicate that slightly over 50% of the hearings occurred in districts located in urban or suburban areas while nearly one-forth of the hearings occurred in towns with populations of 3000 to 15,000. A growth in the number of hearings occurring in small districts was noted over the years of the study. Hearing issues did not show to be a significant predictor of hearing outcomes; however a significant relationship at the .05 level was identified between student disability and the restrictiveness of student placement and hearing outcomes. Data also indicated that hearing outcomes consistently favored a district complete win.

Recommendations to administrators as a result of the study would include careful adherence to due process procedures and programming for students in low density disability categories, documentation of justification when restrictively placing a student, enhancement of parent-school communication, use of state-level mediation and specialized assistance in programming for students in areas of parent-school dispute.
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CHAPTER I

INTRODUCTION TO THE STUDY

In 1974, the U.S. Comptroller General reported that fully 60% of the nation's disabled children were not receiving appropriate schooling. One million disabled children were excluded entirely from the public school system because of the severity of their handicap, and only 16 states provided special education services to more than half of their eligible school-age population (Roach, 1991).

Due to the contributions of many concerned parents, teachers, and visionary policy makers, the right of disabled students to a free appropriate public education has now been well established. Special education presently serves students who were previously excluded from schools and has developed into a sophisticated educational system for approximately four and a half million students nationally (Roach, 1991).

Paramount in obtaining these results was the passage by Congress of P.L. 94-142, The Education for All Handicapped Children Act (EHA, 1975). The EHA provides that states can receive federal funds for special education by establishing and implementing a comprehensive plan to provide a program of educational services to handicapped children within that
state (Rothstein, 1985).

The major underlying principles of the statute are as follows:

1. All handicapped children in the state are to be provided education and related services based on their individual needs.
2. The education is to be provided at no cost.
3. The education is to be provided within the least restrictive appropriate environment.
4. Comprehensive due process procedures are to be provided in the identification, evaluation, and placement of all children entitled to special education (Rothstein, 1985).

In the passage of the EHA, Congress assumed the existence of a federal constitutional right of the handicapped to a public education, and, in so doing, incorporated remedies for its enforcement at the individual level. These enforcement provisions are contained in the procedural section where the list of procedural rights afforded parents is substantial (Colley, 1981, p. 149). Under the EHA, parents may revoke their consent to an educational program, have full access to the education records of their child, can request an independent evaluation of their child if they disagree with the assessment of the school district, and are entitled to
notice whenever the school system wishes to implement a change in a child's program or refuses to initiate changes which the parents desire (Colley, 1981).

When parents are dissatisfied with an identification, evaluation or placement decision, they may access a full evidentiary hearing at which they have the right to the following:

1. an impartial hearing officer
2. cross-examination
3. counsel
4. notification by the district of the availability of inexpensive legal assistance
5. a compulsory process

Parents also have the right to a speedy determination of the administrative process and to appeal the hearing officer's decision directly to the federal or state court system (Rothstein, 1985).

In 1986, Congress passed an amendment to EHA which substantially increased parents' ability to seek resolution through the hearings and appeal process (Kemerer & Hairston, 1990). This amendment was a reaction to the Supreme Court decision in Smith v. Robinson, (1984). In that decision the court denied that prevailing parties in cases brought under EHA were entitled to be awarded attorney
fees (Cohen & Jones, 1988). Congress, disagreeing with the Supreme Court, passed the Handicapped Children's Protection Act of 1986. Section 1415(e)(B) of that act authorized a court to award attorneys' fees to a parent or guardian of a handicapped child who prevailed in an action or proceeding brought under that subsection. Not only does this act apply to proceedings litigated within the federal and state courts, but it also clearly refers to awards of attorneys' fees incurred in administrative proceedings, including due process hearings (Cohen & Jones, 1988).

Subsequent to the passage of the Handicapped Children's Protection Act (HCPA), the courts have determined that, to be a prevailing party, a parent does not have to win on all issues. Rather, to prevail means that the school district changes its behavior as a result of the parent's action. Thus, a parent can be a prevailing party if the school district changes its behavior as the result of a settlement, rather than a final decision of a hearing officer or court (Kemerer & Hairston, 1990).

Courts have also determined that parents may be entitled to at least a portion of their attorneys' fees even if they are successful on only some of the significant issues. Additionally, at least two courts have determined that school districts must pay attorneys' fees even when the
legal services to the prevailing parent were free or at a reduced cost (Horton, 1988).

The Handicapped Children's Protection Act does not provide for school systems to be reimbursed if they prevail. Absent unusual circumstances, school systems have no claim for fees in special education cases. Congress, however, did incorporate a settlement provision in the act which prevents parents from being awarded attorneys' fees and related costs subsequent to the time of a written offer of settlement by the school district to the parent if one or more of the following occur:

1. the offer is made more than ten days before an administrative hearing begins
2. the offer is not accepted by the parents within ten days of the hearing
3. the relief finally obtained by the parent is not more favorable to the child than the offer of settlement.

The purpose of this provision is to encourage settlement of these disputes and to provide a mechanism to that end (Kemerer & Hairston, 1990).

Following the precedent of the EHA, Congress enacted Public Law 99-457 (1986). This law provided new funding for programs for handicapped children ages birth through two. In Texas the Mental Health and Mental Retardation agency is
primarily responsible for the implementation of P.L. 99-457. This act does, however, interface with the public school through transitional obligations and time lines for program implementation once the disabled child reaches age three (Weber & Binkelman, 1990).

In 1990, the Education of All Handicapped Children Act was again amended to change the reference from "handicapped children" to "children with disabilities." The EHA is now known as IDEA, or Individuals with Disabilities Education Act. This amendment added autism and traumatic brain injury to the list of disabilities for which a student could receive services (Individuals with Disabilities Education Act, 1991).

The scope of this legislation clearly demonstrates the strong support of Congress for the education of children with disabilities (Cohen & Jones, 1988). This legislation, in conjunction with the vast amount of litigation it has created, makes implementing and administering special education programs a massive undertaking. Goldberg (1989) states that virtually any aspect of a student's program, traditionally set by administrators without challenge, may be subject to attack by dissatisfied parents.

Every school district, at some time or another, is likely to face a controversy with a parent of a student with a disability that will result in a hearing before a special
education hearing officer (Horton, 1988). If the controversy is ultimately resolved in favor of the parents, the district may find itself liable for reimbursement to the parents for educational services unilaterally obtained, or compensatory education for the child in addition to attorney fees (Horton, 1988).

The potential financial impact of these laws on the state education agency and school districts is unquestionably significant. The Texas State Education Agency assumes the cost of payment to the hearing officer and the court reporter as well as the expense of copying the transcript and decision (Texas Education Agency, 1978). How substantial this cost can be is evidenced by the payment of a quarter of a million dollars over a two-year period to one of the then four Texas appointed impartial hearing officers (Henslee, 1990). School districts incur expenses when they are involved in hearings through the cost of the district's legal counsel and that of a prevailing parent. At the present average rate of $150.00 an hour this cost can soon drain the school budget (Walsh, 1991).

A school district's involvement in a special education due process hearing can also undermine school and community public relations. The importance of community confidence in the education and programs provided by school officials to students is well documented (Kindred et al., 1884). Special
education due process hearings brought by parents in protest of district actions become public record. When the parent prevails, the district may suffer a diminished public image.

School systems can take steps to protect their public image and to avoid or minimize their exposure to attorneys' fees, reimbursements, or compensatory services. One step would include the assurance by special education administrators that their staff and teachers are fully aware of the due process procedural safeguards awarded to parents and handicapped students, as well as of significant emerging litigation (Special Education and the Handicapped, 1991).

Statement of Problem

Understanding what aspects of special education programming have been brought to hearing in other Texas districts and how these disputes were resolved can be invaluable to special education administrators in avoiding the monetary and credibility expense of losing a dispute in hearing. The problem of this study is to describe the characteristics of special education due process hearings and to analyze the patterns in issues arising from these hearings in the state of Texas from September 1, 1983, to September 1, 1992.

Purpose of the Study

The purpose of this study is to assess the effects of selected characteristics on the outcomes of those special
education due process hearings brought forth in the state of Texas from September 1, 1983, to September 1, 1992. A further purpose is to determine if district characteristics of size or location affect the likelihood of a district becoming involved in a special education due process hearing.

Research Questions

1. Is there a relationship between district size or location (urban, rural) and the likelihood of the district becoming involved in a special education due process hearing?
2. Is there a relationship between the type of due process hearing issue and the outcome of the hearing?
3. Is there a relationship between student disabilities (handicapping conditions) cited and due process hearing outcomes?
4. Is there a relationship between the restrictiveness of the student's placement at the time of hearing and the outcome of the hearing?
5. Is there a relationship between the representation by an advocacy group and the outcome of the hearing?

Basic Assumptions

The following assumptions formulate the basis for the study:
1. All information can be represented by discrete, nominal data.

2. The winner, or prevailing party, on each issue brought to hearing can be determined by the hearing officer's requirement for action, change of action or denial of such requirement.

3. Information gleaned from the data collected provides a basis for future data interpretation.

4. The data represent the status of due process hearings in the state of Texas.

Definitions

The following terms have been included for the purpose of this study as defined in *The Law of Public Education* (Reutter, 1985).

1. Abatement. The termination of a lawsuit.

2. Circuit court. A court in which rules are binding to federal trial courts in the states within its circuit and persuasive on other courts.

3. Class action. A lawsuit brought by one or more persons on behalf of all persons similarly situated as to complaint and remedy sought.

4. Common law. A law which is derived from customs of a country which become common to the entire country.
5. Consent decree. A judgment that is agreed upon by the parties to a suit and approved by a court.


7. Defendant. The party against whom an action is brought.


9. De minimis. A fact so insignificant as to be unworthy of judicial attention.

10. Demurrer. Allegation to the effect that even if acts asserted by plaintiff are true, there is no cause for action.

11. En banc. All judges in a circuit court hear a case.

12. Enjoin. A command to maintain the status quo either by doing or refraining from doing a specific act; the writ is called an injunction.

13. Federal trial court of general jurisdiction. This court is usually named the U.S. District Court; appeals from it go to the United States Court of Appeals.

14. Fundamental rights. Rights mentioned explicitly in the Constitution or those implicitly there as declared by the Supreme Court.

15. Hearing officer. A person who conducts the impartial hearings. In Texas, hearing officers
are appointed by the Commissioner of Education and trained by the state education agency.

16. Injunction. Permanent injunctions which are issued after trial on the merits. Temporary or preliminary injunctions are issued under the following conditions:
   a.) when a plaintiff can show he will suffer irreparable harm if relief is not granted at once
   b.) when there is a reasonable probability or substantial likelihood the plaintiff will prevail on the merits
   c.) when the threatened injury to the plaintiff outweighs the potential harm an injunction would do to the defendant
   d.) when the public interest will not suffer.

17. Mainstreaming. A term that refers to the mandate of EHA requiring that special educational services be provided to the handicapped child in the least restrictive environment.

18. Moot case. A case in which the factual controversy no longer exists and in which a judgment would be abstract with no practical effect.

19. Opinion. Reasoning that explains the conclusion reached by a judge.
20. **Petitioner.** The party bringing a case before a court; the appellant in a case appealed.

21. **Plaintiff.** The party who initiates the action in a lawsuit.

22. **Preponderance of the evidence.** The general standard of proof.

23. **Remand.** To send back to lower court.

24. **Respondent.** The party against whom a legal action is brought; the appellee in a case appealed.

25. **Stare decisis.** Let the decision stand. The doctrine of precedent, whereby prior decisions of courts are followed under similar facts.

26. **Strict scrutiny.** Applied when an action of a governmental official is shown to infringe on a fundamental constitutional right or disadvantages a suspect class. Under these circumstances the burden of proof shifts to the government to show a compelling need for the arrangement.

27. **Suspect classes.** Clearly defined groups that require extraordinary protection from the majoritarian political process because they suffer severe disabilities, have been subjected purposefully to grossly unequal treatment, or are relegated to a position of virtual political powerlessness.
28. Texas Administrative Code (TAC). A document containing the rules and regulations that the state agency establishes to carry out its responsibilities.


30. Ultra vires. Outside the legal power of an individual or body.

31. Writ of certiorari. When court grants to reexamine the holding of a lower court. The most common means of getting a school law case before the Supreme Court.
CHAPTER II

REVIEW OF RELEVANT LITERATURE

Since the enactment of the Individuals with Disabilities Education Act, formerly P.L. 94-142, numerous major federal litigations have been instituted in every part of the country in order to promote the educational rights of handicapped children (Colley, 1981). This chapter seeks to review the pertinent historical aspects of educational services to handicapped children by tracking relevant legislation and litigation.

Relevant Legal Concepts

In order to comprehend the legal issues involved in providing educational services to children with disabilities, it is necessary to understand certain key legal concepts. This section reviews the origins of the power to establish, govern and regulate the public schools and the judicial role in adjudicating public school issues. Several legal concepts important to the education of disabled children are also presented. Additional concepts and terms can be found in the definition section of Chapter One.

The United States Constitution at no point refers expressly to education. Because education is not a power
specifically delegated to the federal government by the U.S. Constitution, it became a state function under the Tenth Amendment (Reutter, 1985). The Tenth Amendment provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The General Welfare Clause, Section 8, of Article I, gives Congress the power to tax and spend "The Congress shall have power to lay and collect taxes, duties, imports and excise, to pay the debts and provide for the common defense and General Welfare of the United States ...." Congress acts under the General Welfare Clause when it offers funds for purposes it deems to serve the public good. If a state elects to accept the money, it is bound by the conditions attached. The vast majority of the federal statutes directly and substantially affecting education policies offer federal funds to the states conditioned upon the states observing certain prescriptions for the use of the money (Alexander & Alexander, 1985).

Although never expressly referring to education, the federal Constitution does affect education. Pursuant to the Tenth Amendment, Congress is not empowered to enact legislation controlling education matters; however, Congress has the power to implement provisions of the Constitution throughout the nation. Thus, for example, public education
systems are subject to the anti-discrimination in employment portion of the Civil Rights Act of 1964, which pertains to the states under authority of the First Amendment and the equal protection clause of the Fourteenth Amendment (Reutter, 1985).

The number of educational cases in which the Constitution is directly involved has increased at a rapid rate since the 1960's. The sections of the Constitution that substantially affect public schools are the amendments that protect the rights of individuals (Reutter, 1985). The Bill of Rights and Fourteenth Amendment of the U.S. Constitution have traditionally furnished a basis for litigation against public schools (Kemerer & Hairston, 1990).

The First Amendment established basic personal freedoms or civil rights including redress of grievances (Alexander & Alexander, 1985). The First Amendment states the following:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.
By interpretation of the Supreme Court, the Fourteenth Amendment makes the provisions of the First Amendment applicable to the individual states (Reutter, 1985). The portion of the Fourteenth Amendment which has extensively influenced litigation in behalf of the handicapped (Alexander & Alexander, 1985) states the following:

No state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The rights to "due process" and "equal protection" have been important to education. These two major sources of constitutional litigation in the educational arena assure the following:

1. that a property right cannot be deprived without due process
2. equal protection of the law (Kemerer & Hairston, 1990).

For legal purposes there are two distinct aspects of due process, substantive and procedural. Substantive due process protects against grossly unfair acts of government. Substantive due process pertains to legislation itself and
requires that, if a state deprives a person of life, liberty, or property, the state must have a valid objective and the means used must be reasonably calculated to achieve the objective (Reutter, 1985).

Procedural due process pertains to the decision-making process followed in determining whether the law has been violated. A basic fairness in adjudication is required of those purporting to implement the law (Reutter, 1985). Procedural due process requires that if an individual is to be deprived of his life, liberty, or property, a prescribed constitutional procedure must be followed. The Supreme Court has said that in order to give an individual procedural due process, as required by the federal Constitution, three basic factors must be present. First, the individual must have proper notice that he or she is about to be deprived of life, liberty or property. Second, he or she must be given an opportunity to be heard. Third, the hearing must be conducted fairly (Alexander & Alexander 1985).

In recent years, the courts have made it abundantly clear that procedural due process is not confined to the courts but must also be afforded to individuals by administrative agencies, such as schools, when the potential loss of a fundamental right is at stake (Alexander & Alexander, 1985).
State constitutions form the basic law of the individual states, subject to the supremacy of the federal Constitution and federal statutes enacted within Congress' powers. States may provide more, but not fewer, rights to students than are required by the federal Constitution (Reutter, 1985). An important legal concept is that legislation or rule-making on any level within the state cannot be in conflict with higher authority (Reutter, 1985).

All state constitutions provide for a system of free public schools. The power to operate a public education system originates with the constitutional delegation to the legislature to provide for a system of education (Alexander & Alexander, 1985). Public school systems have become so complex that it is impossible to attempt to control their administration in detail by specific legislative enactments. In recognition of this fact, the law is well settled that state and local boards of education, school administrators and classroom teachers have the authority to adopt and enforce reasonable rules and regulations for operation and management of the public school systems (Reutter, 1985).

The Texas Constitution of 1876 established the legal basis for a public school system in the state. Section 1 of Article VII reads as follows:

A general diffusion of knowledge being essential to the preservation of the liberties and rights
of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of free public schools.

Texas statutory law on the handicapped is contained in the Texas Education Code. These provisions require the State Board of Education (SBOE) to develop and maintain a state-wide plan for serving handicapped children. The SBOE has supplemented these code provisions with a complex set of administrative law requirements to assure the implementation of programs to students with disabilities (Kemerer & Hairston, 1990).

Judicial intervention in the educational arena may be considered justifiable when a power granted to an agency such as a school district is not properly applied or the prescribed law is not followed in effective administrative action. Recourse usually may be sought in the federal courts when a federal Constitutional question or federal statute is involved. When legislation is passed and a properly presented case concerning it is brought before the federal courts, it becomes the obligation of the court to determine, as far as possible, what it deems was the intention of the legislative body when it enacted the law in question (Alexander & Alexander, 1985).
Another basic legal concept in the United States is the doctrine of precedent or the rule of *stare decisis*, "let the decision stand." Under this doctrine, past court decisions are generally considered to be binding on subsequent cases that have the same, or substantially the same, factual situations. This doctrine is rigidly adhered to by lower courts when following decisions by higher courts in the same jurisdiction. Courts can limit this impact by carefully distinguishing the facts of a case from those of the previous case that established the rule of law. Courts of last resort can reverse their own previous decisions and change a rule of law that they themselves established (Alexander & Alexander, 1985).

Federal jurisdiction is created by acts of Congress. Since the 1960's, one such provision has profoundly affected public education by serving as a basis for suits in federal courts. The statute has its origins in the Civil Rights Act of 1871, but it has been revitalized and utilized as a vehicle for federal court scrutiny of many rules of school authorities pertaining to students (Alexander & Alexander, 1985). This provision, popularly known as Section 1983, states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be
subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. By evoking this section, a student can claim the deprivation of a federal constitutional or statutory right by the act of a school authority or by operation of a school regulation, thereby invoking federal jurisdiction. Section 1983, however, does not require federal courts to hear and decide all suits in which constitutional deprivations are asserted. To be heard, a federal constitution or statutory question must exist in substance, and not in mere assertion (Reutter, 1985).

Beginning in the 1960's, Congress passed several additional statutes that require or prohibit certain conduct by state and local authorities in connection with any program or activity receiving federal financial assistance. The broad general prohibitions of these acts cover race, color or national origin, sex and otherwise qualified handicapped individuals (Reutter, 1985).
Historical Aspects

A review of the history of the education of students with disabilities reveals the significance of legislation and litigation to their educational rights. Special education programs in the United States originated during the early nineteenth century. Advocates of handicapped children either established educational programs themselves, or pressured state legislatures to pass legislation to achieve that purpose. These early programs, however, were isolated and limited to specific handicaps (Cruickshank & Johnson, 1967).

The earliest known school for handicapped students was established in Hartford, Connecticut, in 1817 by Thomas Hopkins Gallaudet. Gallaudet founded the School for the Education of the Deaf. More schools for the deaf followed his example (Alexander & Alexander, 1985). In 1830, through the tireless efforts of Horace Mann, the Massachusetts State Legislature passed a law which authorized the first state hospital for the mentally ill. Soon after, in 1832, New York established a school for blind students (Cruickshank & Johnson, 1967). By 1852 New York, Pennsylvania and Massachusetts all had appropriated money for programs for the education of mentally retarded children (Alexander & Alexander, 1985).
In the United States, programs for handicapped children in the public schools developed slowly. Public apathy and scarce financial resources combined to prevent significant effort to extend an equal educational opportunity to the handicapped until the 1970s (Alexander & Alexander, 1985). During the early era of America's past, children with a handicap of any severity were thought unable to profit from attendance at school with normal youngsters. They also were often considered to be a liability to the school atmosphere due to the revulsion they were thought to induce among non-handicapped children and adults.

In 1893, a Massachusetts court ruled that student behavior resulting from imbecility was grounds for expulsion allowing the barring of many mentally retarded students from public schools. A later decision ruled that a handicapped student, even though academically capable, could be excluded from regular public school classes because his handicap had a depressing and nauseating effect on the teachers and school children (Alexander & Alexander, 1985).

This attitude toward handicapped children helped to create their widespread exemption from the nearly universal compulsory education laws (Colley, 1981). By 1918, all states had compulsory school laws requiring children to attend school (Kemerer & Hairston, 1990). Parents who resisted faced the threat of criminal penalties. By
contrast, handicapped children were historically excused or denied public instruction should a school board declare them to be unable to profit from education (Colley, 1981).

By the turn of the century, however, attitudes toward handicapped children began to shift. In 1900, Chicago started public school classes for physically handicapped and blind students. Several other states followed, thereby establishing the entry of handicapped children into the public schools.

During the twentieth century, changes in social conditions leaned more favorably toward the handicapped (Cruickshank & Johnson, 1967). The return home of disabled World War I veterans focused national attention upon the needs for handicapped educational programs. In 1918, Congress passed the Soldiers’ Rehabilitation Act (Cruickshank & Johnson, 1967), followed in 1920 by the Smith-Bankhead Act. Both acts offered vocational rehabilitation services in the form of job training and counseling (Alexander & Alexander, 1985). By 1944, these acts were amended to include services for mentally ill individuals and the mentally retarded. They also provided additional funds for research and training programs for the handicapped (Alexander & Alexandre, 1985).

A few states established educational programs for the handicapped from 1940 to 1960, but such efforts were not
comprehensive and failed to address the special needs of most handicapped children, particularly those who were severely handicapped (Alexander & Alexander, 1985). During this era, the right to an education for the handicapped child was only beginning to be conceptualized in the United States. This conceptualization accelerated, however, with the quest for individual rights triggered by civil rights movements of the 1960's.

The Supreme Court cases of *Brown v. Board of Education of Topeka* (1954) and *Wisconsin v. Yoder* (1972) expressed the idea that education was not only critical to the public welfare but was the primary social learning mechanism of society. The reasoning of the court was that to be deprived of an education is to be socially crippled, and to be denied the opportunity to an education in a particular milieu is to be cut off and alienated from that milieu (Colley, 1981).

Extending this reasoning to handicapped children, when considering the fact that they had traditionally been denied access to school with the rest of society, significantly strengthened a case for their access to a public education (Colley, 1981). In accepting the reasoning of the Brown and Yoder decisions, it became clear to advocates that the handicap of these children could only be aggravated by the additional injury that the lack of appropriate social interaction with the wider society caused. Thus, advocates
reasoned, to the extent that education is provided to the children of a state, the state must provide it equally to all, including those with physical and mental impairments. It did not then take too great a step to reason that the right to a free public education for handicapped children could be established under the General Welfare Clause. This concept proved to be the first and greatest argument for a federal constitutional right to an education for handicapped children (Colley, 1981).

In spite of the ground work laid by the Brown and Yoder decisions, it was not until the latter part of the 1960's and early 1970's that pervasive concern for the equality of educational opportunity swept the nation and expanded to the handicapped (Alexander & Alexander, 1985). Prior to the 1970's, there was no established right to an education for handicapped children. Two early 1970's court decisions assisted in the articulation of this right to the rest of the nation. One of these cases occurred in 1971 when a federal district court ruled that retarded children in Pennsylvania were entitled to a free public education (Colley, 1981).

In Pennsylvania Association for Retarded Children v. Pennsylvania, 1971, (PARC), a three-judge panel approved a consent decree which entitled all mentally retarded children in Pennsylvania access to a free public education. This
order required a revamping of the interpretation of the state's statutory law which had been relied on to deny such access (Colley, 1981). The ruling stipulated that, whenever possible, retarded children must be educated in regular classrooms rather than segregated from the normal school populations. Procedural due process and periodic reevaluation of retarded children were also part of the courts consent agreement (Alexander & Alexander, 1985).

The PARC decree was entered as a consent judgment. The plaintiff and defendants, consisting of state and local school officials, recognized the inadequacy of existing services for handicapped students and jointly agreed on a decree to remedy the problem. The Federal Court, in essence, ratified an agreement between advocates for children's services and professional service agencies, requiring the state treasuries to provide greater funds on behalf of handicapped students (Rebell, 1981).

In Mills v. Board of Education of the District of Columbia (1972), the court expanded the Pennsylvania decision to include all handicapped children. In Mills, the court determined that denial of a free public education to handicapped children from poor families violated applicable statutes, regulation and the federal Constitution (Colley, 1981). The federal district court found that on both constitutional and statutory grounds, the plaintiff class of
handicapped students had been illegally excluded from public education facilities. The court issued an extensive decree which provided procedures to assure basic school access and specific due process rights (Rebell, 1981).

The comprehensive plan adopted in Mills was formulated by the District of Columbia Board of Education. Included in the plan were provisions for a free appropriate education, an individual education plan, and due process procedures.

With the inclusion of specific mandates the PARC and Mills decisions laid the groundwork for future federal legislation in behalf of handicapped children's access to an appropriate education (Alexander & Alexander, 1985). However, in neither PARC nor Mills was the right of handicapped children to a free appropriate education necessarily grounded on federal constitutional provisions. In PARC, no determination of the merits was established since the plaintiffs asserting the constitutional right got what they wanted through negotiation (Colley, 1981). Mills was based on a suspect class of poor and not necessarily the handicapped.

In a 1973 case, San Antonio I.S.D. v. Rodriguez, the U.S. Supreme Court decided that education is not a fundamental right available to all persons. The Court ruled that states do not have to set up public school systems. However, when a state does decide to provide public
education, as all states have done, the state has established an important benefit which it cannot take away from students without following due process procedures (Kemerer & Hairston, 1990).

As the claims of handicapped students to a free appropriate public education were beginning to be refined judicially, Congress passed the Vocational Rehabilitation Act of 1973. Section 504 of that act prohibits exclusion from participation in any program or activity receiving federal financial assistance solely by reason of handicap (Reutter, 1985). Although section 504 is concerned with the discrimination of handicapped individuals in work situations, it also addresses the problems encountered by handicapped children in seeking equal educational opportunity (Alexander & Alexander, 1985). Five mandates encompassed in Section 504 that pertain directly to the educational needs of handicapped children are the following:

1. location and notification
2. free appropriate public education
3. educational setting
4. evaluation and placement
5. procedural safeguards (Reutter, 1985).

This legislation in conjunction with several court decisions, including PARC and Mills, helped to articulate some educational rights to the handicapped. It was not,
however, entirely clear what source of law provided the enforceable right of a handicapped child to an education until the passage of the federal government's landmark legislation, The Education for All Handicapped Children's Act in 1975, or P.L. 94-142 (Colley, 1981).

Educational Rights of Disabled Children

The development of handicapped programs in public schools came with a few key court decisions and the Education for All Handicapped Children's Act (Alexander & Alexander, 1985). The passage of P.L. 94-142, the EHA, was a result of the intensive lobbying effort of parents and professionals on behalf of disabled children and youth (Roach, 1991). At the time of the enactment, approximately 1.75 million handicapped children throughout the United States were receiving no educational services at all, and 2.5 million were receiving inadequate services (Rebell, 1981). From 1976 to 1981, the number of children receiving special education services rose 13% (Alexander & Alexander, 1985) and by 1991 nearly 10% of all students were enrolled in special education programs (Roach, 1991).

The right of handicapped children to a free appropriate public education was assumed by Congress when it enacted EHA. This assumption is explicit in Congress' Statement of Findings and Purpose:

(8) State and local educational agencies have a
responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special education needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law (Colley, 1981).

The underlying principles of EHA were founded on equal protection and due process principles within the Fourteenth Amendment (Rothstein, 1985). These tenets include the following:

1. a free appropriate public education
2. an individualized educational program
3. special educational services
4. related services
5. due process procedures
6. the least restrictive environment in which to learn.

The act further required that all handicapped children between the ages of three and twenty-one be served.
The EHA defines a free appropriate public education (FAPE) as special education and related services with the following qualities:

1. they have been provided at public expense, under public supervision and direction, and without charge.
2. they meet the standards of the state education agency.
3. they include an appropriate preschool, elementary, or secondary school education.
4. they are provided in conformity with the individual education program (EHA, 20 U.S.C. 140(18), 1975).

Special Education is defined as "specially designed instruction at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospital and institutions" (Huefner, 1989).

The related services provision of the statute states that the term, related services, means "transportation and such developmental, corrective, and other supportive services ... as may be required to assist a handicapped child to benefit from special education" (Huefner, 1989).
This special education, consisting of instruction and related services and carried out through an individualized education plan (IEP), constitutes a free appropriate public education (FAPE). The individualized education program must be documented to include long and short-term goals, methods for instruction and related services for each handicapped child within the school district (Colley, 1981).

The concept of least restrictive environment (LRE) requires that districts make available a range of optional educational service programs from regular classroom placement with minimal special education support service to residential placement and complete custodial care. The presumptive best placement is that placement which is closest to the child's home and the closest to the regular classroom environment. As placement gets closer to the regular classroom, the child is less restrictively placed. As placement approaches institutionalization, the child is more restrictively placed. Placement may be anywhere along the continuum and be least restrictive, as appropriate to the child's needs, and as the presumption of regular classroom placement is refutable (Colley, 1981).

In order to ensure the provisions of appropriate educational services to all handicapped children, the EHA provided for detailed due process. These procedures are applicable whenever the public school system identifies,
refuses to identify, evaluates, places or changes the placement of a qualified child (Rothstein, 1985).

Under the EHA, parents must be notified in writing of any proposed alteration in their child's classification or placement and the reason for the change (Goldberg, 1989). When a disagreement arises, either parents or school administrators may request a timely hearing presided over by an impartial hearing officer (Goldberg, 1989).

At a hearing both sides are entitled to the following:

1. representation by legal counsel or other advocates
2. access to all educational records
3. examination of witnesses.

The hearing may be opened or closed to the public (at the parents' discretion), and a record of the proceedings must be kept. After the hearing, parties have the right to receive a written decision of the hearing officer, and to appeal adverse decisions (Goldberg, 1989).

These impartial hearing and appellate review procedures are designed to resolve factual disputes and disagreements (Rothstein, 1985) and grant parents an unprecedented right to challenge any aspect of a current or proposed special education program. By imposing this legal model of dispute resolution, Congress intended that parents and students receive a fair opportunity to be advocates for the programs they sought (Goldberg, 1989).
The EHA incorporates a zero reject principle (Wegner, 1981) in that it applies to all handicapped children. Congress clearly expressed a presumption that any handicapped child may benefit from educational programming regardless of the severity of the handicapping condition. To have good faith compliance with the full educational opportunity goal established in 20 USC section 1412(2)(A), no child may be excluded (Colley, 1981).

Relative Litigation

Congress passed the Education for All Handicapped Children's Act (EHA) to delineate funds and remedy the lack of educational services to handicapped children (Rebell, 1981). Since its enactment, however, there has been major federal litigation instituted in every part of the country to promote educational rights to the handicapped. The procedural provisions of the EHA, the terminology of substantive rights, the large number of children who might be covered by the act, and the large sums of money potentially involved, work to make this statute by far the most litigation prone educational measure ever enacted (Reutter, 1985). The importance of the study of this litigation to education administration lies in the doctrine of precedent, whereby prior decisions of courts are followed under similar facts (Reutter, 1985).
Free Appropriate Education

The Supreme Court issued its first opinion of the EHA in a sign language case, *The Board of Education of Hendrick Hudson v. Rowley* (1982). In Rowley, the U.S. Supreme Court reversed a lower federal court decision and ruled that, pursuant to P.L. 94-142's provision of free and appropriate education for handicapped children, a school district was not required to provide interpreter service for a deaf student (Reutter, 1985). In this case, Amy Rowley's parents believed that Amy should have the services of an interpreter in order for her to make optimum progress in school (Broadwell & Walden, 1988). The Supreme Court held the EHA did not require a school district to furnish a sign language interpreter for a deaf elementary school student "who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of the public school system" (*Board of Education of Hendrick Hudson v. Rowley*, 1982).

In ruling against Rowley, the Supreme Court refuted the district court's definition of appropriate education, maintaining that Congress intended only to provide handicapped students with a "basic floor of opportunity," not a specific quality of education (Alexander & Alexander, 1985). In approving the individual educational program for Amy Rowley, the Court did not provide a high substantive
standard for special education programs (Zirkel, 1989a). Rowley did articulate, however, a standard for reviewing any challenge to the appropriateness of a handicapped child's program (Walsh, 1986).

In Rowley, the Court also dealt with the intent of Congress in enacting P.L. 94-142. The Court stated that Congress' primary motive for passage of the EHA was to make public education available to all handicapped children. The Court discussed at some length the apparent absence of substantive standards for the level of educational quality (Broadwell & Walden, 1988), saying that the act did not require a state "to maximize the potential of each handicapped child commensurate with the opportunity provided non-handicapped children ... rather Congress sought primarily to identify and evaluate handicapped children and to provide them with access to free public education" (Board of Education of Hendrick Hudson v. Rowley, 1982). To further define the meaning of appropriate, the majority in Rowley asserted that access should result in educational benefit for the handicapped child (Alexander & Alexander, 1985). The Court held that the requirement of a free appropriate public education is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction (Reutter, 1985).
The Supreme Court, in Rowley, held for the school district, and in so doing, established a two-pronged test to determine whether a school district was providing the free appropriate education required by P.L. 94-142. First, the school district had to demonstrate that the educational plan fashioned for the student was developed in conformance with the procedural guidelines mandated by the act; and second, school officials had to show that the plan would enable the student to benefit educationally (Broadwell & Walden, 1988). If a child is being educated in the regular classroom of the public educational system, the child's individualized education program should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade (Reutter, 1985).

The Court also cautioned lower courts regarding making judgments concerning the educational requirements of methodology employed to educate the handicapped. "In assuring that the requirements of the act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the states" (Board of Education of Hendrick Hudson v. Rowley, 1982). The primary responsibility for formulating the education to be accorded a handicapped child and for choosing the educational method most suitable to the child's needs was left by the act to states and to local education agencies in cooperation with
the parents or guardian of the child (Broadwell & Walden, 1988).

The central issue in Rowley was the definition of free appropriate public education (FAPE), the underlying tenet of EHA (Alexander & Alexander, 1985). The Rowley Court articulated the following considerations in deciding FAPE cases:

1. There is no requirement to maximize handicapped children's potential commensurate with the opportunity provided non-handicapped children.

2. The act requires a basic floor of education opportunity, access to specialized instruction and related services which are individually designed to provide educational benefit to a handicapped child.

3. Furnishing handicapped children with only such services as are available to non-handicapped children would, in all probability, fall short of the statutory requirement of a free appropriate public education. To require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is further than Congress intended to go.
4. Congress recognized that regular classrooms simply would not be a suitable setting for the education of many handicapped children. The act provides for the education of some handicapped children in separate or institutional settings.

5. Judicial review must make two inquiries:
   a. Has the school complied with all the procedures set forth in the EHA?
   b. Is the IEP developed through the EHA's procedures reasonably calculated to enable the child to receive educational benefits?

   (Hendrick Hudson District Board of Education v. Rowley, 1982)

   Since 1982, the federal courts have used Rowley to guide them in dealing with conflicts over what constitutes a free appropriate public education (Broadwell & Walden, 1988). The two-pronged approach requiring a basic floor of opportunity and benefit from special education, articulated by the Court in Rowley, limited the scope of the judicial pursuit of special education. In narrowing the limits of court review, the Supreme Court gave greater authority to state and local school administrators and limited parental opportunity to challenge a school's educational program (Broadwell & Walden, 1988).
Related Services

In a second case, *Irving Independent School District v. Tatro* (1984), clean intermittent catheterization (CIC) was required by the Supreme Court in spite of the school district's claim that the service was medical and therefore not permissible under P.L. 94-142. Guidelines under the act exempt medical services except those for diagnostic and evaluation purposes. Under EHA, supportive services that enable handicapped children to benefit from special education must be made available without cost to the parent (Alexander & Alexander, 1985).

Tatro involved an eight year-old who suffered from spina bifida and required CIC every three or four hours to avoid injury to her kidneys. The procedure can be performed in a few minutes by a lay-person with less than an hour training (Broadwell & Walden, 1988). In Tatro, the Supreme Court said "where Congress sought primarily to make public education available to handicapped children and to make such access meaningful... without having (CIC) services available during the school day, Amber Tatro cannot attend school and thereby benefit from special education" (*Irving Independent School District v. Tatro*, 1983). The Court unanimously held that the school district must provide the service. The Supreme Court also found to be reasonable the distinction in the rules of the Department of Education between medical
services (which must be performed by a physician, and are required only for diagnosis or evaluation) and school health services (which may be performed by a school nurse or other qualified person, and are required if necessary to aid a handicapped child to benefit from special education) (Reutter, 1985).

Pursuant to Tatro, the Supreme Court noted three conditions that had to be met in order to qualify for a related service such as CIC:

1. To be entitled, a child must be handicapped so as to require special education.
2. Only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless of how easily a school nurse or lay person could furnish them.
3. The services must be those that can be provided by a nurse or other qualified person, and not by a physician (Broadwell & Walden, 1988).

Subsequent to Tatro, when disputes have arisen regarding which medical services fall within the provision of EHA, the courts have generally taken a broad interpretation of allowable services (Alexander & Alexander, 1985).

While the EHA's definition of related services specifically excludes public schools from providing any sort
of medical services other than for diagnostic and evaluative purposes, this determination is becoming increasingly difficult (Bucek, 1991). This is, to a large degree, due to advances in modern medical technology. With more medically fragile children surviving, the medical condition of these children is such that the distinction between a related educational service and a medical service is increasingly blurred and difficult to determine (Bucek, 1991).

In the case of Clovis v. California Office of Administrative Hearings (1990), the court said that in order to determine what is an educationally related service, as opposed to a medical service, the focus must be on whether it is necessary for the learning process. If the service is more essential to the medical, social or emotional aspects of the child's health, rather than more essential to the learning process, then it is medically related and not educational in nature (Bucek, 1991).

Another standard that has been used to determine when a service is an educationally related service is the extent and scope of the service required. In Detsel v. Board of Education (1987), the parents of a handicapped child requested that the school pay for a life support system for their child. The court rejected this request, stating the responsibility for such extensive therapeutic health services was contrary to the medical exclusion in the EHA
(Bucek, 1991). The court further contended that a legal duty to supply a service arises only when, without the services, the child's educational program would become less than appropriate or when the child would not benefit from his/her educational program (Walsh, 1991a).

Related services that courts have generally ruled are required by the EHA include the following:

1. tracheostomy and nasogastric tube care
2. reinsertion of a dislodged trachetory tube
3. clean intermittent catherization,

Services courts have defined as medical and excluded under the Act include the following:

1. one-on-one medically trained aide to provide the child with feeding through a gastro button, administration of nebulizer and oxygen, specialized manipulation to avoid aggravation of a hernia and extensive, in-school nursing care
2. continuous monitoring of several medical devices to sustain life
3. subsidized physical therapy when the child was already benefiting from the physical therapy being received (Bucek, 1991).
Shortened Day and Extended Year Services (EYS)

Another issue of appropriate education which has continued to be a matter of contention involves the length of the school year and the amount of time necessary for a unique education (Broadwell & Walden, 1988). Texas State Board of Education rules require that handicapped children "have available an instructional day commensurate with that of non-handicapped students" (SBOE Rules, 1991). Additionally, the Office of Civil Rights (OCR) generally has ruled that the shortening of a handicapped child's school day violates section 504 of the Rehabilitation Act (Gallegos & Anderson, 1989).

A decision to shorten a handicapped child's school day for transportation reasons has been ruled to clearly violate the EHA and Section 504, as has any categorical decision to shorten the school day (Gallegos & Anderson, 1989). It is, however, procedurally permissible to shorten a handicapped child's school day if the Admission Review Dismissal (ARD) committee determines that the child is incapable of benefiting from a full day (Gallegos & Anderson, 1989).

In a Fifth Circuit case, Christopher M., b/n/f Laverto McA., v. Corpus Christi I.S.D. (1991), the court upheld the ARD's decision of a shortened day. Christopher's day was reduced from a full day to four hours after surgery to implant a gastric tube. The court held that under Texas law
there is no presumption in favor of providing a seven hour school day to handicapped children whose ARD committee found a shorter school day to be appropriate. The court declined to create any presumption in favor of the testimony of the child's treating physician. The court considered that school personnel often have the greater knowledge of the child's needs in the educational setting (Henslee, 1991).

Another area of considerable litigation is the issue of summer services for handicapped students. Courts have said that school districts are not obligated to offer summer services just because it would be beneficial or would strengthen skills learned during the regular school year. Rather, the legal obligation to offer extended year services (EYS) arises only when the child's unique condition is such that, absent such services, his education cannot be characterized as appropriate (Kemerer & Hairston, 1990). In Battle v. Pennsylvania (1981), the Third Circuit struck down Pennsylvania's 180-day limit as it applied to a class of children who were severely and profoundly retarded or seriously emotionally disturbed (SED). The court, in Battle (1981), further set down a standard of regression and recoupment to aid in determining the need for extended year services to handicapped students. This standard asks if "without an extended school year, will the student regress so severely that he will be unable to recoup, to such an
extent that he will be unable to attain his goal and objective, to such a degree that he will ultimately be less self-sufficient when he leaves special education?" By this standard most special education students do not qualify for extended year services (Slenkovich, 1987).

The court, in Battle, also set up guidelines to determine when more services would be required. Five key factors cited to be considered include the following:

1. the handicapping condition (which requires consistent highly structured programs)
2. the severity of the handicap
3. the areas of learning (to include attainment of self-sufficiency, independence from caretaker, and avoidance of institutionalization)
4. the parental contribution (assuring that parents are not immune from obligations in maintaining a child's progress during the summer months, but that the parents' time constraints and lack of expertise must be taken into account)
5. the extent of regression and the amount of time it would take to re-acquire, or recoup, lost skills.

It is now well established that extended year services focus on severely emotionally disturbed students and retarded or autistic students (Slenkovich, 1987).
Regulations for extended year services (EYS) have been established for Texas districts by the State Board of Education (SBOE). Under these rules, the need for EYS must be documented from formal or informal evaluations provided by the district of the parents. This documentation must demonstrate that unless the student is provided EYS the student will exhibit, or is reasonably expected to exhibit, severe or substantial regression without reasonable recoupment in one or more critical areas addressed in the current individual education program objectives. The reasonable time for recoupment should not exceed eight weeks. If the loss of critical skills is particularly severe or substantial or may be expected to result in immediate physical harm to the student or others, the rules permit EYS to be justified without considering the recoupment time (Henslee, 1990).

Under these rules, a skill is critical if its loss unexpectedly results, during the first eight weeks of the next school year, in any of the following:

1. placement in a more restrictive setting
2. significant loss of self sufficiency in self-help skills evidenced by an increase in the number of staff working directly with the student or the amount of time required for special education or related services
3. loss of access to community-based independent living skills instruction or an independent living environment provided by non-educational sources

4. loss of access to on-the-job training or employment (SBOE Rules, 1991).

On May 29, 1986, in the case of Alamo Heights ISD v. SBOE, the Fifth Circuit Court of Appeals again affirmed the fact that some handicapped children are entitled to receive educational services for a full twelve months (Walsh, 1986). The court stated that "if a child will experience severe or substantial regression during the summer months in the absence of a summer program the handicapped child may be entitled to year-round services" (Alamo Heights ISD v. SBOE, 1986). The court concluded, "The issue is whether the benefit accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months" (Alamo Heights ISD v. SBOE, 1986).

Least Restrictive Environment

The requirement that handicapped children be educated in the least restrictive environment (LRE) has generated more confusion than perhaps any other area of special education and has become an area of intense focus by federal and state regulatory agencies (Gallegos & Anderson, 1989).
Federal regulations (Reg 300.550 General) require the following:

(b) Each public agency shall ensure:

(1) that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature of severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The EHA and federal regulations require school districts to ensure that each handicapped child participates with non-handicapped children in nonacademic and extracurricular services and activities to the maximum extent appropriate (34 C.F.R 300.553) (Gallegos & Anderson, 1989). Even though the Rowley decision did not directly involve the least restrictive environment provision, that decision remains authoritative in analyzing LRE questions. In LRE decisions compliance with procedural requirements is paramount. The
decision to place the handicapped student in the least restrictive environment must be accomplished by strict sequential compliance with the LRE procedures of EHA and the accompanying regulations (Gallegos & Anderson, 1989). Given procedural compliance, the courts usually defer to the professional judgment of school personnel. Benchmark for a lawful placement is that it be in the closest-to-normal setting in which the student's individual educational needs can be met (Horton, 1991b).

Federal regulations also provide that various alternative placements be available to the extent necessary to implement a child's individual education plan (34 C.F.R. 300.552(b))(Gallegos & Anderson, 1989). Therefore, to be in compliance, each public agency must ensure that a continuum of placements is available to meet the needs of handicapped students (34 C.F.R. 300.551(a)). The State Board of Education Rules for Special Education in Texas lists and defines the continuum of placements and services that each school district or cooperative must make available. These placement continuums include the following:

1. resource room
2. self-contained, mild/moderated, regular campus
3. self-contained, severe, regular campus
4. self-contained, separate campus
5. homebound
6. community class
7. hospital class
8. speech therapy
9. residential care and treatment facility

(19 TAC s 89.242(c)).

Additionally, a Texas hearing officer held that a self-contained classroom on the regular campus must be available on every campus level in order to achieve age appropriateness (Gallegos & Anderson, 1989).

Litigation has established that the least restrictive environment mandate does not mean a student must be placed in regular education if he or she is a burden to staff, to other students, to finances, or if the regular program would have to be substantially modified for him or her (Slenkovich, 1990). In a case binding to Texas, Daniel R. v. El Paso ISD (1989), the court evoked the second prong of the Rowley test: whether the program, developed through the EHA procedures, is calculated to enable the handicapped child to benefit from his or her education (Gallegos & Anderson, 1990). The first prong of the Rowley test (concerning procedural compliance) was not disputed; therefore, the district court only addressed the issue of educational benefit provided by the student's placement. Daniel was a mentally retarded and speech impaired five-year-old in an afternoon pre-kindergarten regular education
class. After a three-month trial period an ARD was called to discuss reports from Daniel's regular education teacher that the afternoon placement was not working. The ARD determined that mainstreaming Daniel was not appropriated, and the parents requested a hearing before a special education hearing officer (Horton, 1991b). They then appealed to the district court and the Fifth Circuit. The Fifth Circuit affirmed the district court decision in favor of the school district and rejected the theory that socialization alone is a sufficient basis for mainstreaming (Ahearn, 1990).

In a Fourth Circuit case, *Barnett v. Fairfax County School Board* (1991), the Court found that the school district was not required to reproduce a cued speech program in a student's home school. In this instance, attendance at a centralized cued speech program was found to be appropriate and in the least restrictive environment. The court said that states must balance economic realities, which make centralized programs fiscally responsible, with the special needs of an individual student, when making placement decisions (Horton, 1991b).

In a Sixth Circuit case, *Roncker v. Walter* (1983), the court determined that children must be educated in segregated facilities when one of the following conditions exist:
1. the child cannot benefit from mainstreaming
2. any marginal benefits are outweighed by benefits gained from services which cannot feasibly be provided in a nonsegregated setting
3. the child is a disruptive force in a non-segregated setting.

The court also declared that cost is a proper factor to consider in some cases (Horton, 1991b).

In the Seventh Circuit, Lachman v. Illinois State Board of Education (1988), the court stated that the EHA's preference for mainstreamed classes is to be given effect only when it is clear that the education of a handicapped child can be achieved satisfactorily in the type of mainstream environment sought by the challengers of the child's IEP. The court reiterated that the principal goal of the EHA is an appropriate education (Broadwell & Walden, 1988).

In 1983, the Eighth Circuit used the beneficial education standard to decide that a student's most appropriate educational placement was at her local school district (Broadwell & Walden, 1988). In this case, Springdale School District v. Grace (1983), the parents of Sherry Grace wanted the local school district to provide a certified teacher of the deaf at the school closest to their
home. The school district contended that Sherry would
derieve the best educational opportunity at the Arkansas
School for the Deaf. The court stated that when the student
had the opportunity to receive an appropriate education in a
local school, the school system must abide by the EHA's
(P.L. 94-142) preference for mainstreaming the student. The
court reiterated that the least restrictive environment
section maintains a preeminent position in cases where the
choice was between the best and most appropriate education
(Broadwell & Walden, 1988).

The Eighth Circuit also ruled in Mark A. v. Grant Wood
Area Education Agency (1986). Here the court said that the
EHA creates a preference for public education. This
mainstreaming preference is satisfied students, not only by
education in the same class as non-handicapped, but also in
the same public school (Horton, 1991b). Another Eighth
Circuit case, A.W. by and through N.W. v. Northwest R-1
School District (1987), found the child's ability to benefit
from mainstreaming was minimal. The court determined that
the preference for mainstreaming is not absolute. Local and
state educational authorities must balance the reality of
limited public funds against the exceptional needs of a
handicapped child. There must be equitable distribution of
available financial resources (Horton, 1991b).
A Ninth Circuit case, *Dept. of Ed., State of Hawaii v. Katherine D.* (1983), ruled that an appropriate, not the best, education is what is required. The court acknowledged that budgetary constraints limit resources that can be committed to special programs, and only reasonable actions are necessary (Horton, 1991b).

In a 1991 Texas hearing, *Dawn B. v. Aldine I.S.D.*, a separate campus was ruled to be appropriate. Since 1988, separate campuses had often been viewed by advocate groups as unconscionable and unjustifiable and therefore were targeted for legal challenge and forced closure. The case of Dawn B. was openly acknowledged by the student's lawyer as an attempt to force the closure of Land Center, a separate special educational facility. The hearing officer ruled that if proper procedures are followed and reasons documented, separate campuses were part of the educational continuum for special education students and could be defended successfully when appropriately used (Heiligenthal, 1991).

**Private or Residential Placements**

The use of private schools or residential facilities for appropriate educational placement has been the subject of bitter dispute between parents of handicapped children and local school administrators (Alexander & Alexander, 1985). The extent of this dispute was expressed by the
court in *Bales v. Clark* (1985) when the judge wrote, "Increasingly, courts have had to decide whether parents have the right under the law to write a prescription for an ideal education for their child and have the prescription filled at public expense."

The EHA acknowledged that for some special education students the least restrictive environment in which they could benefit from a FAPE would be an institutional setting rather than a day school (Huefner, 1989). The Department of Education has issued extensive regulations to guide states in implementing the EHA mandates. One of these regulations addressed the cost of residential placements. This regulation provides that if either a public or a private residential program is required for special education reasons, the nonmedical cost, including board and room, must not be borne by the parents (Horton, 1991). Education agencies have been reluctant to recommend and pay for residential programs, where the cost of board and room can typically range from $20,000 to $75,000 per year per student (Huefner, 1989).

When parents have challenged districts to pay this bill, the first line of defense by educational agencies is a straightforward assertion that the student does not need a residential program and has been offered an appropriate education in a day program. Since handicapped students do
not have a statutory right to the best education money can buy, a parent will not be entitled to reimbursement for residential cost if, in fact, the day school program is appropriate. Where all parties acknowledge the necessity of a residential placement, the argument shifts. School officials assert that, although a residential program is necessary for some reason, it is not needed for educational reasons (Huefner, 1989).

In most cases, when a public school program is available and judged to be appropriate for the child's needs, the courts have tended to favor local district administrative decisions. When no appropriate placement can be provided within the local public schools, special education and related services, including nonmedical care and room and board, must be provided at no cost to the parents of the child (Alexander & Alexander, 1985).

Courts have had great difficulty in separating instructional needs from medical and therapeutic needs when the handicapped students are severely emotionally disturbed or multiply handicapped (Huefner, 1989). In six cases in four circuits the courts have stood for one of the two following positions:

1. Where educational needs are broad and extend beyond academic needs to social and emotional needs, and where twenty-four hour consistency and
continuity of instruction, or combined instruction and therapy, is necessary for educational progress, a residential placement is a special educational residential placement (SERP).

2. Where progress toward academic, social and emotional needs demands an extended and controlled instructional environment for virtually all the waking hours, a residential program will be justified for special education reasons (Huefner, 1989).

On the other hand, where the required type of consistency and continuity is primarily custodial rather than instructional, where special education services are secondary to the need to contain, stabilize or physically care for the handicapped student for his/her own or others' health and safety, the placement should not be considered SERP (Huefner, 1989).

The Supreme Court, in Burlington v. Department of Education of Massachusetts (1985), decided that the expenses for special education in a private school could be reimbursed if a court determined that the placement was appropriate. In this case, the student had been diagnosed as learning disabled. The school system wrote an educational program specifying a particular program at a local school. The parent disagreed with the components of
the education program and requested a review by the state special education administrator (Broadwell & Walden, 1988). Prior to the hearing the parents moved the student to a private school for handicapped students.

The Supreme Court, in Burlington, agreed to decide two essential and long argued questions: First, whether the parent, on moving the student before hearing, forfeited entitlement to reimbursement for tuition and expenses related to the unilateral move; and second, whether the EHA bars reimbursement to parents who determine that the educational program and placement decisions are not suitable for the child. Justice Rehnquist, who wrote the decision, granted parents retroactive reimbursement for their educational expenses. Justice Rehnquist cited the excessive length of time it had taken to resolve this dispute and the possibility of the appeal system allowing districts to delay the provision of a FAPE. The Court was careful, however, to say that its ruling would not apply automatically to all cases when parents disagree with school authorities (Broadwell & Walden, 1988).

In a 1985 case, In re Philip D., a severe head injury from an automobile accident left a nineteen-year-old student with multiple impairments. The district offered a school placement developed to address learning disabilities. The parents wanted placement in a head trauma unit. The hearing
officer determined that the needs of head-injured students and learning disabled students are not similar, and, therefore, the student needed services in a head-injury unit (Horton, 1991).

In Doris O. v. Galena Park Independent School District (Texas 1985), a spina bifida paraplegic, who suffered severe respiratory complication and was at risk for cardiac arrest, was unilaterally placed by her mother at Hughen School within the Port Arthur Independent School District. Later the residential district, Galena Park, proposed to change Doris's placement to a self-contained classroom within the school district. Her mother disagreed. Testimony at the hearing indicated that due to the student's severe respiratory problems, she was required to remain in a temperature-controlled environment and was medically precluded from unnecessary travel outside of this environment. The placement in public school would require the student to live at home and travel daily to and from school on a bus. Evidence established that this was a danger to the student's health and life. The court, ruling against the district, said that in making placement decisions schools must give consideration to any potential harmful effects on a child and to the quality of services which the child needs (Horton, 1991a).
In Re Karen C. (Massachusetts 1985) involved a student with a very dysfunctional family history. The district offered a day placement. The Department of Social Services sought a twenty-four hour residential placement. Past history revealed that while the student was enrolled in the school program he had made an effort to attend school and had made academic progress. It was ruled that the student's need for a secure safe place to live was the responsibility of the Department of Social Services, not the school district (Horton, 1991a).

The case of Darien v. Board of Education (Connecticut, 1988) involved a student with severe behavioral problems outside of school. No evidence was presented which demonstrated that the student's educational progress was impeded because of his difficulties. Because his education was not significantly affected, the court ruled that he was not entitled to special education and related services (Horton, 1991a).

In Clovis Unified School District v. California Office of Administrative Hearings (1990), the parents had placed the student in an acute care psychiatric hospital because of emotional problems and uncontrollable behavior. They subsequently sought funding for the hospital services from the school district. Neither party disputed the need for a residential placement; however, the district disagreed that
psychiatric hospitalization was the type of placement contemplated under EHA as a residential placement. Rather, the district contended that the services at the hospital were medical and thereby excluded under EHA. The court found that the student's needs were medical in nature. The hospital focused upon treating an underlying medical crisis and therefore the placement was for medical reasons. The district was not required to pay room and board costs at the hospital (Horton, 1991a).

Richard Roy N. v. Midland ISD (Texas, 1989) involved an autistic student placed by parents in a residential treatment facility. The district offered a six-hour day program and contended that controlling behavior at home was the parent's responsibility. The hearing officer found that behavior control was this child's primary educational need. The officer further decided that the district must take the child's behavior problems at home into account in assessing educational progress (Horton, 1991a).

Attorneys' Fees

As a result of a 1984 Supreme Court decision, the United States Congress amended the EHA. In July, 1984, the Supreme Court ruled in Smith v. Robinson (1984) that the federal civil rights statutes could not be used as a basis for awards of attorneys' fees in most cases asserting that handicapped children had been denied a free appropriate
public education (Wegner, 1981). The Court reasoned that if handicapped students were allowed to go directly to federal court (under Sec. 1983 or Sec. 504) with a claim that they were not receiving a FAPE, it would circumvent the "carefully tailored scheme" that congress had set up under the EHA (Henslee, 1990). The Court pointed out that P.L. 94-142 had no section authorizing the award of attorneys' fees to prevailing parties. In Tatro, no reimbursement for attorneys' fees was allowed in spite of the lengthy litigation the parents had incurred to arrive at a unanimous decision in their favor (Flygare, 1984).

Two years after the Smith decision, Congress enacted the Handicapped Children's Protection Act of 1986 (HCPA). This legislation was expressly designed to overrule Smith by authorizing awards of attorneys' fees in litigation under EHA (Wegner, 1981). This act provides that a court, at its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party in an administrative hearing or court action (Kemerer & Hairston, 1990). This authorization was extended to the prevailing party in special education disputes under many, but not all, circumstances and provides guidance concerning calculation of such awards (Wegner, 1981).
A settlement provision in the act provides that parents may not be awarded attorneys' fees and related costs subsequently to the time of a written offer of settlement by the school district to the parent if one of the following occurs:

1. the offer is made more than ten days before an administrative hearing begins
2. the offer is not accepted by the parents within ten days of the hearing
3. the relief finally obtained by the parent is not more favorable to the parent than the offer of settlement (Kemerer & Hairston, 1990)

The purpose of this provision is to encourage settlement of these disputes and to provide a mechanism to that end.

The HCPA clearly allows that, if a settlement offer is made within the prescribed time, an award for attorneys' fees may be made for fees incurred in an administrative proceeding prior to the time of the offer (Cohen & Jones, 1988)

The HCPA also added a new section to the HEA, 615(f) which states the following:

Before the filing of a civil action under [the Constitution, title V of the Rehabilitation Act of 1973, or other federal statutes protecting the rights of the Handicapped Children and Youth] the procedures under subsection (b)(2) and (c) [having
to do with due process hearings and state-level administrative review] shall be exhausted to the same extent as would be required had the action been brought under this part (615(f), 20 U.S.C. 1415(f), 100 Stat. 797).

This reiterates that the exhaustion doctrine, which requires exhaustion of administrative remedies before parents may seek judicial redress, is still required (Wegner, 1981). Under this general rule, courts refuse to become involved in disputes until all administrative remedies are exhausted. The justification for the exhaustion requirement reasons that administrative agencies are staffed by persons familiar with the educational setting and who are theoretically more qualified than judges to arrive at satisfactory and workable solutions to disputes that arise within that setting. The resolution of education disputes are considered, therefore, to be best left to educational professionals (Kemerer & Hairston, 1990).

Even with the assurance of the exhaustion doctrine the HCPA still serves to expand the implication of attorney fee authorization (Wegner, 1981). This was pointed out when, with intense reservations, Representative Barlett stated that it was a serious mistake that "we have authorized the awarding of fees at the due process hearing system level in disputes that do not even go to court on a substantive
issue." The bill passed in the face of this concern of Bartlett and other members of Congress (Cohen & Jones, 1988). An effect then of the Handicapped Children's Protection Act was to guarantee to the parents of handicapped children the broadest possible basis for seeking relief (Kemerer & Hairston, 1990).

In the calculation of fee awards, subparagraph (c) of subsection (e)(4) provides the following:

For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection (EHA at 20 U.S.C.) 1415(d)(4)(c).

The courts have also interpreted what it means to be the prevailing party in a special education appeal. If the parent or guardian acquires the primary relief sought in the special education appeal, even by settling with the school district, the parent or guardian will be considered to be prevailing for purpose of the statute (Barbara R. v. Tirozzi, (1987). To prevail, therefore, means essentially that the school district changes its behavior as a result of the parent's action (Kemerer & Hairston, 1990). Courts have generally held that when a parent does prevail before a
special education hearing officer, the parent can bring a law suit in court solely for the purpose of recovering the attorney's fee incurred at the administrative hearing (Henslee, 1986). At least two courts have determined that school districts must pay attorneys' fees even when the legal services to the prevailing parent were free or at a reduced cost (Barbara R. v. Tirozzi, 1987).

In addition to liability for attorneys' fees, the school district may also be liable to reimburse the parent for money spent in providing educational services to the child during a controversy (Horton, 1988). Although the term does not appear in the EHA or the federal regulations implementing the statute, several hearing officers and courts have found that compensatory education should be provided for students. Most of the cases requiring compensatory education have been based on circumstances where the student was denied educational services for a period of time (Horton, 1988).

In the case of In re. L.P. (Conn. 1985), a student had been denied educational services for a period of time. Such a deprivation was considered a violation of the responsibility of the school district to provide a free appropriate public education. Compensatory education, in such a situation, is considered to be similar to financial reimbursement permitted in the Burlington case. The school
district is simply providing educational services it should have provided all along.

In Fontenot v. Louisiana Board of Elementary and Secondary Ed. (1986), the Fifth Circuit ruled that a prevailing parent may recover attorneys' fees and costs in either of two ways. If a parent is not happy with the decision of the hearing officer in an administrative hearing, the parent may appeal to a state or federal court and include in the lawsuit a request that the court award attorneys' fees and costs in the event that the parent is a prevailing party in the litigation. If the parent prevails in the administrative hearing and does not wish to appeal to a court, the parent may file an application for fees and costs with the court (Kemerer & Hairston, 1990).

**Discipline**

Although neither Section 504 nor P.L. 94-142 addresses disciplining of handicapped students, court have consistently ruled that handicapped students must be given special consideration in disciplinary proceedings. The two provisions of the EHA which must be considered when disciplinary action is taken with a handicapped student are appropriate education and least restrictive environment (Alexander & Alexander, 1985).

Early court decisions prohibited expulsion, noting that under P.L. 94-142, services must be provided through
alternative placement in one of the other educational environments offered (Alexander & Alexander, 1985). In a Fifth Circuit case, *S-l v. Turlington* (1981), nine mentally retarded students in Florida sued local districts and the state claiming that they had been denied an appropriate education due to expulsion. The court upheld expulsion as a viable form of discipline; however, the court pointed out that the cessation of all educational programs violated the rights of handicapped students. Consequently even after expelling a student, services must be provided (Alexander & Alexander, 1985).

Suspension, on the other hand, has been viewed favorably by the courts as an appropriate disciplinary action for handicapped students when it has been determined that the misconduct is not related to the student's handicap. If the misconduct is related to the handicapping condition, an alternate or more restrictive placement should be considered (*Doe v. Koger*, 1979).

In 1988, the U.S. Supreme Court made a landmark decision concerning discipline of handicapped students (*Kemerer & Hairston*, 1990). John Doe and Jack Smith were emotionally disturbed students who had a propensity for aggressive behavior and were eventually expelled from school. The federal district court subsequently issued a summary judgment in favor of the two students and
permanently enjoined the district from taking disciplinary action beyond a five-day suspension (Zirkel, 1988). The court further ruled that the state of California had the burden of overcoming the stay-put provision (C.R.R., 1988b). On appeal, the Ninth Circuit affirmed the district court's order, modifying the five-day limit to up to thirty days and ruling that the students did not fall within the reach of the stay-put provision of the EHA (Zirkel, 1987). The stay-put provision requires that, as long as any proceedings under EHA are still pending and unless school authorities and the parents agree, the child shall remain in the then current educational placement.

On review, the Supreme Court, in Honig v. Doe (1988), affirmed the Ninth Circuit's decision, although it drew the line for permissible short-term suspension at ten days (Zirkel, 1987). Honig v. Doe (1988) articulated the common law principles in dealing with the suspension and expulsion of handicapped students (Huefner, 1989). These principles permit temporary suspension but define expulsion and lengthy suspension as changes in educational placement which trigger the procedural safeguards of P.L. 94-142. The Court ruled that a trained and knowledgeable group of persons must determine whether a causal relationship exists between a child's handicapping condition and the misbehavior. This
group must assure that a handicapped child will be expelled only if no such relationship exists (Huefner, 1989).

The Honig court refused to read a dangerous exception into the stay-put provision (Huefner, 1989). In Stay-Put, as enunciated in Honig, the Supreme Court said that the identification of a "substantial likelihood of injury to the child or to others" must be the result of a judicial weighing of the relative harm to the party and a determination of where the balance tips. The state must seek injunctive relief to remove a student against the parents' wishes (CRR, 1988a). The Court allowed, however, that where students pose an immediate threat to the safety of themselves or others, officials may temporarily suspend them for up to ten days. When suspending or expelling handicapped students due process procedures are required. Schools also have an option to transfer a disruptive student to a more restrictive setting (Huefner, 1989).

Assessment or Evaluation

A major component of the provision of a FAPE is the individual educational evaluation which provides the basis for all programming decisions (Walsh, 1990). What constitutes an appropriate evaluation was addressed by a Pennsylvania hearing officer in Educational Assignment of Holly S. (1986). A three-part test established for
determining the appropriateness of an evaluation includes the following requirements:

1. The evaluation must be adequate and complete in assessing the student's handicap.
2. The evaluation must determine the student's educational needs arising from the handicap.
3. The evaluation must determine how to address the student's educational needs through a program of special education and related services.

Other litigation has determined that, to be appropriate, districts must administer a particular test according to the prescribed procedure.

The clarification of assessment issues has also been a topic of litigation and regulation. Courts have determined the following:

1. A district does not need consent from a parent to obtain a psychological evaluation by a psychologist who is not an employee of the district, as long as this is not the pre-placement evaluation.
2. Before any action is taken with respect to the initial placement of a handicapped child in a special education program a full and individual evaluation of the child's educational needs must be conducted.
3. The referral of a student for a preplacement evaluation must be based on two factors:
   a. The district must have some reason to suspect that the student has a handicapping condition as defined by EHA
   b. The district must also have some reason to suspect that there is an educational need for special education services.
4. As long as a student is performing successfully in regular classes and does not otherwise indicate any educational need for special education services, he or she is not an appropriate candidate for a comprehensive assessment.
5. The referral committee, based on its review of the referral information, can properly determine that no identifiable educational need exists that would justify referral for a comprehensive assessment (Chuck T. v. Cypress-Fairbanks ISD, 1990).
6. There is no legal obligation to evaluate in any particular area which was not suspected as a disability (Walsh, 1990).

The assessment of students with emotional disturbances offers unique challenges. In answer to this challenge the Texas Education Agency developed the booklet "Guidelines for Assessment of Emotional Disturbance" (1990). This guide is
designed to assist assessment personnel in the identification of students as seriously emotionally disturbed (SED). To be identified as seriously emotionally disturbed the student must have a condition (i.e., disability) and an educational need that justifies receiving special education services. In the diagnosis of SED, the ARD must differentiate between those students who are socially maladjusted and those who are seriously emotionally disturbed (Nelson et al. 1991).

When parents of a handicapped child disagree with the assessment conducted by the public school they may have the right to an independent educational evaluation (IEE) at public expense (Gallegos, 1990). Regulations require the following:

1. Parents of a handicapped child have the right to obtain an independent educational evaluation (IEE) of the child

2. Districts must provide to parents, on request, information about where an IEE may be obtained

3. Parents have the right to an IEE at public expense if the parents disagree with an evaluation obtained by the district; however, the district may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parents still
have the right to an IEE, but not at public expense

4. Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the district uses when it initiates an evaluation (Data Research Inc., 1991).

While the language of the regulation seems clear enough, the interpretation has undergone change since its adoption. These clarifications include the following:

1. A school district cannot require prior consultation by parents as a condition for payment of an independent educational evaluation (Office of Special Education, 1989).

2. If parents select an independent assessment team not preferred by the school district, they do so at the risk that the assessment may not meet the criteria used by the district in initiating an evaluation. If the IEE does not meet the district's criteria, the parent is not entitled to the IEE at public expense (Hiller v. Board of Education, 1988).

3. Notice to the district and the filing of an impartial hearing are not prerequisites to parents
obtaining independent evaluations or reimbursement should the district's initial evaluation be found inappropriate.

4. Reimbursement is limited to a single evaluation.

5. Parents are not required to first notify the school district that they disagree with the district's evaluation and give the district an opportunity to show its evaluation is appropriate before the parents acquire private testing.

6. When faced with a parental request for an independent evaluation, a school district must either request a due process hearing to determine the appropriateness of its evaluation or pay for the independent educational evaluation (Data Research, 1991).

Texas hearing officers, in two 1990 cases, ruled that the state hearing rules broadened the statutory definition of handicapped and therefore extended the right of an independent assessment to those suspected of having a handicap. As a result schools can find themselves forced to pay for independent assessments or call a hearing on a child who has no educational need and for whom existing testing does not discern a handicap (Walsh, 1990).

On May 4, 1989, the Office of Special Education (OSEP) set out three methods by which school districts could try to
keep the cost of independent evaluations within reasonable bounds. These include the following:

1. requesting a due process hearing to prove the appropriateness of the evaluation

2. denying payments of independent evaluations conducted by persons not meeting minimum qualifications

3. establishing maximum allowable changes for specific tests that eliminate only unreasonably excessive fees, absent unique circumstances.

On September 15, 1989, OSEP issued a letter setting forth the following regarding independent educational evaluations:

1. A school district may request that it be notified before the parents obtain an independent evaluation, but may not refuse to pay for it if they do not

2. a school district may request the parents to specify the nature of their disagreement but may not deny reimbursement if they do not,

3. A school district may adopt cost criteria designed to eliminate unreasonably excessive fees, absent unique circumstances

4. The parents are entitled to only one independent evaluation for each evaluation performed by the
school district; however, the school district must consider any independent evaluation done at private expense.

5. School district may provide parents with a list of qualified evaluators, but must allow parents to select anyone in the geographic area meeting the district's criteria.

6. A school district may establish reasonable time lines, two years for example, following district evaluations for reimbursement of independent evaluations obtained by parents (Walsh, 1990).

Recent Programmatic Issues

Recently several additional special education programmatic issues have been the subject of litigation or regulation. Included among these are graduation requirements, collaborative decision making, transitional services, and services for children with attention deficit with hyperactivity disorder (ADHD).

The Texas SBOE promulgated new graduation requirements for handicapped students which became effective September 1, 1989 (Kemerer & Hairston, 1990). Under the new rules a handicapped student may be graduated under the following conditions:

1. When he or she meets the graduation requirements
2. when he or she meets requirements of his or her IEP and has accomplished one of the following:
   a. secured full-time employment
   b. demonstrated mastery of employability and self-help skills
   c. has access to outside services that are not within the legal responsibility of public education
   d. no longer meets the age eligibility requirements (Henslee, 1988)

SBOE rules adopted November 11, 1989, require that all ARD committee members have the opportunity to participate in a collaborative manner in developing the IEP. Decisions are to be by mutual agreement when possible. If agreement is not possible, the parents have one opportunity to have the meeting recessed for no more than ten days (SBOE Rules, 1991). The date and time for meeting again is to be determined by mutual agreement prior to the recess. During the recess, alternatives, additional data, further documentation or additional resources shall be considered. If agreement still cannot be reached, the district implements its IEP and a written statement of the basis for disagreement is included in the IEP. Dissenting members should be given the opportunity to write this statement (Heiligenthal, 1989).
Another recent addition to requirements for serving handicapped children is the requirement for transitional services (W. N. Kirby, personal communication, March 1, 1990). Senate Bill 417 of the 71st Legislature amended the Texas Educational Code by adding Section 21.510, Transition Planning. The statute includes the following requirements:

1. The agency and the other designated state agencies must develop and adopt by rule, effective September 1, 1990, a memorandum of understanding which defines the role of each agency for the provision of services needed to prepare students enrolled in special education for successful transition from public school to adult life.

2. Each school district, in coordination with the other agencies, must develop an individual transition plan for every student enrolled in special education who is at least 16 years of age.

3. Each school district must review annually all existing individual transition plans and develop initial plans only for the students without plans who are 16 years of age.

The "Memorandum of Understanding on Transition Planning For Students Enrolled to Special Education" was completed on March 21, 1990 (TEA, March 21, 1990).
The Education Department, in 1991, clarified its policy on special education laws to ensure that schools serve children with attention deficit disorder (ADHD). Under the existing language of EHA, schools must provide special education services to ADHD children who demonstrate a significant educational need. ADHD students not deemed eligible for special education still may find recourse under Sec. 504 of the 1973 Rehabilitation Act (Education of the Handicapped, 1991).

The EHA was amended in 1990 by the 101st Congress, and became the Individuals with Disabilities Education Act (IDEA). Other changes in the act included the addition of autism and traumatic brain injury to the recognized disabilities served under the act and replacing the term handicapped with children with disabilities (IDEA, 1991).

Due Process Hearings

In 1975, the impartial due process hearing was formally introduced to the field of special education by means of the Education of the Handicapped Act (EHA). The regulations implementing the act describe the fundamental elements and rights involved in an impartial due process hearing (Ekstrand et. al., 1989).

Federal regulations state that grounds for a hearing exist when the school system proposes or refuses to initiate or change the identification, evaluation or educational
placement of a handicapped child, or when a school system fails to provide a free appropriate public education to the child (34 C.F.R. 300.505 and 300.504). These regulations include the following requirements:

1. The local school system must hold the hearing, and the decision must be mailed to the parties within forty-five days after the receipt of the request for a hearing. The hearing officer may grant an extension of time beyond the forty-five day limit at the request of either party.

2. The local hearing must be conducted by a hearing officer, who must be impartial. The federal regulations specifically indicate that the officer may not be an employee of the local system involved.

Generally there are two parties to the local-level due process hearing the local school system and the parents (Special Education and the Handicapped, 1991). Either party has the right to be represented by counsel. The local school system is required to inform parents of any available free and low-cost legal and other relevant services when a hearing is initiated or when the parents request such information. If the parents ultimately prevail in a special education case, they may be awarded reimbursement for attorneys' fees and costs (Ekstrand et al., 1989).
The hearing is always considered an administrative hearing rather than a judicial proceeding. It is not intended to be a formal court procedure with strict rules to be followed. The impartial hearing officer is in complete control of the hearing much as a judge in court proceedings. Hearsay evidence is usually admitted; however, to ensure an orderly process, the hearing should be conducted in a somewhat formal fashion. Regulations also require that there be a written or electronic verbatim record of the hearing (Ekstrand et al., 1989).

Evidence at hearings consists of the documents and testimony of witnesses. Generally, only evidence that directly relates to the issue (relevant to material evidence) given by a knowledgeable person (competent witness) should be admitted, but the hearing officer has wide discretion to accept any evidence that will aid him or her in reaching a well-informed decision. A five-day-rule on disclosure of evidence requires that all documents be shared between the parties at least five days before the hearing. Failure to observe this rule can result in the hearing officer excluding these documents from consideration (Ekstrand et al., 1989).

Under the federal rules any dissatisfied party may appeal the decision of the local-level hearing officer to an appropriate state or federal court, where a judicial review
may be sought. The Texas SBOE Rules (1991) state the following:

1. Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

2. The Commissioner of Education shall establish a procedure by which the Texas Education Agency shall collect information, respond to inquiry, act on complaint, assist in grievance matters, and engage in mediation in response to requests from the public, local school district, and other agencies receiving funds under this subchapter. This process shall include the following:
   a. receiving information concerning special education and analyzing the information in conjunction with other information on file with the agency
   b. responding to inquiries concerning special education services
   c. taking appropriate action on substantial complaints
   d. engaging in mediation activities
   e. providing information on the formal procedures available in the impartial hearing process.
The adversarial nature of a hearing, no matter what the issues, often negatively affects the parent-provider relationship. Often statements are made by witnesses on each side that question the motives or competencies of those involved. Hearings are difficult, emotionally draining experiences for everyone concerned, yet they are a crucial component of the right to due process (Ekstrand et al., 1989).

Research in Due Process Hearings for the Disabled

Early results of studies looking for relationships between variable and special education due process hearing outcomes consistently show that districts prevailed in the majority of due process hearings even though parents were the initiators in the majority of the hearings. The issue over which most hearings were initiated concerned placement, and the categories of disability most often taken to hearings were emotionally disturbed and learning disabled. Recent studies, however, show that the category of mentally retarded has become more prevalent in special education due process hearings.

In a 1980 study of due process hearings in Cook County, Illinois, a parent initiation rate of 90% was reported (Diamond, 1980). The two most prevalent handicapping conditions in these Cook County hearings were emotionally disturbed and learning disabled. Diamond reported a 53.7%
incident rate for hearings initiated on behalf of behaviorally disordered students and an incident rate of 17.1% for learning disabilities students. Diamond also noticed an inverse relationship between the initiator of the due process hearing and the decision-favored party, reporting that although parents initiated the majority of hearings, 73.1% of the hearing decisions favored the school systems.

A similar study (Eubank, 1984) reviewed due process hearings conducted between September 1977 and September 1983 in Texas. The data indicated that parents initiated approximately 95% of hearings filed during that time frame. Precipitating factors or allegations which were the most frequently cited as reasons for initiating due process hearings focused on placement decisions regarding the least restrictive alternatives, evaluations, and instructional concerns related to individualized educational plans. The Eubank study revealed that the most prevalent student disabilities cited in Texas during that time period were emotionally disturbed and multiply handicapped. These disabilities accounted for 23.58% and 20.33% of all due processing hearings, respectively. Additionally the hearing impaired represented 12.2%, the mentally retarded accounted for 13.82%, other health impaired characterized 7.32%, the visually handicapped accounted for 1.82%, and speech
impaired and severely and/or profoundly handicapped represented 0.81% of the due process hearings.

The Eubank study also reported that, while parents of disabled students filed for over 90% of the due process hearings, the majority of the decisions clearly favored the school district's special education programs.

In a survey of the departments of education in the 50 states and District of Columbia, Smith (1981) found that the major issue in most due process cases dealt with placement. This study also noted that while parents requested most of the hearings, the ruling favored the school districts in two-thirds of the cases.

Another study (Regan, 1990) was conducted in New Jersey to provide a descriptive analysis of mediation and formal hearings initiated to resolve parent-school disputes in special education between July 16, 1984, and July 15, 1985. The results indicated that 64% of disputes which resulted in due process requests were resolved through mediation. The most frequent issue for which due process procedures were requested was the appropriateness of the child's individual education program, especially placement. Parents were more frequently the petitioner. Parents and school districts tended to prevail equally at hearings; parents tended to prevail when the parent was the petitioner and districts when the district was the petitioner. A significant
relationship was found between which party prevails at a hearing and whether the party was represented by a lawyer. The most frequent classification of students for whom due process procedures were requested was emotionally disturbed. The most frequent age ranges of the students for whom disputes were resolved through mediation were 6 through 11 and 14 through 18. The study also found that most requests for due process procedures came from middle socio-economic status communities and from the most densely populated areas in the state. Parents more frequently requested due process procedures than districts, and high socio-economic districts and parents tended to prevail equally at hearing.

A survey by Steven S. Goldberg (1985) in Pennsylvania sought to determine if legally mandated special education placement hearings are fair and useful ways for resolving placement disputes. He found that a majority of parents believed they were accorded their legal rights in the pre-hearing stage as well as under the hearing system. A majority of school officials believed that the hearings they experienced were fair, accurate, and satisfactory ways to resolve disputes. Parents, however, were of two camps on the fairness issue. A majority of parents believed hearings were fair, though they did not think that the decisions were accurately based on the evidence presented. Most were dissatisfied with the process and decision rendered.
Parents' perceptions were not significantly correlated to their socio-economic status, but were highly and significantly correlated to winning. Though the majority of participants had positive feelings about procedural fairness, this contrasted with the belief that hearings were painful, destructive to parent-school relationships, and not useful for resolving special education disputes.

In a 1985 Pennsylvania study (Kuriloff) the age of the student was not found to be significantly related to the outcome of the hearing or the appeal. Kuriloff found that when the child's current placement was restrictive and there was no disagreement between the school and parent over the child's classification, the school districts did not fare well in the hearing process. His findings suggest that school districts tended to argue their cases less well as the seriousness of the placement they requested increased. Kuriloff suggested that, at least in the early years after PARC, schools did not fully understand the necessity of careful preparation when they were asking for a less normalized placement or did not appreciate the burden of defending decisions regarding children already in a placement for the more seriously handicapped. Kuriloff concluded that parents tended to lose their cases when schools asked for more mildly handicapped placement categories.
The 1989 United States General Accounting Office (GAO) issued a report to Congress which examined comprehensive nation-wide data concerning due process hearings occurring during 1984 and 1988. Although the data indicated that greater numbers of due process hearings were being resolved informally, there was still a 4% increase in hearing officer decisions over this span of time (United States General Accounting Office, 1989).

For the purpose of this study, the GAO categorized all due process hearings under five headings: eligibility/identification, appropriate special education services, related services, placement, and procedure. Although success rates varied with the issues involved, the GAO found that parents prevailed in their due process hearing disputes in 43% of the cases. The study determined that parents were more likely to prevail if represented by attorneys and were increasingly choosing to enlist legal counsel in their behalf (United States General Accounting Office, 1989).

A 1991 study (Howard) in Georgia concerning incidence, outcomes and fairness of special education due process hearings found that certain disability groups and age groups of students with disabilities were disproportionately represented in Georgia's due process hearings. Local school districts which experienced medium and high incidence rates
of due process hearings in Georgia through 1990 tended to be large, wealthy districts with low concentrations of students with disabilities. Those small school districts in poor communities with greater concentrations of disabled students typically had no due process hearings. From 1977-1990, due process hearings in Georgia typically concerned the appropriate placement of older male students who were either categorized as behaviorally disordered, severely emotionally disturbed or mentally handicapped. Although parents initiated most due process hearings in Georgia, these efforts resulted in a marked lack of success, except when students with hearing impairments were involved. When they enlisted attorneys, parents' success rates improved somewhat.

Hehir (1990) looked at how due process hearings in special education influenced the programmatic decisions of special education directors in Massachusetts. Specifically the study investigated whether special education directors develop programs to protect themselves from adversarial due process hearing proceedings. The study revealed that, though few parents actually took school districts to due process hearings, many exercised their due process rights and rejected educational plans. Most of the time these disputes were resolved either informally or through a state-appointed mediator. Further, the study showed that, though
the impact of due process varied significantly from one community to another, the threat of due process hearings influenced the programmatic decisions of special education directors. Directors gave many examples of parents rejecting placement offers and seeking improved services for their children within the mainstream of regular education. These improvements were sometimes extended to other children through program development.

An analysis of the decisions and agreements from special education due process hearings in Pennsylvania (O'Connor Rhen, 1991) was undertaken to determine informational factors that included student age, sex classification and placement prior to hearing; year of hearing; class, wealth, density and urban status of the school district; hearing officer background; hearing outcome; representation for the parties; issues at the hearing and number of sessions. Findings showed that the outcome of hearings favored the schools to a much greater degree than the parents. The background of the hearing officer showed no relationship to the outcomes. The highest number of hearings concerned the emotionally disturbed. The highest number of issues concerned student classification, educational placement and approved private school placement. The factors which showed a relationship to the hearing outcome were the type of issue raised at the hearing, parent
legal representation, and third party evaluation. Parents were more often supported at the hearing when they brought legal counsel, a third party evaluation, and when the issue was one of classification and placement. Parents had less of a chance of being supported when they resided in large urban districts.

Tarloa, in a 1991 study, found that at the hearing level, the school district was the complete winner in four times as many cases (64%) as the parents (16.2%). The hearing officers' occupational background, the child's classification at the time of the hearing and the type of issue significantly impacted the outcome of the hearing. The restrictiveness of current placement had no significant relationship to the outcome at either the hearing or appeal level. The results of Tarloa's study suggest that schools have become much more responsive and adept at preparing for due process actions during the later years covered by the study.

For several classifications of students in the study (Tarola, 1991), the incidence of hearing/appeals was much greater. Almost one-third or 31.1% of the students were mentally retarded. The next highest category, more than one-fourth or 29.4%, were learning disabled. The third highest category at 8.9% were emotionally disturbed. The outcome of the hearing differed significantly according to
the child's classification. When the child's classification was mentally retarded, the school scored a complete or modified victory in 83.3% of the cases. The parents prevailed with the greatest frequency when the child's classification was gifted and talented. The type of issue most frequently raised at the hearings and appeals levels was appropriateness of placement, which comprised 64.3% of the cases.

Collectively these studies support the usefulness of representation of counsel for parents involved in due process hearings. When this factor was included as a part of the study it proved to increase the parent's rate of prevailing. Another trend demonstrated by the studies indicate that although the majority of special education due process hearings are initiated by parents, the majority of the decisions favored school systems.

The issue most often brought to special education due process hearings was student placement. In only one study was placement the second most prevalent issue. In that case student disability classification was first. The most prevalent student disability classification involved in special education due process hearings in five out of six of these studies was that of behaviorally or emotionally disturbed. The classification of learning disabled and mentally retarded was the second most prevalent
classification in equal proportions. An exception to this finding was noted in 1991, when Tarola found the mentally retarded classification to be the most prevalent, followed by learning disabled and finally emotionally disturbed.
CHAPTER III

METHODOLOGY

Data for this study is categorically presented and nominally represented. A nominal scale classifies objects into categories based on some defined characteristic (Hinkle et al., 1988). Data collected contains the following properties of nominal data:

1. The data categories are mutually exclusive, in that an object can belong to only one category

2. The data categories have no logical order.

Descriptive statistics were used to classify and summarize numerical data (Borg & Gall, 1983). Frequency distributions were compiled to organize and summarize the data. A frequency distribution is an arrangement of values that shows the number of times a given score or group of scores occurs (Hinkle, et al., 1988).

Population

The population of this study consisted of all special education due process hearings conducted in the state of Texas from September 1, 1983, to September 1, 1992, with the data on advocacy group involvement collected from September 1, 1989, to September, 1992. My availability to this data was limited to these dates. The Texas Education Agency does
not maintain this data, nor was Advocacy Incorporated able to furnish this information. Because Region 10 Service Center began furnishing complete copies of hearing officer decisions to special education directors during these years, these copies were examined for the inclusion of Advocacy Incorporated lawyers as attorneys for the parent.

Procedures

The Texas School Law News (T.S.L.N.) was used to identify the due process hearings held in the state of Texas from September 1, 1983, to September 1, 1992. The T.S.L.N. is a bi-monthly periodical published by Henslee, Ryan & Groce, which reviews all Texas special education due process hearings, identifying initiator and defendant, basis for action, student disability, the position of the defendant and respondent, the school district and the rulings of the due process hearing officers. Copies of the actual hearing officer's report were also reviewed from September 1, 1989, through September 1, 1992.

For each due process hearing listed a data form was completed (Appendix A). The collected data were tallied according to the six major topics of the study to include the following:

1. the demographical characteristics of districts involved in hearings
2. the issues over which hearings were requested
3. the classification of the disabled students involved in the hearings
4. restrictiveness of placement
5. the outcome of the hearing
6. the involvement of advocacy groups in hearings.

Data Analysis

A coding system based on the system used by Kuriloff et al. (1979) was used to code the data for the first three research questions (Appendix B). Only those scales of the coding system that are addressed in this study were be used.

For topics two, three and four (as listed above) the independent variables consisted of restrictiveness of placement at the time of hearing, disability classification and type of issue with the dependent variable being hearing outcome.

The data gathered was nominal (categorical) in nature so the Chi-square test of independence was used to determine whether a relationship existed between the selected variables and hearing outcomes. This data was recorded as percentages. Three-year intervals were chosen to better display trends and to evenly divide the nine year study. Data displays include the following:

1. Number of occurrences of:
   a. hearings by district geographical location
   b. hearings by district size
c. hearings by issue, disability classification, restrictiveness of placement and outcomes

d. hearings by representation by advocacy groups for the years from September 1, 1989, through September 1, 1992.

2. Percentages of:

a. district geographical location classification for the full study and at three-year intervals

b. district size classification for full study and at three-year intervals

c. issue, disability and placement restrictiveness classification and outcome for full study and at three-year intervals

d. representation by advocacy groups for the years from September 1, 1989 through September 1, 1992.

3. Relationship results by:

a. issue and outcome

b. disability classification and outcome

c. restrictiveness of placement and outcome, and

d. representation by advocacy groups and outcome.
CHAPTER IV

ANALYSIS OF DATA

This study concerned special education due process hearings in Texas from September 1, 1983, through September 1, 1992. The purpose of this study was to assess the effects of selected characteristics of those special education due process hearings and their outcomes. A further purpose was to determine if district characteristics of size and location affect the likelihood of a district becoming involved in a special education due process hearing. Hearing reviews in the Texas School Law News were examined for the hearings decided during the years of the study. In addition, the actual hearing officers' decisions were also reviewed from September 1, 1989, through September 1, 1991. Data from 210 cases were identified, reviewed and recorded on a data collection instrument (Appendix A). Data from each hearing was then coded for analysis. The data for research questions are located in tables 1 through 12 respectively. These questions deal with the following issues:

1. the demographic characteristics of districts involved in hearings, and

2. the issues over which hearings were requested
the classification of the disabled students involved in the hearings

restrictiveness of placement

the outcome of the hearing

the involvement of advocacy groups in hearings.

The results of the analysis of data concerning relationships of hearing characteristics and hearing outcomes are presented in Tables 13 through 18.

District Urbanization

Of the 210 hearings reviewed the data revealed the geographical locations of 209. The geographical characteristics of districts involved in hearings over the length of this study showed that slightly over half (51.2%) of special education due process hearings were held in urban or suburban areas. Close to a fourth of the hearings occurred in small towns (population of 3,000 to 15,000) with only 8.6% being held in rural populations of less than 3,000. The balance were held in cities with population from 15,001 to 5,000.

When characteristics were reviewed in three-year intervals similar trends were demonstrated. Percentages for the years from September 1983 to 1989 showed again that slightly over half the special education due process
Table 1

Urbanization Characteristics of Districts Involved in Hearings, From September 1, 1983, to August 30, 1992

<table>
<thead>
<tr>
<th>Classification</th>
<th>Occurrences of Hearings</th>
<th>Estimated Occurrence of Disabled Students in District Student Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban (50,000 or more)</td>
<td>63</td>
<td>&gt;6,000</td>
</tr>
<tr>
<td>Suburban (located next to urban city)</td>
<td>44</td>
<td>21.1%</td>
</tr>
<tr>
<td>City (15,001 - 50,000)</td>
<td>32</td>
<td>1,800 to 6,000</td>
</tr>
<tr>
<td>Town (3,000 - 15,000)</td>
<td>52</td>
<td>360 to 1,800</td>
</tr>
<tr>
<td>Rural (less than 3,000)</td>
<td>18</td>
<td>&lt;360</td>
</tr>
</tbody>
</table>

hearings occurred in urban or suburban locations with rural locations comprising only 6.1%. Urban and suburban locations comprised 46.2% of the hearings occurring from September 1986 to September 1989, with the rural percentage rising 15.4%. During the last three years of the study the percent of hearings occurring in urban and suburban areas
again rose to 52% and hearings in rural areas declined to 7.4%.

Table 2

Percentages of Districts Involved in Hearings at Three Year Intervals

<table>
<thead>
<tr>
<th>Classification</th>
<th>School Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>83/86</td>
</tr>
<tr>
<td>Urban</td>
<td>32.7%</td>
</tr>
<tr>
<td>Suburban</td>
<td>20.4%</td>
</tr>
<tr>
<td>City</td>
<td>16.3%</td>
</tr>
<tr>
<td>Town</td>
<td>24.5%</td>
</tr>
<tr>
<td>Rural</td>
<td>6.1%</td>
</tr>
</tbody>
</table>

Size of Districts

The size of districts involved in special education due process hearings was also investigated. Eight of the hearings reviewed involved cases where the district residency as in question or involved state schools and were therefore not included in the data analysis. Districts in which hearings were held were classified according to average daily attendance.
Table 3

Involvement in Hearings by District Size, From September 1, 1983, to August 30, 1992

<table>
<thead>
<tr>
<th>Classification of Size</th>
<th>Estimated Occurrence of Students with Disabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
</tr>
<tr>
<td>1 - 750</td>
<td>9</td>
</tr>
<tr>
<td>751 - 1500</td>
<td>10</td>
</tr>
<tr>
<td>1501 - 3000</td>
<td>18</td>
</tr>
<tr>
<td>3001 - 5000</td>
<td>29</td>
</tr>
<tr>
<td>5000 or More</td>
<td>236</td>
</tr>
</tbody>
</table>

The majority of hearings (67.3%) occurred in districts of more than 5000 average daily attendance (A.D.A.). During the years studied 4.5% of special education hearings occurred in districts of 1 to 750 A.D.A., with 5% occurring in districts with 751 to 1500 A.D.A. and 8.5% occurring in districts of 1501 to 3000 A.D.A.

Although consistently more than 60% of the special education due process hearings involved districts of over 5000 A.D.A., the percent of hearings occurring in districts of between 1501 and 3000 A.D.A. consistently increased from 7% (between September 1983 to September 1986), to 13.2%
(between September 1986 to September 1989), and finally to 17.4% (between September 1989 to September 1992).

Table 4

Percentages of Districts Involved in Hearings at Three-Year Intervals

<table>
<thead>
<tr>
<th>District Size</th>
<th>83/86</th>
<th>86/89</th>
<th>89/92</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 750</td>
<td>0.0%</td>
<td>10.5%</td>
<td>4.1%</td>
</tr>
<tr>
<td>751 - 1500</td>
<td>7.0%</td>
<td>2.6%</td>
<td>5.0%</td>
</tr>
<tr>
<td>1501 - 3000</td>
<td>9.3%</td>
<td>10.5%</td>
<td>8.3%</td>
</tr>
<tr>
<td>3001 - 5000</td>
<td>7.0%</td>
<td>13.2%</td>
<td>17.4%</td>
</tr>
<tr>
<td>5001 or More</td>
<td>76.7%</td>
<td>63.2%</td>
<td>65.3%</td>
</tr>
</tbody>
</table>

Issue

The issues over which special education due process hearings were brought are divided under the heading of placement, program, evaluation, related services and due process. Such issues are compensatory programs and services, individual education plan development and initiation, extended year services, reimbursement for related services and length of school day were grouped under the individual educational plan/program category. The
evaluation/diagnosis category included such issues as authority to assess and reimbursement for independent evaluation.

Transportation issues were included in the related service category while the denial of due process included

Table 5

Special Education Due Process Hearing Issues Hearings from September 1, 1983, to August 30, 1992

<table>
<thead>
<tr>
<th>Issue Category</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placement</td>
<td>107</td>
<td>35.7%</td>
</tr>
<tr>
<td>Program</td>
<td>68</td>
<td>22.7%</td>
</tr>
<tr>
<td>Evaluation</td>
<td>58</td>
<td>19.3%</td>
</tr>
<tr>
<td>Related Services</td>
<td>32</td>
<td>10.7%</td>
</tr>
<tr>
<td>Due Process</td>
<td>35</td>
<td>11.7%</td>
</tr>
</tbody>
</table>

such issues as expulsion/suspension, the composition of the ARD Committee, and proper notice and destruction of educational records.

More then half of the hearing issues reviewed had to do with program or placement. For the full length of the study, placement made up 35.7% of issues brought forth, and
program issues comprised 22.7% of the total with evaluation, related services and due process comprising 19.3% and 11.7% respectively.

Table 6

**Due Process Hearing Issues at Three-Year Intervals**

<table>
<thead>
<tr>
<th>Hearing Issue</th>
<th>83/86</th>
<th>86/89</th>
<th>89/92</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placement</td>
<td>41.8%</td>
<td>40.4%</td>
<td>29.7%</td>
</tr>
<tr>
<td>Program</td>
<td>20.3%</td>
<td>26.3%</td>
<td>22.7%</td>
</tr>
<tr>
<td>Evaluation</td>
<td>16.5%</td>
<td>14.0%</td>
<td>22.3%</td>
</tr>
<tr>
<td>Related Service</td>
<td>7.6%</td>
<td>12.3%</td>
<td>12.0%</td>
</tr>
<tr>
<td>Due Process</td>
<td>13.9%</td>
<td>7.0%</td>
<td>13.7%</td>
</tr>
</tbody>
</table>

In examining three-year trends during the study dates, the percent of program issues have remained fairly steady with 6% variation. The percent of evaluation issues jumped from 14% during the years from September 1, 1986, to August 30, 1989, to 22.3% during the three years from September 1, 1989, to August 30, 1992. This increase may be due in part to the courts' determination that districts must pay for an independent evaluation when the district's evaluation
is challenged or justify the authenticity of the district's evaluation through the hearing process.

The percent of due process issues declined during September 1, 1986, to September 1, 1989, by 6.9% only to rise again during September 1, 1986, to September 1, 1992, by 6.7%. The percent of placement issues brought to hearing declined by around 10% in the last three years of the study.

Classification of Student Disability

The category of "other" consisted of students who were classified as auditory handicapped, other health impaired, visually handicapped, closed head injury, multi-handicapped or not classified. The "other" classification contained the highest number of students, with 34.6% of all hearings involving students with one of the "other" classification over a third of students were considered multi-handicapped; close to another third was made up of those students classified as either other health impaired or auditorially handicapped. In close to ten percent of the hearings in that category, the disability was either in dispute or not determined at the time of hearing.

Students labeled emotionally disturbed were involved in 24.9% of the hearings brought during the time frame of this study, while 18.5% of the students were classified as learning disabled. The mentally retarded classification comprised 13.7% of hearings with autistic students involved
in 8.3% of the hearings. Visually handicapped students were involved in 3.4% of hearings and other health impaired, speech impaired, deaf/blind and traumatic brain injury students in 6% of the hearings reviewed.

Insert Table 7 about here

Trends over three-year intervals of the study show the percentage of students classified as emotionally disturbed involved in hearings decreased, as have autistic students (by 12.7% and 9.5% respectively). By contrast the "other" category increased by 12.8%.

Insert Table 8 about here

Table 9 reflects eight disability labels and a category encompassing hearings where the disability was in dispute or no disability was determined. These disabilities fell within the "other" category shown in Tables 7 and 8.

Restrictiveness of Placement

The most frequent placement of students involved in special education hearings during the years of this study consisted of resource or regular education with support
Table 7

Disability Classification of Students Involved in
Hearings from September 1, 1983, to September 1, 1992

<table>
<thead>
<tr>
<th>Disability</th>
<th>Number</th>
<th>Percentage</th>
<th>Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning Disabled</td>
<td>38</td>
<td>18.5%</td>
<td>51.3%</td>
</tr>
<tr>
<td>Emotionally Disturbed</td>
<td>51</td>
<td>24.9%</td>
<td>11.3%</td>
</tr>
<tr>
<td>Mentally Retarded</td>
<td>28</td>
<td>13.4%</td>
<td>7.5%</td>
</tr>
<tr>
<td>Autistic</td>
<td>17</td>
<td>8.3%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Other</td>
<td>71</td>
<td>34.6%</td>
<td>3.2%</td>
</tr>
<tr>
<td>Multi-Handicapped</td>
<td>25</td>
<td>12.2%</td>
<td>0.7%</td>
</tr>
<tr>
<td>Other Health Impaired</td>
<td>11</td>
<td>5.4%</td>
<td>3.2%</td>
</tr>
<tr>
<td>Auditorially HC</td>
<td>9</td>
<td>4.4%</td>
<td>2.1%</td>
</tr>
<tr>
<td>Visually Handicapped</td>
<td>7</td>
<td>3.4%</td>
<td>6.7%</td>
</tr>
<tr>
<td>Not Identified</td>
<td>7</td>
<td>3.4%</td>
<td></td>
</tr>
<tr>
<td>Orthopedically HC</td>
<td>3</td>
<td>1.5%</td>
<td>1.3%</td>
</tr>
<tr>
<td>Speech Handicapped</td>
<td>3</td>
<td>1.5%</td>
<td>21.6%</td>
</tr>
<tr>
<td>Deaf/Blind</td>
<td>3</td>
<td>1.5%</td>
<td>&gt;0.1%</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>3</td>
<td>1.5%</td>
<td>&gt;0.1%</td>
</tr>
</tbody>
</table>

services (27.8%). This representation proved to be much smaller than the prevalence in the total population. Close
behind in placement frequency (26.3%) were self-contained units housed on regular education campuses. This representation was fairly commensurate with the general prevailing in the disability population of the state (21.5%). Private/residential facilities comprised 22.7% of Table 8

**Classification of Student Disability Hearings at Three-Year Intervals**

<table>
<thead>
<tr>
<th>Years</th>
<th>83/86</th>
<th>86/89</th>
<th>89/93</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Learning Disability</td>
<td>14.3%</td>
<td>21.1%</td>
<td>19.5%</td>
</tr>
<tr>
<td>Emotionally Disturbed</td>
<td>34.7%</td>
<td>21.2%</td>
<td>22.0%</td>
</tr>
<tr>
<td>Mentally Retarded</td>
<td>10.2%</td>
<td>15.8%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Autistic</td>
<td>16.3%</td>
<td>2.6%</td>
<td>6.8%</td>
</tr>
<tr>
<td>Other</td>
<td>24.5%</td>
<td>39.5%</td>
<td>37.3%</td>
</tr>
</tbody>
</table>

placements, while self-contained separate campuses and the "other" category consisted of 12.1% and 11.1% respectively. All three of these categories of instructional placements were represented in hearings at a greater rate than their prevalence in the total population of placements of disabled students.
Table 9

**Restrictiveness of Placements of Students Involved in Hearings from September 1, 1983, to August 30, 1992**

<table>
<thead>
<tr>
<th>Placement</th>
<th>Number</th>
<th>Percentage</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Ed./Resource</td>
<td>55</td>
<td>27.8%</td>
<td>75.0%</td>
</tr>
<tr>
<td>Self-Contained/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regular Campus</td>
<td>52</td>
<td>26.3%</td>
<td>21.5%</td>
</tr>
<tr>
<td>Self-Contained/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate Campus</td>
<td>24</td>
<td>12.1%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Residential Placement</td>
<td>45</td>
<td>22.7%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Other</td>
<td>22</td>
<td>11.1%</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

Three-year trends in restrictiveness of the placement of students involved in hearings indicated the highest percentages occurring for student placements that were residential or self-contained regular campus with both showing 31.9% during the years from September 1, 1983, to September 1, 1986.
Table 10
Restrictiveness of Placement of Students Involved in Hearings Three-Year Intervals

<table>
<thead>
<tr>
<th>Placement</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>83/86</td>
</tr>
<tr>
<td>Regular Education/Resource</td>
<td>12.8%</td>
</tr>
<tr>
<td>Self-Contained/Regular Campus</td>
<td>31.9%</td>
</tr>
<tr>
<td>Self-Contained/Separate</td>
<td>10.6%</td>
</tr>
<tr>
<td>Residential Placement</td>
<td>31.9%</td>
</tr>
<tr>
<td>Other</td>
<td>12.8%</td>
</tr>
</tbody>
</table>

During the years from September 1, 1986, to September 1, 1989, the trend changed somewhat with students residually placed comprising only 19.4%, while those placed in regular educational setting or resource comprised 41.7% of hearings. Self-contained regular campus placements accounted for 27.8% of cases brought to hearing during those years.

The years from September 1, 1989, to September 1, 1992, saw a growth to 13% in students brought to hearing whose placement fell in the "other" category. This was due in
part to an increase in hearings brought on behalf of students no longer in the educational setting. The percentage of placements in regular or resource setting decreased to 29.6% and the category of self-contained separate campus rose to 13.9%.

Outcomes of Due Process Hearings

Due process hearing outcomes were tallied for each issue identified for a hearing. In many cases one hearing consisted of more than one issue and outcome. In 91.6% of the cases there was an identifiable complete winner in the hearing.

Table 11
Outcomes of Due Process Hearings from September 1, 1983, to August 30, 1992

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Complete</td>
<td>192</td>
<td>64.2%</td>
</tr>
<tr>
<td>District Modified</td>
<td>13</td>
<td>4.1%</td>
</tr>
<tr>
<td>Parent Modified</td>
<td>13</td>
<td>4.1%</td>
</tr>
<tr>
<td>Parent Complete</td>
<td>82</td>
<td>27.4%</td>
</tr>
</tbody>
</table>

In 64.2% of the hearings brought during the time frame of this study the district was the complete winner with the parent prevailing completely in 27.4% of the hearings.
In examining trends of hearing outcomes districts consistently prevailed completely more than 60% of the time, although this dropped by 9.5% from the September 1, 1986, to September 1, 1989, interval to the September 1, 1989, to September 1, 1992, interval.

Table 12

<table>
<thead>
<tr>
<th>Outcomes of Due Process Hearings at Three-Year Intervals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years</td>
</tr>
<tr>
<td>Outcome</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>District Complete</td>
</tr>
<tr>
<td>District Modified</td>
</tr>
<tr>
<td>Parent Modified</td>
</tr>
<tr>
<td>Parent Complete</td>
</tr>
</tbody>
</table>

Another trend revealed that over the years of the study, decisions (in favor of districts or parent) are more often being modified by hearing officers. Although comprising only 11.4% of outcomes this was an increase of almost 10%.

The determination of the involvement of an advocacy group in each special education hearing from September 1, 1989, through September 1, 1992, was made by examination of
the official hearing report. When it could be established that the representative for the parent/student was an advocacy organization, the hearing was credited as involved with an advocacy organization. During that period 104 hearings were reviewed. Of those 15 could be identified as having advocacy representation of parent/student. Thirty issues were identified in these 15 hearings. Fourteen issues were resolved in favor of the parent/student with 15 being resolved completely in favor of the district and one in favor of the district with modifications. At first glance this would indicate a substantial advantage to parent/students to having an advocacy organization involved in their due process hearings. However, this information must be examined in light of the "Robstown Seven" hearings which were brought during this time frame. These hearings were brought in the same district and concerned similar issues of placement. Excluding Robstown hearings, parents prevailed in 33.3% of hearing involving advocacy while the district prevailed in 66.6%.

Relationship Between Hearing Issue, Student Disability and Restrictiveness of Student Placement and The Hearing Outcomes

The Chi-Square Independence test was used to explore the relationship between hearing outcomes and hearing issues, student disability classification and
restrictiveness of student placement at the time of the hearing.

Table 13

**Hearing Issue and Outcome**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Observations</td>
<td>300</td>
</tr>
<tr>
<td>Chi-Square</td>
<td>17.5203</td>
</tr>
<tr>
<td>Degrees of Freedom</td>
<td>12</td>
</tr>
<tr>
<td>Critical Value @ .05</td>
<td>21.026</td>
</tr>
<tr>
<td>Significance</td>
<td>No</td>
</tr>
</tbody>
</table>

Student disability classification was determined by the study to have a significant relation to hearing outcomes. The ratio of a district versus parent complete win at hearing is approximately 8:1. This decreased when an emotionally disturbed classification was brought to hearing to approximately 2:1 and with a mentally retarded classification to approximately 5:4 in the district's favor. When the classification is autistic the ratio of district versus parent complete win is approximately 7:3 with the "other" category showing a 2:1 ratio.

These data show a significant relationship (at the .05 level) between student disability classification and restrictiveness of student placement and hearing outcomes.
Table 14

**Student Disability Classification and Hearing Outcomes**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Observations</td>
<td>292</td>
</tr>
<tr>
<td>Chi-Square</td>
<td>22.5359</td>
</tr>
<tr>
<td>Degrees of Freedom</td>
<td>12</td>
</tr>
<tr>
<td>Critical Value @ .05</td>
<td>21.026</td>
</tr>
<tr>
<td>Significance</td>
<td>YES</td>
</tr>
</tbody>
</table>

However, the data does not suggest whether the variables are the cause or critical determination of the outcome.

Table 15

**Restrictiveness of Student Placement and Outcome of Hearings**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Observations</td>
<td>288</td>
</tr>
<tr>
<td>Chi-square</td>
<td>28.4955</td>
</tr>
<tr>
<td>Degrees of Freedom</td>
<td>12</td>
</tr>
<tr>
<td>Critical Value @ .05</td>
<td>21.026</td>
</tr>
<tr>
<td>Significance</td>
<td>YES</td>
</tr>
</tbody>
</table>

A relationship was not found between the issue referred to and the hearing outcome. However, Table 16 showed that the observed frequencies were higher than the expected frequencies for at least one outcome classification of each issue. The district complete win category showed higher
than expected frequencies when the issue was IEP/program or denial of due process.

A significant relationship was found between student's disability classification involved in hearing and hearing outcomes. Table 17 showed higher than expected frequencies in the district complete win outcome classification when the disability was identified as learning disabled or autistic. The data showed a higher than expected outcome as a parent complete win when the disability was categorized as emotionally disturbed, mentally retarded, autistic and "other".

A significant relationship was also found between student placement classification involved in hearing and hearing outcomes. Table 18 showed higher than expected frequencies in the district complete win outcome classification when the placement was identified as regular/resource. The data showed a higher than expected outcome in favor of parent complete win when the placement was self-contained regular campus, private/residential placement or "other".
Table 16

**Issue Observed and Expected Frequencies**

<table>
<thead>
<tr>
<th>Type of Issue</th>
<th>Observed</th>
<th>Expected</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriate Placement</td>
<td>74</td>
<td>68.48</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>4.64</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>4.64</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>29.25</td>
<td>4</td>
</tr>
<tr>
<td>IEP/Program</td>
<td>39</td>
<td>43.52</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>2.95</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>2.95</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>18.59</td>
<td>4</td>
</tr>
<tr>
<td>Evaluation/Diagnosis</td>
<td>42</td>
<td>37.12</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>2.51</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2.51</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>15.85</td>
<td>4</td>
</tr>
<tr>
<td>Related Service</td>
<td>22</td>
<td>20.48</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>1.39</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1.39</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>8.75</td>
<td>4</td>
</tr>
<tr>
<td>Denial of Due Process</td>
<td>15</td>
<td>22.40</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1.52</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1.52</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>9.57</td>
<td>4</td>
</tr>
</tbody>
</table>

*Note. Outcome 1 = District complete win, Outcome 2 = district win on major issue with modification in favor of parent, Outcome 3 = Parent win on major issue with modification in favor of district, Outcome 4 = Parent complete win.*
### Table 17

**Disability Observed and Expected Frequencies**

<table>
<thead>
<tr>
<th>Disability Classification</th>
<th>Observed</th>
<th>Expected</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning Disabled</td>
<td>41</td>
<td>31.68</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>2.23</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>2.23</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>13.87</td>
<td>4</td>
</tr>
<tr>
<td>Emotionally Disturbed</td>
<td>44</td>
<td>44.35</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>3.12</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>3.12</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>19.42</td>
<td>4</td>
</tr>
<tr>
<td>Mentally Retarded</td>
<td>21</td>
<td>28.51</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>2.00</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>2.00</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>12.48</td>
<td>4</td>
</tr>
<tr>
<td>Autistic</td>
<td>14</td>
<td>13.30</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>0.93</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>0.93</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>5.83</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>65</td>
<td>67.16</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>4.72</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>4.72</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>34</td>
<td>29.40</td>
<td>4</td>
</tr>
</tbody>
</table>

**Note.** Outcome 1 = District complete win, Outcome 2 = district win on major issue with modification in favor of parent, Outcome 3 = Parent win on major issue with modification in favor of district, Outcome 4 = Parent complete win.
Table 18
Placement Observed and Expected Frequencies

<table>
<thead>
<tr>
<th>Placement</th>
<th>Observed</th>
<th>Expected</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular/Resource</td>
<td>63</td>
<td>49.02</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>3.25</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>3.25</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>22.21</td>
<td>4</td>
</tr>
<tr>
<td>Self-Contained/Regular</td>
<td>50</td>
<td>54.68</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>3.63</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>3.93</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>24.77</td>
<td>4</td>
</tr>
<tr>
<td>Self-Contained/Separate</td>
<td>19</td>
<td>19.48</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>1.29</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1.40</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>8.83</td>
<td>4</td>
</tr>
<tr>
<td>Private/Residential</td>
<td>34</td>
<td>41.48</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2.75</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>2.98</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>18.79</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>16.34</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>1.08</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1.17</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>7.40</td>
<td>4</td>
</tr>
</tbody>
</table>

Note. Outcome 1 = District complete win, Outcome 2 = district win on major issue with modification in favor of parent, Outcome 3 = Parent win on major issue with modification in favor of district, Outcome 4 = Parent complete win.
CHAPTER V

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The problem of this study was to determine and describe characteristics of special education due process hearings and to analyze the patterns in issues arriving from these hearings in the state of Texas from September 1, 1983, to September 1, 1992. It was hoped that such information would help districts in avoiding the monetary and possible credibility expenses involved in losing a dispute during a special education due process hearing.

Research Question Findings

Research Question:

1. Does the district size or location make it more likely to be involved in the hearing process?

The review of district size and involvement in special education due process hearings revealed that the larger the district the more the likely the district was to be involved in a due process hearing. This would be expected in that the special education population also increases with the district size producing an increase in opportunities for disagreement with student services. When the trends over three-year intervals were examined, it was found that more hearings were brought in the later years of the study in
smaller districts. A growth from 0% (during the years from September 1, 1983, to September 1, 1986) to 4.1% (during the years from September 1, 1989, to September 1, 1992) was noted in districts involved in hearings with an average daily attendance of from one to 750. In districts of 3001 to 5000 average daily attendance the growth was from 7.0% for the years September 1, 1983, to September 1, 1986, to 17.4% from September 1, 1989, to September 1, 1992. These growths may be explained by an increase in parent awareness of rights in rural areas through the Texas Education Agency's efforts as well as efforts from advocacy groups. Parents' rights booklets were developed by the state and were first mandated to be disseminated and explained to all parents of student with disabilities in 1988. Prior to 1988 many large districts had been providing parents with this information through their public relations departments.

The review of district geographical location indicated that the likelihood of a district's involvement in hearings increased for those districts that were classified as urban or suburban. Over the length of the study data revealed that slightly over half (51.2%) of special education due process hearings were held in urban or suburban areas. This finding would be expected due to the larger numbers of special education students located in such areas. Not expected is the finding that small towns (population 3,000
to 15,000) were consistently involved in a higher percent of hearings than were cities of a population of 15,001 to 50,000. When the names and locations of the smaller town populations involved in hearings during the years of the study were examined, it was noted that many of the districts of populations of 3,000 to 15,000 were involved more than once in the hearing process. This phenomenon occurred in other categories, but to a lesser degree. For example, Robstown, whose population fell in the small town category, was involved in a total of eight hearings during the study years. Other districts in that category accumulated multiple hearings ranging from two to five per district.

2. Is there a relationship between the type of due process hearing issue and the outcome of the hearing?

Although hearing issues did not show in the study to be a significant predictor of hearing outcomes, some frequency trends can be noted and may perhaps be helpful to program administrators. Due process hearings were more often found to deal with placement, program and evaluation issues in that order. This finding is consistent with the majority of previous research. Smith (1981) and Eubank (1984) found placement to be the major issue raised in due process hearings, as did more recent studies by Howard (1991) and Tarola (1983). Eubanks's Texas study (1984) also listed evaluation and instructional concerns as top issues. In
contrast O'Connor Rhen (1991) determined the highest number of issues brought to hearing in Pennsylvania concerned students' classification. In that study placement was the second highest category.

For two of the three-year intervals reviewed by this study, hearings involving issues of due process accounted for 13.9% (between September 1, 1983, and September 1, 1986) and 13.7% (between September 1, 1989, to September 1, 1992), while those involving related service issues accounted for 7.6% (between September 1, 1983, to September 1, 1986) and 12.0% (between September 1, 1988, to September 1, 1992). This trend was reversed during the years from September 1, 1986, to September 1, 1989, with due process issues accounting for 7.0% and related services accounting for 12.3%. Emphasis at the state level on diligence concerning special education due process could account for the decline of due process as an issue in hearings for September 1, 1986, to September 1, 1989. During the 1990's the emphasis in Texas special education changed from a process orientation to a program orientation. This decreased the Texas Education Agency's detailed monitoring of districts' special education procedures. Considering that due process issues accounted overall for 13.9% of hearings and that the aspect of due process is within district control, this would
seem to be an area where administrators could impact the prevalence of special education due process hearings.

The increase in evaluations as an issue in special education hearings can be explained by rulings by hearing officers that districts have the burden of proving their evaluations appropriate at hearings or pay for an independent evaluation. Once made aware of this shift in burden more parents challenged their child's district evaluations.

3. Is there a relationship between student disability (handicapping condition) cited and due process hearing outcomes?

Student disability classification was determined by the study to have a significant relation to hearing outcomes. The most frequent disability classification brought to hearing over the length of the study was the "other category" (34%). This category made up 29.6% of the total population of students with disabilities for the years of this study. Under the "other" category, speech impairment accounted for 21.5% of occurrences in the total population but only 1.5% of the hearings brought forth. With the removal of speech from the "other" category, the occurrence of the remaining disabilities in that population was only 8%, yet that 8% accounted for 33.1% of disabilities brought to hearing.
After removing speech, a disability breakout under the "other" category reveals a list of disabilities which require extensive programming and related services. These disabilities include multi-handicapped, visually handicapped, other health impaired, deaf/blind, orthopedically handicapped, auditorially handicapped, and traumatic brain injured. The debilitating severity of these conditions can place great coping burdens on families and thereby increase the likelihood that families will demand assistance from public agencies including schools through the hearing process.

The next disability classification found most likely to be involved in hearings consisted of emotionally disturbed. The prevalence in the overall special population during the years of this study was 11.3% while 24.9% of hearings involved students with emotional disturbances. Again these children are difficult for families to work with as well as for schools to handle. Placement issues most often accompany emotionally disturbed students to hearings. Parents often want placement in residential settings or reimbursement for such placements.

Students classified as learning disabled were inversely represented in hearings when compared to prevalence in the overall population of disabled students. These students represented 18.5% of hearings, but 51.3% of
identified disabled students. Comparatively students with a learning disability present a mild disability. They frequently have compensatory skills that allow them to function well outside of the school setting, thereby not creating the extent of family care that disabilities in the "other" and emotionally disturbed categories require.

Students classified as mentally retarded were represented in hearings at close to two times their prevalence in the population. These students also will generally require extensive community and school services.

Considering the small numbers of students identified in the general student population as autistic (0.3%), an 8.3% hearing frequency should alert districts to a need to very carefully follow due process requirements in planning and implementing programs for these students. The regulations for autistic students are more extensive than those for other disabilities. Because the care and treatment of these children in and out of the school setting are extremely challenging and require consistency between school and home, parents must be closely involved with all aspects of planning for their autistic child. This increases the opportunity for disputes to occur.

Most previous research shows the category of emotionally disturbed to be the most prevalent classification involved in hearings. Diamond (1980) listed
behaviorally disordered students followed by learning disabled students as most often involved in hearings. Eubank (1984) also showed emotionally disturbed students as the most prevalent with multi-handicapped students close behind, whereas the multi-handicapped classification was listed under the "other" category in the present study.

Regan (1990) also found the most frequent classification of students for whom due process proceedings were requested was emotionally disturbed, as did Howard (1991) and O'Connor Rhen (1989). Tarola (1991), however, found the order of frequency of disability classification to be mentally retarded, then learning disabled, followed by emotionally disturbed.

4. Is there a relationship between the restrictiveness of a student's placement at the time of hearing and the outcome of the hearing?

The restrictiveness of a student's placement was also determined by the study to be significant in predicting hearing outcomes. The ratio of district complete win versus parent complete win for the regular education/resource category was approximately 5:1, while the self-contained regular campus category showed a ratio of approximately 2:1. The self-contained separate campus category showed a ratio of district versus parent complete win of 3:1 and the private/residential placement category a ratio of 17:14.
while the "other" category showed an approximate ratio of 2:1.

This data would indicate that when a student's placement is more restrictive the likelihood of the parent prevailing in a due process hearing increases. This agrees with Kuriloff (1985), whose findings in Pennsylvania suggest that school districts tended to argue their cases less well as the restrictiveness of the placement they requested increased. This increase is less in the category of self contained/separate campus, perhaps due to the state-wide efforts to close separated campuses as instructional arrangements, which has increased awareness of the need to document and justify the restrictiveness of that placement.

The data from this study indicate that hearing outcomes have been consistently in favor of districts, with 64.2% complete wins by districts compared to 27.4% complete wins by parents. This trend has remained fairly consistent through the three-year interval with the exception of the years between September 1, 1986, to September 1, 1989. During these years 70.9% complete wins were ascribed to districts, while 21.8% were ascribed to parents. This trend for districts to prevail more often than parents in special education due process hearings is collaborated in previous studies (Eubank, 1984; O'Connor Rhen, 1989; Regan, 1990; Tarola, 1991).
Another trend noted indicates an increase in hearing outcomes that do not indicate a complete winner, but rather a modified win, of about 10% from the first years of the study to the final years.

5. Is there a relationship between the representation by an advocacy group and the outcome of the hearing?

Advocacy involvement in hearings was reviewed for the last two school years of the study for September 1, 1989, to September 1, 1992. When the "Robstown Seven" hearings were excluded, districts prevailed in 66.6% of hearings involving representation by Advocacy Incorporated and parents prevailed in 33.3%. The Robstown Seven hearings were brought in the same district and concerned similar issues of placement. Robstown closed its separate campus during that summer, but failed to return to an ARD meeting to make a change in placement decision. Instead they administratively placed students on regular campuses. Therefore results including these seven hearings must be viewed with caution due to the limited sample from which data were drawn.

Recommendations

As a result of this study, recommendations to district administrators would include the following:

1. Carefully follow due process procedures and extensively document good faith educational efforts when programming for students in low
density disability categories.

2. Justify placing students in restrictive environments with complete documentation of efforts to provide services in less restrictive environments.

3. Do not become careless in following due process regulations as that issue still makes up over 10% of hearing issues and is generally within administrative control.

4. Work with parent communication to maintain a vehicle by which parents and the district can rectify any disputes before they move to the hearing level.

5. Make use of state-level mediation whenever possible.

6. Call in specialists to assist in programming for disputed areas. They can be extremely effective in testifying for the merit of the district's educational decisions.

Recommendations for Further Study

Recommendations for further studies would include studies on the following:

1. a determination of variables which may precipitate the increase in hearing in districts of small size (i.e. proximity of
state schools or advocacy organizations).

2. an investigation of characteristics of those complaints that are formally made, but settled through mediation before going to hearing (i.e. number of complaints resolved, issues most likely to be resolved, and what outcomes were determined).
APPENDIX A

DATA INFORMATION SHEET
Data Information Sheet

<table>
<thead>
<tr>
<th>Hearing Date</th>
<th>Assigned #</th>
</tr>
</thead>
</table>

Petitioner:  
Represented by:  
Respondent:  
Represented by:  
Handicapping Condition(s) of Student(s)  
Sex of Student ___  Age of Student at time of Hearing ___  
Restrictiveness of Current Placement:  

Issue(s) of dispute:  

1.)  
2.)  
3.)  

(If more than three issues continue on back)

Decision(s) by issue:  

Decision Favored Party:  

Representation by an Advocacy Group,  No ___  Yes ____,

If yes, indicate the name of the group:  

APPENDIX B

HEARING OUTCOME CODING INSTRUMENT
**Independent Variables:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Scale</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Child's Age</td>
<td>1 = 0-7</td>
<td>(0-22)</td>
</tr>
<tr>
<td></td>
<td>2 = 8-12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 = 13-17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 = 18-22</td>
<td></td>
</tr>
<tr>
<td>2. Child's Sex</td>
<td>1 = Male</td>
<td>(1-2)</td>
</tr>
<tr>
<td></td>
<td>2 = Female</td>
<td></td>
</tr>
<tr>
<td>3. District Urbanization</td>
<td>1 = Urban (Large City Population 50,000+)</td>
<td>(1-5)</td>
</tr>
<tr>
<td></td>
<td>2 = Suburban (Located Near a Large City)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 = City (Population 15,001 to 50,000)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 = Small Town (Population 3,000 to 15,000)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 = Rural (Population less than 3,000)</td>
<td></td>
</tr>
<tr>
<td>4. District Size</td>
<td>(1-5)</td>
<td></td>
</tr>
<tr>
<td>5. Restrictiveness of Current Placement services/resource</td>
<td>(1-5)</td>
<td></td>
</tr>
<tr>
<td>6. Child's Classification</td>
<td>(1-5)</td>
<td></td>
</tr>
</tbody>
</table>
Dependent Variable | Scale | Range
--- | --- | ---
7. Type of Issue | (1-5) | 
1 = Appropriate Placement
2 = IEP/Program
3 = Evaluation/Diagnosis
4 = Related Services
5 = Denial of Due Process

8. Hearing Outcome | (1-4) | 
1 = District complete win
2 = District win on major issue with modification in favor of parent
3 = Parent win on major issue with modification in favor of school
4 = Parent complete win
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