

Trinity College

Trinity College Digital Repository

Senior Theses and Projects

Student Scholarship

Spring 2004

Who Prevails in Special Education and Why?

Kate Belf-Becker

Trinity College

Follow this and additional works at: <https://digitalrepository.trincoll.edu/theses>



Part of the [Education Commons](#)

Recommended Citation

Belf-Becker, Kate, "Who Prevails in Special Education and Why?". Senior Theses, Trinity College, Hartford, CT 2004.

Trinity College Digital Repository, <https://digitalrepository.trincoll.edu/theses/94>

Who Prevails in Special Education and Why?

Kate Belf-Becker
Education 400 Senior Research Project
Trinity College
December 15, 2003

In hearings concerning services for children with autism, is there a common thread as to why one side or the other prevails more frequently and what does it consist of? What constitutes a winning case? I spent the last semester as an intern at the Connecticut Department of Education's Bureau of Special Education and Pupil Services, Due Process Unit. While there, I had access to hearing officer decisions and the Bureau's data base system in order to help my study. As hearing officers hear cases regarding all special education-related issues, I decided to focus my research on cases from the past six years concerning autism. Therefore, I read and analyzed every Connecticut decision related to autism from 1998 to 2003. My internship has taught me what I needed to look for in a hearing decision in order to analyze it sufficiently. As a result of my research, I have concluded that winning a case is dependent on many factors, including representation, desired placement and services, the individual hearing officer, and the evidence presented during a hearing.

Background:

Special education is a right under state and federal law. The Individuals with Disabilities Education Act (IDEA) is the federal law in which special education

entitlements are found. The act gives eligible children with disabilities the entitlement of a free appropriate public education (FAPE) that includes special education and related services.¹ Special education is defined as “. . . specially designed instruction at no cost to parents, to meet the unique needs of a child with a disability . . .”² Students who receive special education services are also entitled to receive related services which includes transportation and other services that “. . . may be required to assist a child with a disability to benefit from special education . . .”³ Also, under the IDEA, students with special needs must be taught in the least restrictive environment (LRE) which is defined as a child who must be educated to the extent possible and appropriate in the least restrictive setting possible when determining where and how services are to be delivered.⁴ All of these terms, IDEA, FAPE, special education, related services, and LRE, combine to ensure that an eligible child will receive meaningful access to education.

According to Title 20 of the United States Code, every state must have a due process system to address special education disputes. In Connecticut, parties have access to hearings, mediations, or advisory opinions in order to resolve disputes over special education issues. Hearing officers decide each individual case based on the evidence presented and the facts of the case within the context of the state and federal laws, regulations, and pertinent cases.

Parents can access due process regarding virtually any issue involving their child’s special education program and services. Specifically, when the parent of a child

¹ 20 United States Code, ss. 1400-1487 (originally from 1975, most recently amended in 1997 and currently being reauthorized by Congress)

² 20 United States Code, s. 1401 (2s); 34 Code Federal Regulations, s. 300.26

³ 20 United States Code, s. 1401 (22); 34 Code of Federal Regulations s. 300.24

⁴ 34 Code of Federal Regulations s.300.550

with autism does not believe that his child is receiving appropriate services or is in the wrong placement, he can request a hearing before a hearing officer. The hearing officer hears the parent's case and the local education agency's (LEA) case and then determines what services or placement offers the student a FAPE. A hearing is like a mini-trial; evidence is presented through documents and sworn testimony and the resulting decision is final unless appealed to court where a judge would review it. Cases involving students with autism involve disputes over various teaching methods and amount of time spent providing educational services to the students as well as disputes over placements, private or otherwise. In discussing cases about autism, Tom Badway, an education consultant for the Bureau of Special Education and Pupil Services at the Connecticut Department of Education, said, "When districts have provided programs for children then I don't see cases coming to hearing as often. There are more programs in public schools for children with autism, so, as far as the decisions are concerned, when a district has given consideration to placing the child with non-disabled peers when appropriate, and given consideration to placing the child in the least restrictive environment in relationship to the services needed for the child as well as the opportunity to be with non-disabled peers, I see more districts prevailing on those issues." He believes that, due to the increase of knowledge on both sides, there has been an improved quality of programs for children with autism.

Autism is a neurological disorder that hinders normal development of reasoning, social interaction, and communication. Autism affects about one percent of the population and is three times more likely to affect boys than girls. There are many

different types of autism such as Pervasive Developmental Disorder (PDD), Asperger's Syndrome, and Autistic Disorder.⁵

Autism is a disorder that is defined by the Individuals with Disabilities Education Act (IDEA) in 1997 as “. . . a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.”⁶

My research consisted of two parts: analyzing themes in the decisions concerning hearings on students with autism, and conducting interviews with different parties involved in the hearing process. I used the data that I analyzed from the decisions and the interviews in order to answer my research question.

This study is worth studying because my findings can parties understand what is helpful in order to put on the best case possible for the hearing officer to hear. It is important that each party be aware of ways in which to access the due process system equally even if a winning case is never guaranteed.

Existing Research:

⁵ Mesibov, Gary B, Lynn W. Adams and Laura G. Klinger, Autism Understanding the Disorder. New York: Plenum Press, 1997.

⁶ IDEA: 34 Code of Federal Regulations s. 300.7 (b)(2)(c)(1)(i)

Steven S. Goldberg and Peter J. Kuriloff wrote an article called, "Evaluating the Fairness of Special Education Hearings." This study focused on the hearing process in Pennsylvania between 1980 and 1984. According to the authors of this article, this study was worth researching because, "Participants have the right to receive adequate notice, to examine witnesses, to be heard by an impartial hearing officer, and to appeal adverse decisions."(page 1)⁷ The researchers wanted to specifically look at the question of whether the due process system gives participants the indication that their case is being treated fairly. They wrote, "The present research was designed to discover how parents and school officials evaluate the subjective fairness of special education due process hearings."(page 5)⁸

The authors of this article questioned the fairness of special education hearings. They analyzed parents and schools who participated in hearings in Pennsylvania between 1980 and 1984 by looking at a total of 282 hearings. The authors used a parent and a school interview questionnaire and a transcript data form as part of their research. Their findings were, "There were equally large, significant differences between both parents' and school officials' positive and negative perceptions about the overall fairness of their hearings. Eighty-eight percent of the officials, but only 41% of the parent believed the hearings were completely or almost completely fair. Indeed, a larger number of parents (35%) had very negative views, perceiving the hearings as substantially unfair."(page 10)⁹ The authors also looked at the relationship between fairness and winning. "On all but two measures, parents who got more of what they wanted in the decision perceived

⁷Goldberg , Steven S. and Peter J. Kuriloff, "Evaluating the Fairness of Special Education Hearings," Exceptional Children, May 1991 vol. 57 no. 6 p.546.

⁸ Goldberg, Steven S. and Peter J. Kuriloff, "Evaluating the Fairness of Special Education Hearings," Exceptional Children, May 1991 vol. 57 no. 6 p.546.

hearings to be fairer and more satisfactory than did parents who got less of what they wanted.”(page 11)¹⁰

For my study, I asked a question regarding hearings that was similar to these two authors’ question. They researched the fairness of hearings, I am ultimately seeking to find out if one side prevails over another more frequently in a hearing; my outcomes may reveal the fairness of hearings as well. There is a definite link between perception of fairness and which side prevails as the side which does not prevail in a hearing may feel that there was a lack of fairness during the hearing.

Another study which can be related to my research was done by Susan Etscheidt and was written about in her article, “An Analysis of Legal Hearings and Cases Related to Individualized Education Programs for Children with Autism.” Her goal was to make sure that the individualized education plan’s goal matches the data from the evaluation of the student. She explained her study by writing, “The current study is an analysis of 68 cases between 1997 and 2002 and contributes to the existing research in its identification of specific factors influencing administrative and judicial decisions regarding the adequacy of IEPs for students with autism.”(page 53)¹¹

Susan Etscheidt reviewed hearing officer cases and collected data regarding the case, the student, the educational program, the parent’s issue, and the decision. She put all of her data into tables in order to clearly portray her findings. She put together five tables which were labeled: Table 1, “Administrative and Judicial Decisions Finding IEP

⁹ Goldberg, Steven S. and Peter J. Kuriloff, “Evaluating the Fairness of Special Education Hearings,” Exceptional Children, May 1991 vol. 57 no. 6 p.546.

¹⁰ Goldberg, Steven S. and Peter J. Kuriloff, “Evaluating the Fairness of Special Education Hearings,” Exceptional Children, May 1991 vol. 57 no. 6 p.546.

¹¹ Etscheidt, Susan. “An Analysis of Legal Hearings and Cases Related to Individualized Education Programs for Children with Autism.” Research & Practice for Persons with Severe Disabilities 2003 Vol. 28, No.2, 51-69.

Goals Were Consistent With Evaluation Data, Table 2, “Administrative and Judicial Decisions Finding IEP Goals Were Inconsistent With Evaluation Data,” Table 3, “Administrative and Judicial Decisions Addressing the Qualifications of IEP Team,” Table 4, “Administrative and Judicial Decisions Finding Methodology Was Able to Achieve IEP Goals,” and Table 5, “Administrative and Judicial Decisions Finding Methodology Could Not Achieve IEP Goals.” Her findings included three elements: “the goals developed for the student must be consistent with evaluation data,” “individual participants of the IEP team must be qualified to make placement decisions for students with autism,” and “the special education methodology must be able to achieve the goals of the IEP.”(page 66)¹² My study differs from Susan Etscheidt’s study in that she looked at IEPs of students with autism to see if the IEPs match the data from the student’s evaluation and my study focused on hearing officers’ decisions on autism cases to see which side prevails more frequently.

This study also differs from mine because Etscheidt looked at individualized education plans of students with autism and I looked at actual hearing officer decisions. My study is related to hers because if the student’s evaluation does not match the individualized education plan, the case has the potential to go to a hearing if the dispute cannot be resolved.

Another study related to special education hearings was done by H. Rutherford Turnbull, III, Brennan L. Wilcox, and Matthew J. Stowe in their article called, “A Brief Overview of Special Education Law with Focus on Autism.” The authors of this article

¹² Etscheidt, Susan. “An Analysis of Legal Hearings and Cases Related to Individualized Education Programs for Children with Autism.” Research & Practice for Persons with Severe Disabilities 2003, Vol. 28, No.2, 51-69.

discussed the Individuals with Disabilities Education Act (IDEA) and the effect this act had on special education law, specifically children with autism. The article discussed the legal changes that have occurred since IDEA was reauthorized in 1997. The article stated that while IDEA is supposed to be a neutral disability act, “The exception to this, so far as children with autism are concerned, related to functional behavioral assessment and positive behavioral interventions and support.”¹³ (p.493) The authors believed that the act works on paper but that it may not work on the street or in the classroom.

This study regarding IDEA is connected to my study because parents and LEAs go to hearings if procedures required regarding students with disabilities under IDEA are not being followed. The authors of this article believed that the act does not work the way it was intended for students with autism. They referred to IDEA as a “disability neutral” act but say that it is, in fact, not.

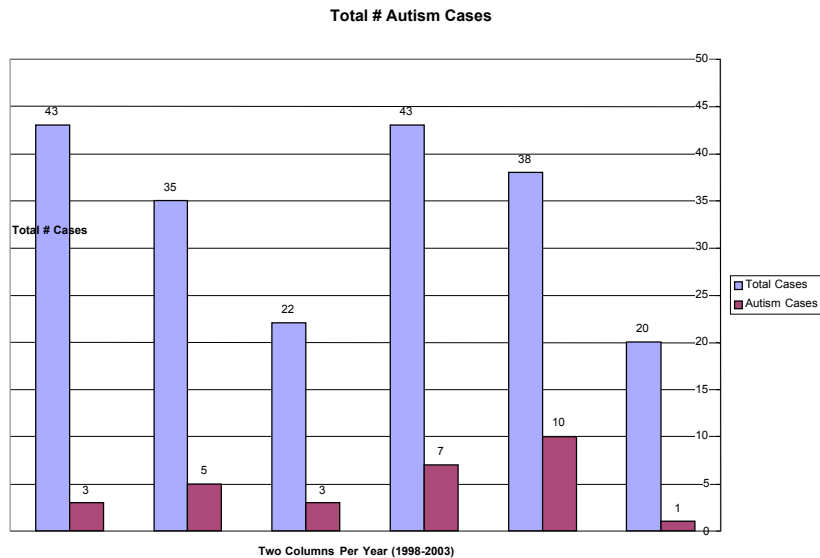
The final study that I looked at that was related to my study was done by Myrna R. Mandlawitz in her article, “The Impact of the Legal System on Educational Programming for Young Children with Autism Spectrum Disorder.” Myrna Mandlawitz proposed that “school districts consider legal standards as programs are designed, that programs fit the unique needs of the child, that programs ensure appropriate progress educationally and socially, and that communication between parents and school districts be open and honest so that the due process system is used as the last resort.”¹⁴ (page 495) Mandlawitz wrote that the prevailing party depends on whether or not there are qualified experts to defend or oppose the school’s program. This point of view is very similar to

¹³ Turnbull, H. Rutherford, Brennan L. Wilcox and Matthew J. Stowe, “A Brief Overview of Special Education Law with Focus on Autism,” Journal of Autism and Developmental Disorders, vol. 32, No. 5, October 2002 page 479-493.

my research question. In my study, I also looked to see if the witnesses make a large difference as to which side prevails.

Analysis and Interpretation of Hearing Officer Decisions:

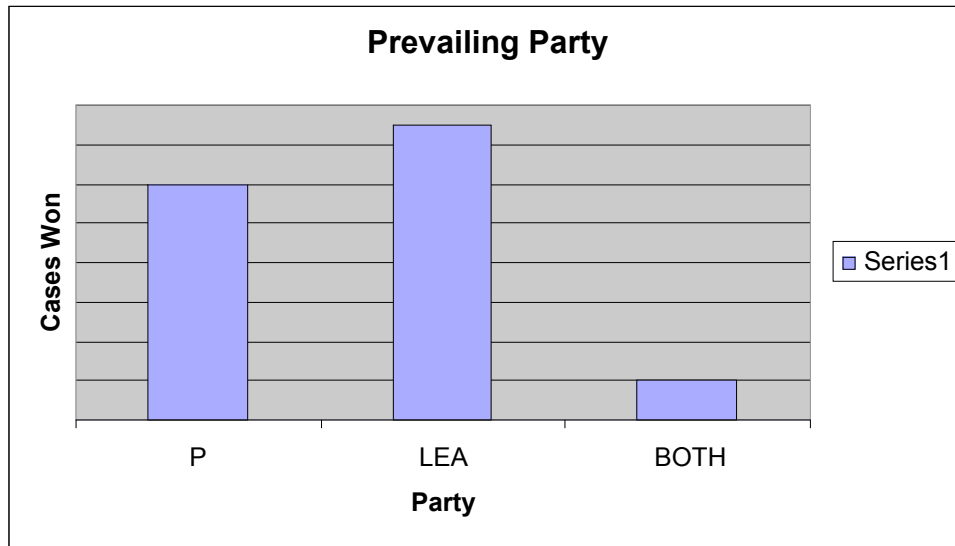
My study involved twenty-nine cases regarding autism from the years 1998 to 2003. 14% of the total number of cases over this six year period are concerning issues relating to autism. The yellow bars in this chart represent the autism cases; the white bars in this chart represent the total number of cases over this six year span.



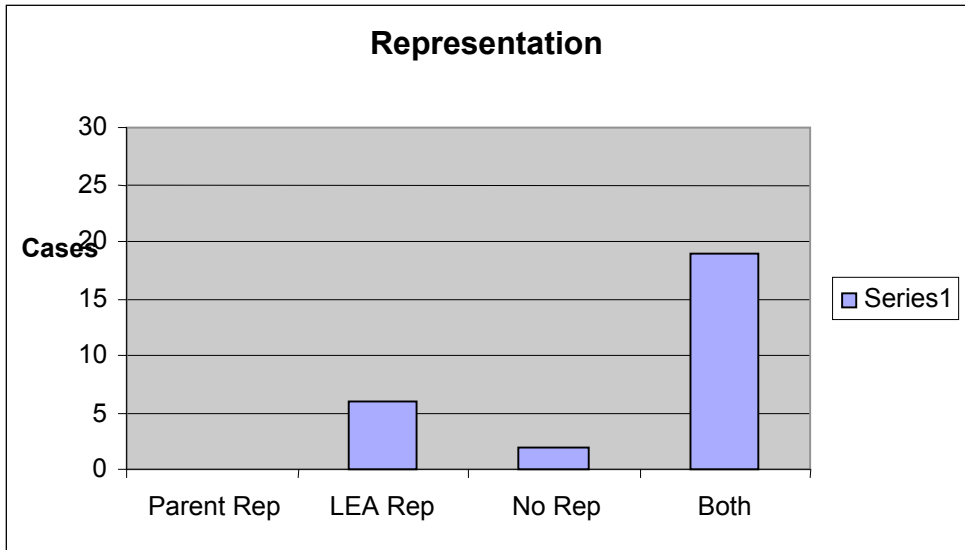
When analyzing the hearing officer decisions, I began by looking at which party prevailed. I found that out of the twenty-nine autism cases, the parents prevailed in 41%

¹⁴ Mandlawitz, Myrna R., “The Impact of the Legal System on Educational Programming for Young Children with Autism Spectrum Disorder,” Journal of Autism and Developmental Disorders ,vol. 32, No. 5, October 2002 page 495-508.

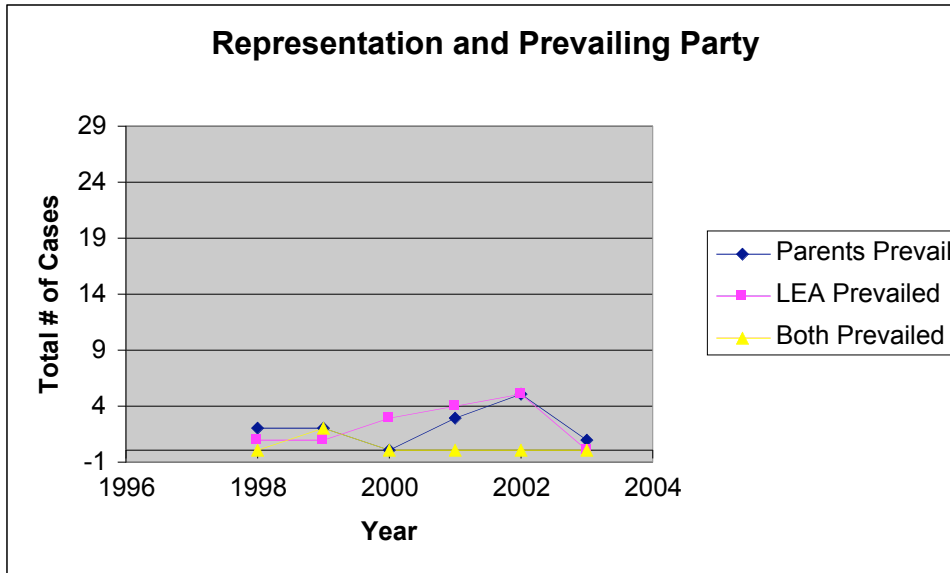
of the cases, the local education agency (LEA) prevailed in 52% of the cases, and both parties prevailed in 7% of the cases. When both parties prevail, it includes cases in which both sides win part of their requested relief. The following graph shows the prevailing parties in comparison to each other.



After seeing that the LEA prevailed a little more frequently than the parents, I decided to look at different factors that may have contributed to a LEA win. First I decided to look at which side had representation and to determine if the statistics show if representation plays a role in which party prevails. I found that both parties had representation in 69% of the cases. The LEA was the only party represented in 24% of the cases. Both parties were unrepresented in 7% of the cases. Parents were never represented when the LEA was not represented.



I continued to look at which party prevailed in each case and which parties were represented. I found that when both sides were represented, the parents prevailed in 60% of the cases and the LEA prevailed in 40% of the cases. When the LEA was the only side with representation, they prevailed 86% of the cases; parents prevailed in 14% of the cases when they were not represented and the LEA was. In the two cases when neither side was represented, both sides prevailed in both cases.



After considering the possible reasons for a party to prevail, I decided to look at the socio-economic status of the eighteen LEAs that were involved in autism cases over the last six years in order to find out if whether or not a side had representation had something to do with the socio-economic status of the district. I found that there were five LEAs with a median household income of less than \$43,000. Within the five districts, there were eight autism cases. In three out of the eight cases (38%), the parents prevailed. And in the eight cases, parents were represented in two cases. The LEA was represented in six out of the eight cases. I then looked at the remaining twelve LEAs with a median household income greater than \$60,000. Within the twelve districts, there was a total of nineteen autism cases, in ten of which parents prevailed (53%) and were represented in seventeen of the nineteen cases. The LEA was represented in all of the nineteen cases.

Another issue that I decided to look at was whether or not one of the issues in the hearing was in regard to a private placement. I found that out of the total twenty-nine autism cases, there were twenty cases concerning private placements. In these cases nine out of the twenty (45%) the LEA prevailed and nine out of the twenty cases (45%) the parents prevailed. Both parties prevailed in two out of the twenty cases (10%).

I continued researching the issue of private placements by looking at which sides had representation. I found that when both sides were represented, parents prevailed in eight out of the twelve cases (66%) and the LEA prevailed in four out of the twelve cases (33%). When the LEA was the only party with representation, the LEA prevailed in five out of six cases (83%) and parents prevailed in one out of six cases (17%). In the two cases where neither side had representation, both parties prevailed in both cases (100%).

In addition to analyzing hearing officer decisions, I conducted six interviews with different participants in the hearing process. I interviewed three hearing officers, one parent, one director of special education from a LEA, and the head of the bureau of special education due process unit.

What Constitutes A Winning Case?

When trying to answer this question, I analyzed my interviews with the three hearing officers which indicated that, when deciding a case, they give weight to certain testimony, how well a witness knows a student, procedural violations, and the appropriateness of the program offered.

When I asked one hearing officer this question, she answered, “A winning case is one where you simply apply the legal principles to the facts and often there is one or the other side who is completely off base, I’ve found.” She continued by explaining, “I don’t think there is a formula that constitutes a winning case, I think you have to have credible witnesses, have to have the facts on your side to go forward, and, I hope that particularly the Board is not wasting Board money going forward with a case where they don’t have the facts and law on their side but a lot of the cases are very sympathetic from the child’s situation and their point of view but, you know you can’t be swayed by that, unfortunately.”

In the actual decisions, hearing officer’s language was an indication of what the individual hearing officer believed constitutes a winning case. In Case # 01-282, the hearing officer discussed an expert witness who “. . . possesses an extensive educational background and does consulting work for numerous districts.” (page 10) In this same decision, the hearing officer wrote, “Based on testimony from Dr. R., it is clear that under forcible circumstances. . .” (page 17) The power of her language implied that certain testimony was given significant weight.

Case # 02-154 gave another example of how a hearing officer’s interpretation of testimony impacts the outcome of a case. “The consultation was done during the school year by Dr. __. She did not write any reports of her observations or consultations, nor did she meet with N’s parents or therapists during the consultation period.”(page 8, #13) This is an example of a witness that the hearing officer did not consider credible. The same case addressed the appropriateness of the program offered for the child. The hearing officer wrote in reviewing the testimony of a credible witness, “The IEP goals

relating to speech were not appropriate or sufficient in Dr. S.'s opinion. They did not deal with verbal reasoning, thinking skills, theory of mind, comprehensive language. They left out entire domains recommended by Dr. S.. Thirty minute speech sessions were not long enough. . ." (page 9,#20)

Case #02-177 is another example of a case where the hearing officer addressed the appropriateness of the program offered by the LEA. In this case, the hearing officer wrote in favor of the LEA's program, "The Board properly considered the student's needs, educational goals, objectives and placement as delineated in his IEP when. . . the student's socialization needs are clearly met with this program." (page 4, paragraph 5)

Procedural violations are an important aspect of what constitutes a winning case. An example of a procedural violation noted by a hearing officer can be seen in case #98-321 on page 30, # 6 of the decision. "When Student was withdrawn from the ISC, there is no evidence of notice from the Board of exactly what services would continue in the integrated class. The withdrawal of support by an ISC instructional aide in the integrated classroom was done unilaterally, with no notice, in violation of both 34 C.F.R. s. 300.503(a)(1)(i) and 34 C.F.R. s.300.343. This seems especially irresponsible, since testimony shows that. . ." "Some of the Board's comments . . . appear to confuse. . ." ". . . it is clear that parents were ready to accept a reasonable decrease in ABA time until they lost faith in the Board's competence and honesty."

I interviewed a parent from case #03-060 in which the parent prevailed. The issues are: (1) Did the parents breach settlement agreement by failing to place student in preschool program for 2002-2003 school year? (2) Did the Board offer an appropriate program for 2002-2003 school year? (3) Is the Foundation School appropriate? (4) Are

parents entitled to reimbursement for the Foundation placement? The hearing officer found that the Board failed to meet its burden of proving that the IEP reasonably calculated to provide educational benefit and that the Foundation School is appropriate and the Board must reimburse the parents for the cost of the school.

When asked what constitutes a winning case, the parent from case #03-060 responded by saying that a winning case is “The child getting what they need...I think a special ed lawyer, having credible expert witnesses who have observed the child and worked directly with the child and having an attorney that’s knowledgeable about the needs of the specific guidelines for meeting the needs of a child like yours.”

A recurring theme throughout my interviews, when asked what constitutes a winning case, was representation. Most interviewees believed that obtaining a lawyer made a difference in the outcome of the case.

Conclusions:

Throughout my research, I found that a common thread as to why one side prevailed more frequently than the other often related to whether or not the side had representation. When both parties were represented, the playing field was leveled and both parties almost had an equal chance of prevailing. Parents had a slightly higher rate of prevailing (60%).

When private placement was an issue and both parties had representation in the twenty-nine autism cases from 1998 to 2003, both sides prevailed in 45% of the cases. These percentages enabled me to conclude that representation is essential in order for

both sides to have an equal chance of prevailing. This probably means that attorneys are able to assess winning cases, maneuver through the process more successfully than parents who are pro se, give a more persuasive argument, and choose credible witnesses.

In school districts with median household incomes less than \$43,000, parents were represented in only two out of the eight autism cases and prevailed in three(38%). In school districts with a median household income of greater than \$60,000, parents were represented in seventeen out of nineteen autism cases and prevailed in ten (53%). Therefore, it can be concluded that access to representation based on income levels the playing field but does not guarantee a winning case.

Further Research:

While my research was limited due to the one semester time frame, further research could be done in order to look into the issues in more depth. More interviews with hearing officers, parents, and the LEA could be helpful in getting more opinions about what constitutes a winning case in a hearing. Also, looking at mediations, advisory opinions and hearings which were dismissed may give researchers more insight about different aspects that may affect the outcome of a hearing. Through my research I have concluded that while there is no definite answer to the question “what constitutes a winning case,” there are some trends which can be found that special education hearings concerning issues with children with autism such as representation, desired placement and services, the individual hearing officer, and the evidence presented in the case that indicate different factors about why one side prevails over the other.

