

ABSTRACT

AN ANALYSIS OF DUE PROCESS HEARINGS FOR COURT-INVOLVED
STUDENTS WITH DISABILITIES

By

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The current study examines California special education hearing officer (SEHO) case records for due process hearings held to settle disputes between families and the juvenile justice system. A mixed methods research design was used to explore trends and characteristics of the youths, families, types of disputes, and prevailing parties. Results indicate most of the cases involved male students aged 12-18 who met eligibility for emotional disturbance, seven types of complaints were filed, and families prevail more often in both substantive and procedural cases. The results of this study raise ethical concerns about juvenile justice agencies' ability to provide special education resources for court-involved youth.

AN ANALYSIS OF DUE PROCESS HEARINGS FOR COURT-INVOLVED
STUDENTS WITH DISABILITIES

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CHAPTER 1

INTRODUCTION

Background

Students with disabilities are overrepresented in the juvenile justice system (Burrell & Warboys, 2000). Within the traditional public school setting, about 13% of students are eligible for special education services. Yet in the juvenile justice system, anywhere from 35% to 75% of students have disabilities (Bullock & McAuthur, 1994; Quinn, Rutherford, Leone, Osher, & Poirier, 2005). Within the juvenile justice system, students eligible under emotional disturbance, intellectual disability and specific learning disability make up about 38.6%, 12.6% and 47.7% of the population, respectively (Baltodano, Harris, & Rutherford, 2005; Bullock & McAuthur, 1994). The juvenile justice system houses a high percentage of students with special education needs; however, researchers have found that students in this setting do not receive a proper education nor the continuum of services to which they are entitled (Mears, Aron, & Bernstein, 2003; Geib, Chapman, D'Amaddio, & Grigorenko, 2011).

Under Individuals with Disabilities Education Act (IDEA; 2004) school systems that receive federal funds for providing children with disabilities with a free and appropriate public education (FAPE). There are certain procedures a local educational agency (LEA), including the juvenile justice system, must comply with when implementing FAPE. Additionally, IDEA states that a student with a disability and his or

her parents have specific due process rights to appeal educational decisions. Parents are allowed to file a legal complaint against an LEA if they believe the LEA is violating any of the terms laid out by the student's individualized education plan (IEP) or by IDEA (Office of Administrative Hearings, 2009).

The IDEA attempts to ensure that students with disabilities are given education rights, regardless of setting. The act entitles eligible youth to special education services in correctional settings; however, in some cases correctional facilities provided IDEA mandated services only after students or their parents exercised their due process rights (Leone & Meisel, 1997). There is a lack of research regarding the application of IDEA to students in the juvenile justice system (Leone & Meisel, 1997; Zhang, Barrett, Katsiyannis, & Yoon, 2011). Students with disabilities are disproportionately represented in the court system, yet it is possible that this setting is inappropriate for this population due to systemic barriers to special education service delivery.

Statement of the Problem

There is a dearth of information about the nature of special education in correctional systems, even less research is available about the nature of disputes filed between court-involved students and LEAs. Furthermore, few have examined special education hearing officer (SEHO) cases in California to identify trends.

Purpose of the Study

The current study utilizes a mixed methods design to analyze SEHO case records in which families and LEAs dispute claims in a due process hearing. The focus will be on the student's special education eligibility, the type of violation that occurred and the prevailing party.

Research Questions

RQ1: Do similarities exist among students involved in due process hearings involving juvenile justice?

RQ2: What are the complaints brought against the juvenile justice system?

RQ3: Do juvenile justice agencies and other local education agencies in California prevail more often than families?

Significance of the Study

This study examines the students with disabilities overrepresented in the court system and the supports or lack of supports as described in the SEHO court cases. The results of this study could inform policy and policy-makers about barriers to supporting students with disabilities in juvenile justice settings.

Definition of Terms

For the purpose of this study, the following definitions apply:

Appropriate education--The most reasonably designed or sufficient program to fit the needs of a student receiving special education and related services. Appropriateness is determined by examining whether or not IDEA procedures are followed and if the designated program is reasonable.

Individuals with disabilities education act (IDEA)--This act, and its predecessors, distributes federal funds to education agencies to provide a free and appropriate public education to students with disabilities.

Procedural rights--Procedures and deadlines required by IDEA to protect students' educational rights.

Substantive rights--The requirement under IDEA that services are reasonable and appropriate.

Child find--IDEA requires public agencies to seek out students within their care that may have a disability. Through child find, the agency must develop policies to ensure that students from birth to 21 who have a disability are identified.

Individualized education plan (IEP)--A document created for a student with disability that lists services the student will receive to assist in accessing the educational curriculum. The IEP document includes the student's present levels of performance, information regarding the student's disability and how to best serve the student's needs.

Least restrictive environment (LRE)--Ensure that students with disabilities are not educated exclusively with other students with special needs simply on the basis of having a disability. Students must be considered for general education placement with services, if possible, then systematically considered for more restrictive placements if it is determined that they will not be successful in general education with support.

Due process--When a dispute arises between a family of a student with disabilities and an LEA, one of the last resolutions is a formal proceeding in which all parties argue in front of an impartial administrative law judge (ALJ) or hearing officer. The ALJ or hearing officer issues a decision regarding the case.

Juvenile justice--The area of the law responsible for persons under the age of majority.

Juvenile court schools--Public education in a court system or group home that serves students in the juvenile justice system. These schools were created to provide

education to students who are under the protection or authority of the juvenile court system.

Local education agency (LEA)--An educational institution that oversees the provision of FAPE for students within disabilities within its jurisdiction.

CHAPTER 2

LITERATURE REVIEW

Introduction

Federal legislation mandates certain treatment and rights of students with disabilities. There are numerous procedural and substantive safeguards in place to ensure that educational agencies provide students with disabilities treatment equal to their peers without disabilities, and that their educational rights are met. However, families and educational agencies do not always agree that services given to students are in the best interest of the child. Federal and state laws are in place to ensure that both parties have the opportunity to argue their opinions in front of an impartial individual. Numerous cases have been taken to these impartial parties.

History of Education of Children with Disabilities

Prior to the legal reformations in the 1960s, most students with disabilities were excluded from public schools and denied FAPE (Isbell, 2011; May, 2009). The only protection they had was the 14th amendment of the Constitution, which states that individuals cannot be denied certain provisions or "rights" given to other individuals without due process and anyone within a state must be given equal protection. This amendment was most notably upheld in *Brown v. Board of Education*, in which the Supreme Court determined that separate but equal facilities for minority children violated the 14th amendment (Isbell, 2011). When extended to students with disabilities, this

amendment is interpreted to mean that students with disabilities must also receive equal protections and due process rights. The *Brown v. Board of Education* decision gave students with disabilities a platform for inclusion and developing education programs in public schools (Isbell, 2011; Prasse, 2008).

A landmark case to follow *Brown v. Board of Education* was *P.A.R.C. v. Commonwealth of Pennsylvania* (PARC). In PARC, parents of students with intellectual disabilities won access for their child to attend public school programs. This verdict ushered in changes in policy and practices for children with intellectual disabilities in that state. PARC laid the foundation of subsequent federal law by requiring the state to (a) identify students excluded from school and offer them public education, (b) give parents notice of changes of placement, and (c) provide families with due process right (Isbell, 2011; Jacob, Decker & Hartshorne, 2011). In *Mills v. Board of Education*, the proceedings from PARC were extended to provide education to students with disabilities regardless of the severity of the disability (Jacob et al., 2011). Similar cases began to be filed in different states, which prompted Congress to take action.

In 1965, Congress passed the Elementary and Secondary Education Act, which provided grants to states to develop programs for students with disabilities. Congress passed the Education for All Handicapped Children Act (EHACA), also known as, Public Law 94-142 in 1975 to address the numerous legal proceedings that occurred about educating students with disabilities in public education, including PARC and Mills. EHACA required all public schools to provide all students with FAPE without charge, and services must be appropriate for the child's needs. In 1990, Congress amended

EHACA and renamed the law the Individuals with Disabilities Education Act (IDEA). IDEA was then amended in 1997 and again in 2004 (Prasse, 2008).

The decisions from PARC and Mills influenced Congress to pass IDEA in order to require public agencies to seek out students within their care that may have a disability. Part one of this principle is “child find.” Through child find, the agency must develop policies to ensure that students from birth to 21 who have a disability are identified (Jacob et al., 2011; Prasse, 2008). Part two of IDEA states that the LEA must provide FAPE to students regardless of the severity of their disability (Jacob et al., 2011; Prasse, 2008). An LEA is a educational institution responsible for providing FAPE to students with disabilities within its jurisdiction. An LEA is most commonly a school district or board of education. However, educational entities such as charter schools, schools for students with low incidence disabilities or juvenile justice systems, can be established as LEAs under state law (Jacob et al., 2011). Determination of LEA is dependent on parent residency, however there are exceptions. For example, the LEA for students with disabilities within the juvenile justice system is the county board of education in which the juvenile court school is located (Cal. educ. code §48645.2). Lastly, LEAs receive funds to assist in the implementation of IDEA. These funds can be used to pay surplus costs for special education or related services (IDEA, 2004).

Special Education Services Required by IDEA

According to the National Center for Education Statistics (2014), in 2011, students with disabilities made up 6.4 million, or about 13% of all public school children. Of these students, about 89.4% were enrolled in public schools. Special education law is primarily governed by IDEA 2004 (May, 2009). This Act, and its predecessors,

distributes federal funds to education agencies that provide FAPE to students with disabilities, including any necessary special education and related services (IDEA, 2004). Special education is specialized educational instruction delivered in the classroom or other setting and may include related services. If public or private residential program placement is necessary to provide special education and related services to a child with a disability, the program must be provided at no cost to the parents of the child. Related services include any transportation, developmental, corrective and support services such as speech, occupational therapy, educationally-related mental health services, and recreation that is required to assist a child within special education to benefit from his or her schooling without cost to the parents from preschool through secondary school (IDEA, 2004).

A student with a disability is not automatically eligible for special education and related services. In order to qualify, a student must exhibit a need that cannot be met in the general education setting and eligibility under one or more 13 identified conditions: intellectual disability, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, or specific learning disability. The delay cannot be due to a lack of appropriate instruction in reading or math or limited English proficiency; it must be due to a disability (IDEA, 2004).

IDEA requires that LEAs offer a free and appropriate education to students with disabilities residing in their boundaries. Each student must have an IEP and be placed in the least restrictive environment. IEP is a document created for a student with disability

that lists services the student will receive to assist in accessing the educational curriculum. The IEP team, which may include the student, parents, special and general education teachers, school psychologist, administrator and any individual implementing related services for the student, develops and modifies the IEP. The IEP document must state the student's present levels of performance, information regarding the student's disability and how to best serve the student's needs (Prasse, 2008). IDEA requires that the IEP should be implemented in the LRE. The purpose of LRE is to ensure that students with disabilities are not educated exclusively with other students with special needs simply on the basis of having a disability. IDEA requires students to be considered for general education placement with services, if possible, then systematically considered for more restrictive placements such as a self-contained class or nonpublic school, if it is determined that they will not be successful in general education with support (Prasse, 2008). The most common disputes involve parents seeking a more restrictive environment for their child (Newcomer & Zirkel, 1999; Rickey, 2003).

Due Process

IDEA provides procedural safeguards for parents, such as the parents must be given a copy of their due process rights at each meeting, parents must be allowed to challenge any action of the agency through due process, and the educational agency must develop a mediation process for legal resolution as well as allow the parent to bring civil action in court (Jacob et al., 2011). If a student's parent is not identified, the agency assigns a surrogate parent, who does not work for the school or agency, to represent the child. (Prasse, 2008).

Students are entitled to FAPE and the right to due process if a family believes their child is being denied FAPE (Zirkel & Skidmore, 2014). During any proceeding with a student with a disability, a public agency must adhere to procedural and substantial safeguards (Jacob et al., 2011). When a dispute arises between a family of a student with disabilities and an LEA, there are different options that can be taken. Parents and school districts have the option of taking these disputes to mediation followed by a due process hearing, if the two parties cannot reach an agreement in mediation. Mediation is a meeting where the family and the LEA attempt to resolve the dispute with an impartial mediator. The impartiality of the due process hearing is maintained by ensuring that mediators are free from personal and professional pressures of association with the agency, parents and any affiliates, at both the local and state levels (Schultz & McKinney, 2000).

If the dispute is not resolved in mediation, the case is heard in a due process hearing. This is a formal proceeding in which all parties argue in front of an ALJ or hearing officer, depending on the state. The ALJ or hearing officer issues a decision regarding the case. However if a party disagrees with the ruling, the ruling can be appealed to the federal courts.

When a request for mediation and due process hearing is filed with the office of administrative hearings (OAH) by a parent, the school district is required to hold a resolution session within 15 days of notice of filing. The resolution session's purpose is to give the parties the opportunity to resolve the dispute quickly. However, a resolution session is not required when the school district files a request for mediation and/or due process hearing. The OAH cannot schedule hearings or mediation within the first 30

days after a request has been filed by a parent, in order to give both parties a chance to informally resolve the dispute. (OAH, 2009; Schultz & McKinney, 2000).

Disputes over whether IDEA requirements are implemented sufficiently can be categorized as either procedural or substantive. Following IDEA procedures such as a 60-day timeline to complete an assessment or giving parents a copy of their due process rights, is a procedural requirement. Determining whether a program is reasonable is considered a substantive requirement (Isbell, 2011; Jacob et al., 2011). The definitive definition of “appropriate” stems from *Board of Education of the Hendrick Central School District v. Rowley* (1982). This case decision designated an “appropriate service” as one that would reasonably fit the needs of the student and the student is likely to make progress. Henceforth, appropriateness is judged by determining if the designated program is reasonable, not necessarily the best.

Definition of Juvenile Justice

In 2001, juveniles accounted for 17% of all arrests and 15% of all violent crime arrests which translates to about 2.3 million individuals involved in the juvenile justice system nationwide (Snyder, 2003). A student that is accused of breaking the law may become involved with the juvenile court system. If convicted, the court considers age of the child, the child’s criminal record and the nature of the crime before moving forward (California Department of Education, 2014b). The court can order the student to live in a variety of settings including with relative, in a group home or within the court system. The California Department of Education (2014b) defines juvenile court schools as public education in a court system or group home that serves students in juvenile court schools. Juvenile Justice includes a variety of environments including: detention centers, shelters,

reception/diagnostic centers, long-term secure facilities, ranch/wilderness camps, group homes, boot camps, independent living, and alternative schools (Office of Juvenile Justice and Delinquency Prevention, 2011). These schools were created to provide education to students that are under the protection or authority of the juvenile court system and are operated by either Juvenile Justice or the County Boards of Education across California (California Department of Education, 2014b).

The estimated cost of court-involved juveniles is in the millions when cost of law enforcement, processing, incarceration and treatment are taken into consideration (Geib et al., 2011). Students in these facilities are disproportionately male, poor, have a disability and/or are a member of a minority group (Bullock & McAuthur, 1994); the most common of these disabilities is specific learning disability, emotional disturbance or intellectual disability (Geib et al., 2011; Howell, 1995).

Researchers have reported rates of disabilities in the juvenile justice system to be anywhere from 34% to 75%, depending of the state (Bullock & McAuthur, 1994; Quinn et al. 2005). Of these students with disabilities, 47.7% had a learning disability, 38.6% were emotionally disturbed and 12.6% had an intellectual disability (Baltodano et al., 2005; Bullock & McAuthur, 1994). A student eligible under intellectual disability exhibits below average cognitive functioning and low adaptive skills that affect his or her education. A student eligible under specific learning disability demonstrates a disorder in at least one of seven academic domains, due to a basic psychological process. A student eligible under emotional disability demonstrates inappropriate affect, is unable to build or maintain relationship, an inability to learn not due to other factors, to a marked degree for a long period of time and may include students with schizophrenia (IDEA, 2004).

History of Juvenile Justice

Springer (1986) described the history of Juvenile Justice as prior to the 1800s, criminals were considered deserving of punishment, not rehabilitation. The fathers of classical criminology, Jeremy Bentham and Cesare Bessaria proposed the philosophy of utilitarianism, which reasoned punishment as the best way for society to preserve the peace and protect the state (Springer, 1986). The philosophies of Bentham and Bessaria focused on protecting the state and its citizens by deterring and preventing crime. This school of thought is the foundation of the modern justice system. The 19th century brought about positivistic criminology, which was a departure from utilitarian's belief that crime occurred of free will (Springer, 1986). Positivists believed that since free will could not be observed, it must not exist. Decisions, such as involvement in criminal activity, were due to external forces such as biology or economy, therefore, beyond an individual's control (Springer, 1986). They believed that society should find and treat the cause of the criminal behavior, rather than punish the individual. Over time, multiple beliefs emerged such as constitutional determinism which relied heavily on phrenology and the belief that individuals are born criminals; psychological determinism which was based on the work of Sigmund Freud purported that criminals were the product of repressed feelings and defective mental states; social determinism which relied heavily on the work of Karl Marx and held the belief that crime was a product of society; and social defense which was based on the work of Enrico Ferri, who believed criminal behavior was biological or unalterable thus society should focus on protecting itself and treating the criminal as punishment is ineffective (Springer, 1986). Theoretically the

juvenile justice system is based on positivism and determinism however, over time it has been shown to follow the social defense theory (Springer, 1986).

Throughout history, children were considered little adults and held responsible for criminal acts if they were old enough to discern right from wrong (Springer, 1986).

Children under the age of 7 were considered unable to determine right from wrong and those over the age of 14 were considered adults who could be held responsible for their actions. Though considered to be adults by the age of 7, the criminal capacity of individuals between ages 7 and 14 was determined by age, mental ability and nature of the crime. In the 16th century, the concept of education for children was developed which allowed children a longer period of childhood. This eliminated the belief that children were adults. In the 19th century, houses of refuge were developed to rescue children who were abandoned, neglected or delinquent. What began as institutions to save children developed into places that housed poor and delinquent youth in a secure residential setting without due process rights. In 1899, the first juvenile court act was passed in Illinois and was based on the practices of these detention centers. This act brought about two major changes: the placement of all criminals under 16 in juvenile centers and requiring poor and parentless children to be placed in these facilities with delinquent youth (Springer, 1986).

The juvenile court system was not created for justice but as housing (Springer, 1986). In this setting, poor parentless children and delinquent youth were treated equally as the overall purpose of the court system was to care for these children as a parent would care for a child. The underlying foundation of the juvenile courts was to provide individualized treatment as children in this system were seen as products of their

environment. Over time, this message was lost and the court system became a set of institutions that held young people accountable for their actions and punished them for their crimes (Springer, 1986).

The Ronald Reagan administration drastically affected the modern-day juvenile justice system. In 1974, Robert Martinson published a series of studies about the effectiveness of offender rehabilitation program. His underlying message was rehabilitation was ineffective and nothing works to rehabilitate them; keeping them locked up keeps society safe (Soler, Shoenberg, & Schindler, M., 2009). Martinson's findings influenced Reagan's policies toward the juvenile justice system as his administration embraced the "the crime control model," which is still present in juvenile justice policies today. This model supported practices such as juveniles transferring to adult prisons, enforcement of the death penalty and increased confinement. This changed policies from emphasizing rehabilitation to emphasizing punishment (Jensen & Jepsen, 2006). Modern initiatives such as zero tolerance, which stressed harsh punishment against students have increased the number of minority youth and students with disabilities in the juvenile justice system (American Psychological Association Zero Tolerance Task Force, 2008).

Purpose of Juvenile Justice

Though there is an underlying principle of the juvenile justice courts, each state have varying definition of the purpose of their juvenile justice system. Each state's regulations may emphasize any combination of five different philosophies identified by the Federal Department of Justice: 1) Balanced and Restorative Justice, 2) Standard Juvenile Court Act, 3) Legislative Guide, 4) emphasis on punishment, deference,

accountability and/or public safety, and 5) child welfare (Office of Juvenile Justice and Delinquency Prevention, 2012). Balanced and Restorative Justice advocates that the courts give equal attention to public safety, individual accountability to victims and the community, and the skill development in offenders. The Standard Juvenile Court Act advocates that children in the court system will be cared for in a way that is in the best interest of the state. The Legislative Guide requires the court system (1) to care for a child's overall development, with a focus on care and rehabilitation, (2) to remove children from their homes only if it is in the best interest of the child or public safety, and (3) to ensure the child's constitutional rights are upheld. Emphasis on punishment, deference, accountability and/or public safety focuses on punishing the child and protecting the public. Child welfare focuses on doing what is in the best interest of the child (Office of Juvenile Justice and Delinquency Prevention, 2012).

Twenty states' have adopted the Balanced and Restorative Justice approach, 20 include the Standard Juvenile Court Act, 11 include the Legislative Guide, 6 emphasize punishment and 5 emphasize child welfare. California's legislatures adopted the Balanced and Restorative Justice and the Standard Juvenile Court Act.

The purpose of the court system is rehabilitation. However, the California Department of Corrections and Rehabilitation (2012), for example, reports that for juveniles that were released in the 2007-08 year, the recidivism rate was 19.4 percent by the end of one year, 34.6% by the end of two years and 38.8% by the end of three years. It appears that rehabilitation efforts are not highly effective.

Juvenile Justice and IDEA

Researchers have found that juveniles are not receiving proper education and those with disabilities do not appear to receive FAPE. Geib and colleagues (2011, p.5) described “the long-standing and continuing absence of a comprehensive continuum of disability-related services within the juvenile justice system.” The juvenile justice system often does not adhere to IDEA requirements such as obtaining and implementing a student’s IEP, conducting child find or having a multidisciplinary team to determine eligibility and appropriate education services (Leone & Meisel, 1997; Zhang 2011). States, juvenile justice and accompanying systems have focused on reducing recidivism over utilizing academic interventions to help meet grade level standards (Geib et al., 2011; Howell, 1995).

There is a lack of training among juvenile justice staff about disabilities, special education and legal rights of juveniles with disabilities and lack of research on education interventions for juveniles with disabilities (Geib et al., 2011). Teachers in this setting tend to be older and some do not understand the needs of the students, the characteristics of the population or the demands of the environment (Howell, 1995). There are very few pre-service corrective education programs so most educators are ill-prepared to implement educational curriculum in the juvenile justice setting (Platt, Casey & Faessel, 2006).

Students within the juvenile system tend to have significantly more academic difficulties than the general population; juveniles who improve their academic achievement while incarcerated tend to have lower levels of recidivism (Allen-DeBoer, Malmgren, & Glass, 2006; Wilkerson, 2012). However, students with disabilities often

receive subpar academic interventions, if any at all (Baltodano et al., 2005; Zhang et al., 2011). Thirty-one states have been involved in legal proceedings around the provisions of education or special education services within juvenile correctional facilities (Platt et al., 2006).

Researchers have found a positive relationship between academic failure and delinquency, especially for students with disabilities (Geib et al., 2011). As described earlier, rates of disability among court-involved students are much higher than students in general education. The educational protections outlined in IDEA extend to all students regardless of placement and disability, thus, these rights extend to students in the juvenile justice system. Furthermore, in 1997, the US Congress passed the Civil Right of Institutionalized Persons Act which re-iterated that these rights apply to students who are in any juvenile justice program (CRIPA, 1997; Geib et al., 2011).

The Juvenile Justice and Delinquency Prevention Act of 2002 expands on CRIPA. The act requires states to submit information pertaining to education, disability, performance etc. of juveniles to federal officials in order to receive federal grants. The funds are to be used to develop plans to increase access to education and communication between schools about instruction and student learning concerns. Geib and colleagues (2011) wrote that section 5 of the act lists the creation or access of tutoring and remedial programs as two of many uses for these funds. Yet little evidence exists about this act's overall effectiveness.

Research does not show compliance within the juvenile justice system, though state and federal laws exist that extend educational rights and protections to students in this setting (Mears et al., 2003). Geib and colleagues (2011) wrote there is a paucity of

research on IDEA and court-involved youth. They hypothesized that the lack of research in this specific area is due to fundamental differences in the purposes of the two systems. They suggested¹ suggested the purposes embraced by many court systems are security, custody, and determining guilt and innocence. These purposes do not fit well within the framework of an educational system. The difference in philosophies may explain why the juvenile court system appears to lack tools, staff and other aspects needed to implement special education and related services (Geib et al., 2011).

Incarcerated youth with disabilities are entitled to special education services, though the Office of Special Education Programs reported that federal regulations do not fit within the correctional setting. Furthermore, there have not been standards to guide development of special education programs in the correctional facilities and few special educators have been employed to design and implement special education programs (Twenty-First Annual Report to Congress, 1999). Therefore, it appears that those that need and are eligible under IDEA to receive educational supports are not receiving them while incarcerated.

Mental Health and Juvenile Justice

Mental health services are a related service which can be determined necessary to enable a student with disability to benefit from that education (IDEA, 2004). These services can range from counseling received from a school counselor or psychologist to placement in a residential facility. Since this service is related service, LEAs provide the student with the service at no cost to the parent. In some cases, the total annual cost for an in-state placement in a residential facility, including room, board, therapies, and educational services, may exceed \$100,000 for a single child in a school year; out-of-

state placements are typically more expensive (United States Department of Education Office of Special Education and Rehabilitative Services, 2005).

As mental health services is given to students under IDEA, these rights extend to court-involved students with disabilities. Court-involved students with disabilities with mental health needs appear to be underserved. Steven Rosenbaum (1999) Chief, Special Litigation Section of the Civil Rights Division of the United States Department of Justice, presented five years of findings investigating correctional facilities in 16 states. He found that juvenile justice facilities failed to (a) appropriately identify mentally ill youth, (b) provide treatment, (c) keep them from harming themselves or others, (d) protect them from abuse, and (e) ensure that they receive necessary accommodations to enable them to benefit from programs offered at the facility. He reported that staff was not trained to work with students with disabilities, which resulted in negative actions, such as punishing the student for an action that was a manifestation of his or her disability. Findings showed that students with emotional disabilities were not receiving adequate medication and treatment, students with learning disabilities were not provided adequate special education services to enable them to benefit from educational services, and students with severe attention deficit disorder were not given accommodations in facility rules to prevent their disability from resulting in disciplinary sanctions. Furthermore, when these services could not be provided at the facility, alternative placements were not considered. He recommended that facilities must recognize the need to provide a continuum of services to respond to the special needs of those who cannot receive adequate services in traditional programs.

Statement of the Problem

Researchers have found that though there are a high number of students with disabilities in the juvenile justice system, they may not receive educational services guaranteed under the 14th amendment and IDEA. With these concerns come questions about ensuring students with disabilities receive FAPE and are given equal educational opportunities in the juvenile justice system.

Purpose of the Study

The current study utilizes a mixed methods design to analyze SEHO case records in which families and LEAs dispute claims in a due process hearing. The focus will be on the student's special education eligibility, the type of violation that occurred and the prevailing party.

RQ1: Do similarities exist among students involved in due process hearings involving juvenile justice?

RQ2: What are the complaints brought against the juvenile justice system?

RQ3: Do juvenile justice agencies and local education agencies in California prevail more often than families?

CHAPTER 3

METHODOLOGY

This chapter outlines the methodology used in this study and provides a detailed description of the due process documents that were analyzed. Due process hearing orders and decisions listed on California's Office of Administrative Hearings Special Education Division (OAH) website (www.dgs.ca.gov/oah/SpecialEducation.aspx) were analyzed.

Subjects

Cases included students whose SEHO hearings occurred from July 1, 2005 to February 14, 2014. Of the 26 cases included in the study, 73% involved male students, 85% were students 12-18 years old, 81% of students met eligibility for emotional disturbance and 58% of the students' parents did not hold educational rights. Seventy-four percent of the students resided within Southern California. Los Angeles Unified School District/Los Angeles County of Education made up the majority of the LEAs involved in the due process hearings. Detailed description of demographic information of the students involved in the cases can be found in Chapter 4.

Procedures

The OAH website is a searchable data-base available to the public, the identity of the student and families is redacted but the identity of the professionals who provide testimonials is included. This database consists of court records of individuals who have appeared before the Office of Administrative Hearings. These comprehensive case

records allow one to search by keyword, name of judge, case number, or school district for court decisions made from July 1, 2005 to the present day. The court cases document the process of deliberating over a parent or LEA complaint that an IDEA violation has occurred.

The process of collecting data began by accessing the OAH website and searching by “Special Education Decisions and Orders” on the special education division main page.

Key terms were entered that fit the parameters of the study. The key term “juvenile justice” garnered 20 results. The term “juvenile justice” called up cases that included the terms “juvenile court school” “juvenile justice,” “juvenile hall” and the specific name of the school such as “Barry J Nidoff Juvenile Hall” that contain the word “juvenile.” The search term was modified to just the term “juvenile,” which yielded over 250 results and included all of the previous 20 cases. All 250 cases were reviewed and 157 were eliminated because they were duplicates or synthesized with another case. The 93 remaining cases were reviewed for specific elements required for inclusion: (1) the student, family member or legally appointed adult filed a complaint against a local education agency, (2) the student must have resided within the juvenile justice system during a portion of the case, (3) the accusations must include a denial of the student’s rights under the IDEA.

The resulting 26 cases were read and the following variables were coded and entered into an excel spreadsheet: case number, year case was filed, age of student, gender, family structure, special education eligibility, local education agency involved in case, type of IDEA violation, prevailing party, and whether the violation was substantive

or procedural. A procedural violation refers to procedures and deadlines required by IDEA to protect students' educational rights. A substantive violation refers to whether the district provided students' with the appropriate and sufficient educational programs. Family structure refers to whether students were represented by birth parents, adopted parents, foster parents, an appointed legal guardian, or responsible adult who holds the child's educational rights. Eligibility refers to the 13 special education categories. Local education agencies include school districts and counties of education. Disagreements occurred when examining use of behavior support plans in the cases. This category was later dropped. Cases were reviewed with notes made on the presenting issues and nature of substantive and procedural accusations. Cases were read multiple times in order to gather information on demographic data, types of violations and prevailing parties. Overall percentages for the categories were computed, entered in tables and analyzed further to determine trends.

Research Questions

RQ1: Do similarities exist among students involved in due process hearings involving juvenile justice?

RQ2: What are the complaints brought against the juvenile justice system?

RQ3: Do juvenile justice agencies and local education agencies in California prevail more often than families?

Data Analysis

Descriptive statistics were used to summarize the data recorded across the cases. The content of each case was analyzed to identify themes that may explain or illustrate

the frequency counts. The presenting issues and nature of substantive and procedural accusations were recorded.

Procedural disputes call into question whether the district adhered to specific procedures that are required by IDEA to protect students' educational rights. Complaints of procedural violations consisted of four categories: failure to appropriately assess, failure to involve parents, failure to follow timeline, and local education agency responsible for services. Issues of appropriate assessment included failing to assess in all areas of suspected disability, failing to reassess despite evidence of lack of progress, and failing to assess during the triennial evaluation. Issues of parent involvement included failing to provide written notice for not providing services, failing to provide parent with a copy of the IEP, and failing to include meaningful parental participation by making a "take-it-or-leave-it" offer of placement. Issues relating to timeline included failing to provide an assessment plan within 15 days of parent request, failing to provide services comparable to an IEP from another school district during the first 30 days of enrollment, failing to develop, adopt or implement a new IEP within thirty 30 days of transfer, failing to hold annual IEP, and failing to make a timely referral for mental health services. Issues of local education agency responsible for services include determining which LEA was responsible for FAPE, determining which LEA was responsible for providing Educationally-Related Mental Health Services, and determining which LEA was responsible for FAPE in out-of-state Residential Treatment Center (RTC) placements.

Substantive accusations question whether the district provided students' with the appropriate and sufficient educational programs as defined by IDEA. These violations were consisted of three categories: RTC placement, mental health services, and

additional related services not included in previous categories, such as occupational therapy support, assistive technology or transportation services. Issues of RTC placement include failing to offer placement in RTC and failing to implement placement at RTC. Issues of mental health services include failing to offer appropriate mental health services such as therapy and counseling, failing to refer to outside resources to meet needs in socio-emotional functioning, failing to provide appropriate mental health services through IEP, not providing educationally-related mental health services (ERHMS). Issues of appropriate educational and related services include failing to provide appropriate occupational therapy services, failing to offer extended school year, failing to provide designated instruction and services (DIS) counseling, failing to provide reading and math intervention, failing to provide specialized services to address student's attention deficit hyperactivity disorder (ADHD), and failing to provide an aide. In 11 (42%) cases, there were multiple complaints. Each of these complaints were coded individually and entered in a chart.

Prevalence data found in the "Prevailing Party" section of the cases were analyzed further. Information regarding the prevailing party was directly listed. This information was gathered for each case and entered into a chart according to prevailing party. In some cases, both the student and district prevailed on separate issues. These cases were entered into a chart and indicated that both parties prevailed. Figure 2 displays an example of a "Prevailing Party" section.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing party against LACOE on the sole issue presented.

FIGURE 1. Prevailing party.

Personal accounts of experiences, student history and additional data found in the “Factual Findings” section of the cases were analyzed further to identify common themes across the cases theory to determine trends. Figure 3 displays an example of the “Factual Findings” section of a case. The transcripts were reviewed with a focus on the student’s relationship to the school system, family system and environmental factors over time. Impressions and notes were taken during the quantitative analysis which guided the subsequent qualitative reviews.

FACTUAL FINDINGS

1. Student is an 18-year-old young woman, who, at all relevant times was detained at the Los Angeles County Central Juvenile Hall (Juvenile Hall) pursuant to a wardship petition filed on May 15, 2009. From the time of her detention through February 24, 2010, Student was eligible for special education services as a student with a learning disability. After February 24, 2010, Student also became eligible for special education as a student with an emotional disturbance.
2. At all relevant times, Student attended the Central Juvenile Hall School.
3. LACOE operated the Central Juvenile Hall School and developed individualized education programs (IEPs) for special education students enrolled there.

FIGURE 2. Factual findings.

One-third of the cases included in the study were coded independently by another school psychology graduate student. The codes were compared with the number of agreements divided by the total number of codes to compute an inter-rater reliability estimate of 88%.

CHAPTER 4

RESULTS

Introduction

This chapter describes the major findings of the study including demographic data for each case and trends across the due process hearing decisions involving students with disabilities served by juvenile justice.

Research Question One

Do similarities exist among students involved in due process hearings?

Demographic Data

Nineteen (73%) cases involved male students and seven (27%) involved female students. The age of students involved in the due process hearings ranged from 8-20 with a median age of 15.9. One (4%) case involved an 8-year-old student, 22 (85%) cases involved students age 12-18, and three (11%) cases involved students over age 18. The students' primary and secondary special education qualifications at the time of the due process hearing were explicitly noted in each case. Of the students with only a primary disability, 11 (42%) met the criteria for emotional disturbance (ED), one (4%) met the criteria for other health impairment (OHI), one (4%) met the criteria for specific learning disability (SLD), and one (4%) met the criteria for autism. Of the students with both a primary and secondary disability, one (4%) student met the criteria for OHI and SLD, five (19%) met the criteria for ED and OHI, four (15%) met the criteria for ED and SLD,

one (4%) met the criteria for SLD and speech and language impairment (SLI) and one (4%) met the criteria for ED, OHI and SLD. Eleven (42%) cases involved students whose birth parents held educational rights and fifteen (58%) cases involved students who were wards or dependents of the court, foster children or adopted. The demographic data for all 26 cases are displayed in Table 1.

Similarities exist among the demographic data collected for each case. Of the 26 cases included in the study, most involved male students (73%), students 12-18 years old (85%), students who met eligibility for emotional disturbance (81%) and 58% of the students' resided with non-birth parents.

Themes Within Cases

Substantive and procedural violations were further analyzed to determine similarities and common themes. The nature of the accusations noted for each student was based on information provided within the "Factual Findings" section of the due process documents. Three themes emerged upon analysis of these data: 1) disputes between a need for in-state- or out-of-state RTC; 2) history of inter- and intra-district mobility; and 3) history of multiple hospitalizations or mental health referrals. Seven cases were coded "Theme 1." For example case 2006100472 involved determination of LEA responsible for FAPE and out-of-state RTC placement when the parent resided in Hemet Unified School District, the student previously resided with the parent but now resides in Orangewood, a licensed children's institute in Orange County. The issue was whether Orange County or Hemet Unified School District should pay for RTC placement. Many of the cases involved students who moved between districts, lived in centers outside of the parent's residence or were wards of the court

TABLE 1. Demographic Data.

Case#	Age	Gender	Eligibility	Family
2013020685.00	15	Female	ED	Foster Child
2012110566.00	12	Male	OHI (FAS)	Adopted
2012060109.00	15	Female	SLD	Adopted
2011061439.00	17	Male	OHI and SLD	Foster child
2009090131.00	20	Male	ED, OHI (ADHD)	Birth parents
2009120683.00	13	Female	"may be ED"	Court dependent
2007040894.00	8	Male	Autistic like behavior	Birth parent
2006100472.00	15	Female	ED	Birth parent
2010040889.00	14	Male	OHI, ED	Adopted
2010110301.00	18	Male	ED	Birth parent
2010110325.00	18	Male	ED/OHI (ADHD, FAS)	Adopted
20090600442.00	19	Male	SLD/SLI	Birth parent
2010050752.00	14	Male	ED	Ward of court
2011090350.00	16	Male	ED/OHI (ADHD)	Adopted
2011100803.00	17	Male	ED/SLD	Birth parent
210040050-2011030120	13	Female	ED/SLD	Birth parent
2009100740.00	16	Male	ED	Court dependent
2009100939.00	17	Male	ED	Court dependent
2008120021-2009020130	18	Female	ED	Court dependent
2009010078-2009010529	16	Female	ED	Court dependent
2009090943.55	19	Male	ED	Court dependent
2006051042-200670791	16	Male	ED	Ward of court
2007030300.00	18	Male	SLD/ED	Birth parent
2013010137.00	16	Male	ED/SLD	Birth parent
2012080468.00	16	Male	ED/OHI (ADHD)/SLD	Birth parent
2012030595.00	17	Male	ED/OHI	Birth parent

therefore determining which LEA was responsible for FAPE at any given time was often complicated. Eleven cases were coded “Theme 2.” For example case 2011061439 involved a student who transferred twice in a short period of time. At one annual IEP meeting held at a previous school, the team discussed a need for a functional behavior assessment and possibility of emotional disturbance assessment at his next triennial evaluation. The student then transferred to two different schools. The last school did not hold a 30 day IEP and did not implement the student’s IEP at the beginning of the year because they did not receive the most recent copy of the IEP document. This was a common theme, students who transferred to a new school or district often did not have an IEP meeting within 30 days of transfer. Eight cases were coded “Theme 3.” For example, case 2010110325 involved a student with Fetal Alcohol Syndrome with a history of self injury and poly-substance use who had been hospitalized numerous times. The LEA did not recommend out-of-state RTC, however, after a certain amount of time the in-state RTC was determined to be ineffective and the courts required the student to attend an out-of-state RTC. It should be noted that some cases included more than one theme.

Research Question Two

What types of complaints are brought against the juvenile justice system?

Seven types of violations were present in the data: (1) failure to appropriately assess, (2) failure to involve parents (3) failure to follow timeline, (4) inappropriate residential treatment placement, (5) mental health services, (6) failure to provide other additional related services, and (7) local education agency responsible for services.

Among the 43 issues analyzed across all cases, 56% were procedural violations and 44% were substantive violations. The number of violations across the different types of complaints was 6 or 7, with the exception of “failure to involve parents” which was only asserted in 4 of the cases.

TABLE 2. Themes.

	Theme 1	Theme 2	Theme 3
2013020685.00		X	
2012110566.00	X		X
2012060109.00	X		X
2011061439.00		X	
2009090131.00			X
2009120683.00		X	X
2006100472.00		X	
2010110301.00			X
2010110325.00			X
20090600442.00		X	
2010050752.00		X	
2011090350.00	X		
2011100803.00	X		X
210040050- 2011030120		X	
2008120021- 2009020130		X	
2009010078- 2009010529	X		
2009090943.55		X	
2006051042- 200670791		X	
2007030300.00	X		X
2013010137.00		X	
2012080468.00			
2012030595.00	X		
Total	7	11	8

Research Question Three

Do juvenile justice agencies and local education agencies in California prevail more often than families?

Overall, families prevailed in 41.2% substantive issues and district prevailed in 35.3%. Families prevailed on 66.7% of the procedural issues and districts prevailed in

TABLE 3. Types of Accusations

Case	Substantive			Procedural			
	RTC placement	Mental health services	Appropriate educational and related services	Failure to appropriately assess	Failure to involve parent	Failure to follow timeline	LEA responsible for services
2013020685.00	X						
2012110566.00	X	X	X	X			
2012060109.00				X			
2011061439.00			X	X		X	
2009090131.00		X	X			X	
2009120683.00				X	X		
2006100472.00							X
2010110301.00		X					
2010110325.00		X					X
20090600442.00			X		X	X	
2010050752.00	X					X	
2011090350.00	X						
2011100803.00	X						
210040050- 2011030120	X						X
2008120021- 2009020130							X
2009010078- 2009010529							X
2009090943.55							X
2006051042- 200670791							X
2007030300.00		X	X	X		X	
2013010137.00		X	X	X	X	X	
2012080468.00				X	X		
2012030595.00	X						
Total	7 (16%)	6 (14%)	6 (14%)	7 (16%)	4 (9%)	6 (14%)	7 (16%)

29%. Both parties partially prevailed on at least one procedural issue and at least one substantive issue in 8.3% and 23.5% of the cases, respectively.

An analysis of prevailing party by complaint found families to prevail more often in every type of complain except “mental health.” Families prevailed highly in violations of “failure to involve parent” and “LEA responsible for services.”

TABLE 4. Prevailing Party

Case	Substantive			Procedural			
	RTC placement	Mental health services	Appropriate education services and related services	Failure to appropriately assess	Failure to involve parent	Failure to follow timeline	LEA responsible for services
Total District	3 (43%)	3 (50%)	2 (33%)	2 (29%)	1 (25%)	1 (17%)	2 (29%)
Total Family	4 (57%)	1 (17%)	2 (33%)	4 (57%)	3 (75%)	4 (66%)	5 (71%)
Total Both	0	2 (33%)	2 (33%)	1 (14%)	0	1 (17%)	0

TABLE 5. Prevailing Party Percentages

	Prevailed (Substantive)	Prevailed (Procedural)
District/Juvenile Justice	6 (35.3%)	6 (25%)
Family	7 (41.2%)	16 (66.7%)
Family and District/Juvenile Justice	4 (23.5%)	2 (8.3%)

CHAPTER 5

DISCUSSION

Introduction

There is a lack of information about the implementation of IDEA in the juvenile justice setting (Geib et al., 2011) and what little is known, suggests the IDEA requirements are rarely implemented fully in this environment (Leone & Meisel, 1997; Zhang, 2011). A thorough review of disputes in California between local education agencies (LEAs), including juvenile justice agencies, and families of court-involved students with disabilities was conducted to examine implementation of IDEA requirements in juvenile justice agencies within the state of California. A mixed methods research design was used to examine trends and characteristics of the youths, families, types of disputes, and prevailing parties.

Explanation of Results

Research Question One

What similarities exist among students with disabilities in juvenile justice settings involved in due process hearings?

The sample was predominately male (73%), aged 12-18 (85%), and eligible for special education services under emotional disability (81%). These demographic data are partially consistent with previous research. The high percentage of males in the sample supports Bullock and McAuthor's (1994) findings that students in the juvenile justice

system are disproportionately male. Prior research indicated the majority of students with disabilities in the juvenile justice system are eligible under specific learning disability, with emotional disability being the second-highest classification (Baltodano et al., 2005; Bullock & McAuthur, 1994). However, in this sample, the majority of students were eligible under emotional disability, indicating that students with emotional disabilities in California are more likely than other students with disabilities to be court-involved. This may mean that students with mental health needs in California may not receive proper services compared to other students with disabilities.

In the present study, eleven (42%) cases involved students whose birth parents held educational rights and fifteen (58%) cases involved students who were wards or dependents of the court, foster children or adopted. A ward or dependent of the court is a child who is taken from his or her family, typically due to parent abuse or neglect, or death (California Department of Education, 2014). Wards or dependents of the court live in foster care or group homes. Many of wards and dependents typically move between numerous homes (Ryan, 2005). Children who experience instability in placement and living situations have an increased risk for delinquency, especially if the child is male (Ryan, 2005). Additionally, children who are in foster care or are adopted are also at risk for delinquency due to the higher rates of maltreatment, abandonment, and multiple transitions from home to home (Simmel, 2007). Parent involvement, support and stability, are considered necessary for promoting the success of students with disabilities (Chen, Symons & Reynolds, 2011). Conversely, adolescents from families that lack structure or lack of bonding between the child and the parent figure, are more likely to engage in delinquency (Kierkus & Hewitt, 2009).

Three themes emerged when examining the histories of the court-involved youth. These themes are: (1) disputes between a need for in-state- or out-of-state residential treatment center (RTC); (2) history of inter- and intra-district mobility; and (3) history of multiple hospitalizations or mental health referrals. Data showed that 27% of cases fell under theme one, 42% under theme two, and 31% under theme three. Further analysis of these cases showed a lack of communication between the juvenile justice agency and the school or district, as well as a lack of communication between multiple districts. Many students moved multiple times due to mental health-related hospitalizations, involvement with the court, or a change of guardian. These themes are consistent with literature on juvenile risk factors. High levels of school mobility and prior mental health concerns are factors that place youth at risk for criminal activity (Vogel & Messner, 2012). Youth who experienced more school moves had more adjustment, academic, and behavioral problems (Chen, Symons & Reynolds, 2011). Additionally, up to 60% of court-involved youth have a history of meeting diagnostic eligibility for at least one psychological disorder (Vogel & Messner, 2012). This indicates that students with emotional disabilities, who move between multiple schools, are more likely to become court-involved. Thus, school personnel could use these indicators to target youth for interventions before they commit a crime. Further, the results suggest court-affiliated youth have mental health problems that may not be treated in juvenile justice (Rosenbaum, 1999).

Research Question Two

What types of complaints are brought against the juvenile justice system?

Seven types of complaints were found among the 26 cases. Procedural accusations fell into four categories: (1) failure to appropriately assess, (2) failure to involve parents, (3) failure to follow timeline, and (4) local education agency responsible for services. Substantive accusations fell into three categories: (1) RTC placement, (2) mental health services, and (3) additional related services not included in previous categories, such as occupational therapy support, assistive technology or transportation services. The number of violations across the different categories was 6 or 7, with the exception of “failure to involve parents” which was only asserted in 4 of the cases. Conversely, Zirkle (2014) reported the typical complaints seen in due process cases nationwide to involve compensatory education, tuition reimbursement and LRE placement. This indicates that due process hearings involving the juvenile justice system yield atypical complaints that are specific to the setting. Many of the accusations against the juvenile justice system are the results of students moving multiple times, which may not affect other LEAs in the same manner.

Among the 43 issues, 56% were procedural complaints and 44% were substantive complaints. Conversely, Zirkle (2014) found that most complains against LEAs nationwide were substantive. This indicates that juvenile justice agencies have difficulties meeting federal guidelines and timelines than other LEAs. In many of the cases, especially ones involving students with high levels of school mobility, juvenile justice agencies did not receive school records or the most updated IEPs, which limited their ability to hold timely IEP meetings. This indicates that their needs to be better

communication between schools and receiving juvenile justice agencies to insure the student's records are received within the appropriate timeline.

Research Question Three

Do juvenile justice agencies and local education agencies in California prevail more often than families?

The data show that families prevailed in 41.2% of substantive issues and 66.7% of procedural issues. Additionally, families partially prevailed in 8.3% of substantive and 23.5% of procedural cases. Substantive complaints assert that FAPE was denied because the LEA failed to provide reasonable and appropriate services. Due to subjectivity and a lack of clear guidelines, however, educational agencies are more able to justify the amount and intensity of educational supports provided (Zirkel, 2013). The procedural element of FAPE, on the other hand, has less ambiguous guidelines. There are clear timelines and deadlines that educational agencies must adhere to. Therefore, an alleged violation of procedural rights may be more difficult for the LEA to defend.

In the current study, families prevail more often than juvenile justice agencies, particularly on procedural violations. This differs from Zirkel & Skidmore's (2014) research that found parents prevail in 48% of cases. Zirkel & Skidmore (2014) examined all cases nationwide, and this study only examining cases that involve court-involved youth in California. The finding that juvenile justice is less successful than other LEAs at defending complaints suggests that juvenile justices agencies may make more egregious IDEA violations. This supports prior research that found the juvenile justice system often does not adhere to IDEA requirements (Leone & Meisel, 1997; Zhang 2011). This may be attributed to the lack of training among staff about disabilities, special education and

legal rights of juveniles with disabilities (Geib et al., 2011), lack of special education services received in detention (Rosenbaum, 1999) and high number of unprepared educators (Platt et al., 2006).

Limitations

A number of limitations may have impacted the results of this study. First, the data were derived from a secondary analysis of SEHO cases. Demographic information, such as race, was omitted from the SEHO cases. This additional information might have provided more insight into trends, such as the disproportionate rate of minority students within special education services and within the juvenile justice system (Baltodano et al., 2005). Furthermore, because these cases are summaries and not verbatim transcripts, it is possible that information not deemed important to the cases was omitted.

Secondly, SEHO records summarize cases brought to a due process hearing; however, numerous complaints are settled through mediation that, if included, may have yielded different results. Unfortunately, records of unpublished judicial cases, including settlements, were unavailable. Further, these cases only represent violations that were considered by SEHO, there are probably many more violations that occur for which no one files a complaint. This is particularly likely given the families of adjudicated youth may feel too ashamed or powerless to bring a complaint forward (Glaser, Calhoun, & Puder, 2009). Thus, these cases likely under-estimate the number of IDEA violations that occur in Juvenile Justice.

Finally, this study focused exclusively on cases in California and may not generalize to other states.

Implications and Recommendations for Practice and Policies

The results of this study raise numerous ethical concerns that need to be addressed. Previous research on the juvenile justice system indicated a lack of teacher training, related services, and interventions for student with disabilities within this environment (Leone & Meisel, 1997; Platt et al., 2006; Geib et al., 2011; Zhang 2011). This lack of resources is not conducive to providing students with special needs the services they are entitled to under IDEA. The results of the study indicate that procedural guidelines are violated and appropriate educational and mental health services are insufficiently provided.

Though many states claim their overall purpose is in the interest of the child or a balance of child welfare and restorative justice, statistics indicate that these efforts are not effective. The rate of recidivism in California continues to rise (California Department of Corrections and Rehabilitation, 2012). Restorative Justice can be successful when implemented correctly and has shown promise in specific cities such as Oakland, where it is used as an alternative to zero-tolerance (Schiff, 2013). However, based on the California's recidivism statistics it may be inferred that restorative justice strategies are not implemented with fidelity, if they are used at all.

Additionally, AB 1729 is a bill passed in 2012 to encourage effective school discipline. Prior to the passing of this law, schools were found to use suspension and expulsion in ways that disproportionately targeted minorities and students with disabilities. Instead of these ineffective practices, schools are encourage to find alternatives such as behavior intervention, positive behavior support and improving overall school climate (Assemble Bill-1729, 2012). Enforcement of this law could

ultimately lower the high rates of minority students and students of color who arrive in the juvenile justice system through the school to prison pipeline. Data review of the effectiveness of this law could prove alternatives to zero tolerance are effective as well as hold schools accountable for previous punitive practices.

Recommendation for Future Studies

This study analyzed 26 cases of disputes involving the juvenile justice system and students with disabilities. Future research should conduct in-depth analyses of the types of services students receive in the juvenile justice system, analyze disputes that are resolved without a due process hearing, and in other geographic locations. It may be beneficial to examine the violations raised at mediation to see if similar trends exist. Furthermore, future studies could examine possible racial disparities in students with disabilities in the juvenile justice system.

This study relied on a secondary analysis of a dataset that included limited information. Future studies would benefit from data acquired directly from juvenile justice, such as student IEPs, focus groups, and interviews.

Conclusions

There is a lack of empirical research on the quality of resources available to students with disabilities in juvenile justice. However, existing research shows a very real need to reform the current system. Students with disabilities are overrepresented within juvenile justice, especially students with learning and emotional disabilities. This study aimed to delve deeper into these issues and examine the types of cases that proceed to due process hearings against juvenile justice agencies. The finding that parents prevailed more often than Juvenile Justices suggests there are more actual IDEA

violations in Juvenile Justices compared to other LEAs. This is supported by previous research stating that juvenile justice facilities may be lacking in equipment and trained staff to accommodate students with disabilities. Adjudicated youth are more likely than other youth to be consistently moving between different facilities and educational agencies, and the lack of communication between LEAs is negatively affecting students' access to FAPE. Furthermore, many of these students have serious mental health needs that are not being addressed. Future research should focus on revising the system to better accommodate these students and incorporate the continuum of services outlined in IDEA (2004).

REFERENCES

REFERENCES

- Allen-DeBoer, R., Malmgren, K. W., & Glass, M. (2006). Reading instruction for youth with emotional and behavioral disorders in a juvenile correctional facility. *Behavioral Disorders, 32*(1), 18-28.
- American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *The American Psychologist, 63*(9), 852-856.
- Assembly Bill-1729: Pupil rights: Suspension or expulsion: Alternatives and other means of correction.* Retrieved from http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1729
- Baltodano, H. M., Harris, P. J., & Rutherford, R. B. (2005). Academic achievement in juvenile corrections: Examining the impact of age, ethnicity and disability. *Education & Treatment of Children, 28*(4), 361-379.
- The Board of Education of the Hendrick Hudson Central School District v Rowley, 483 F. Supp. 536 (1980).
- Brault, M. W. (2012). *Americans with disabilities: 2010*. Washington, DC: U.S. Census Bureau
- Bullock, L. M., & McAuthur, P. (1994). Correctional special education: Disability prevalence estimates and teacher preparation programs. *Education and Treatment of Children, 17*(3), 347-55.
- Burrell, S., Warboys, L. (2000). *Special education and the juvenile justice system* (Juvenile Justice Bulletin). Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- California Dept of Education. (2014a). *Definition of frequently used terms - services & resources*. Retrieved from <http://www.cde.ca.gov/sp/se/sr/srgtprntsterms.asp>
- California Dept of Education. (2014b). *Juvenile court schools - educational options*. Retrieved from <http://www.cde.ca.gov/sp/eo/jc/>

- California Department of Corrections And Rehabilitation. (2012). *2012 outcome evaluation report*. Retrieved from:
http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf
- Cal. Educ. Code §48645.2.
- Chen, C., Symons, F. J., & Reynolds, A. J. (2011). Prospective analyses of childhood factors and antisocial behavior for students with high-incidence disabilities. *Behavioral Disorders, 37*(1), 5-18.
- Geib, C. F., Chapman, J. F., D'Amaddio, A. H., & Grigorenko, E. L. (2011). The education of juveniles in detention: Policy considerations and infrastructure development. *Learning and Individual Differences, 21*(1), 3-11.
- Glaser, B. A., Calhoun, G. B., & Puder, R. J. (2005). Using the juvenile offender parent questionnaire (JOPQ) as a risk and needs assessment: A prospective study. *Youth Violence and Juvenile Justice, 3*(3), 253-264.
- Howell, J. C. (1995). *Guide for implementing the comprehensive strategy for serious, violent, and chronic juvenile offenders*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Individuals with Disabilities Education Act, 20 U.S.C. § 14001400 (2004).
- Isbell, T. D. (2011). Making up for lost educational opportunities. *Brooklyn Law Review, 76*(4), 1717-1756.
- Jacob, S., Decker, D. M., & Hartshorne, T. S. (2011). *Ethics and law for school psychologists*. (6th ed.). Hoboken, NJ: Wiley.
- Jensen, E. L., & Jepsen, J. (Eds.). (2006). *Juvenile law violators, human rights, and the development of new juvenile justice systems*. Portland, OR: Hart.
- Kierkus, C. A., & Hewitt, J. D. (2009). The contextual nature of the family structure/delinquency relationship. *Journal of Criminal Justice, 37*(2), 123-132. doi:10.1016/j.jcrimjus.2009.02.008
- Leone, P. E., & Meisel, S. (1997). Improving education services for students in detention and confinement facilities. *Children's Legal Rights Journal, 17*, 1-12.
- May, K. (2009). By reason thereof: Causation and eligibility under the individuals with disabilities education act. *Brigham Young University Education & Law Journal, 2009*(1), 173-195.

- Mears, D. P., Aron, L., & Bernstein, J. (2003). *Addressing the needs of youth with disabilities in the juvenile justice system: The current status of evidence-based research*. Washington, DC: National Council on Disability.
- National Center for Education Statistics. (2014). *The condition of education - Participation in education - Elementary/secondary enrollment - Children and youth with disabilities*. Retrieved from http://nces.ed.gov/programs/coe/indicator_cgg.asp
- Newcomer, J. R., & Zirkel, P. A. (1999). An analysis of judicial outcomes of special education cases. *Exceptional Children*, 65(4), 469-480.
- Office of Administrative Hearings. (2009). *Understanding special education due process hearings*. Retrieved from: <http://www.documents.dgs.ca.gov/oah/SE/SE%20Guide%20to%20understanding%20DPH.pdf>
- Office of Administrative Hearings. (2014). *Special education decisions and orders*. Retrieved from <http://www.dgs.ca.gov/oah/Home.aspx>
- Office of Juvenile Justice and Delinquency Prevention. (2011). *Easy access to the census of juveniles in residential placement: 1997-2011*. Retrieved from <http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp>
- Office of Juvenile Justice and Delinquency Prevention. (2012). *Purpose clauses for juvenile courts*. Retrieved from http://www.ojjdp.gov/ojstatbb/structure_process/qa04205.asp?qaDate=2012
- Platt, J. S., Casey, R. E., & Faessel, R. (2006). The need for a paradigmatic change in juvenile correctional education. *Preventing School Failure*, 51(1), 31-38.
- Prasse, D. P. (2008). Best practices in school psychology and the law. In A. Thomas & J. Grimes (Eds.), *Best practices in school psychology* (5th ed., pp. 1903-1920). Bethesda, MD: National Association of School Psychologists.
- Quinn, M. M., Rutherford, R. B., Leone, P. E., Osher, D. M., & Poirier, J. M. (2005). Youth with disabilities in juvenile corrections: A national survey. *Exceptional Children*, 71(3), 339.
- Rickey, K. (2003). Special education due process hearings. *Journal of Disability Policy Studies*, 14(1), 46-53.
- Rosenbaum, S. H. (1999). *Remarks of Steven H. Rosenbaum, Chief, Special Litigation Section, Civil Rights Division. United States Department of Justice*. Speech before the Fourteenth Annual National Juvenile Corrections and Detention Forum at Long Beach, CA.

- Ryan, J. P., & Testa, M. F. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children & Youth Services Review, 27*(3), 227-249. doi:10.1016/j.childyouth.2004.05.007
- Schiff, M. (2013, January). Dignity, disparity and desistance: effective restorative justice strategies to plug the “school-to-prison pipeline.” In *Center for Civil Rights Remedies National Conference. Closing the School to Research Gap: Research to Remedies Conference*. Washington, DC:.
- Schultz, G. F., & McKinney, J. R. (2000). Special education due process: Hearing officer background and case variable effects on decisions outcomes. *Brigham Young University Education & Law Journal, 2000*(1), 17-31.
- Simmel, C. (2007). Risk and protective factors contributing to the longitudinal psychosocial well-being of adopted foster children. *Journal of Emotional & Behavioral Disorders, 15*(4), 237-249.
- Snyder, H. N. (2003). *Juvenile arrests 2001*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Soler, M., Shoenberg, D., & Schindler, M. (2009). Juvenile justice: Lessons for a new era. *Georgetown Journal on Poverty Law & Policy, 16*, 483-541.
- Springer, C. E. (1986). *Justice for juveniles*, U.S. Department of Justice. Washington, DC: Office of Juvenile Justice and Delinquency Prevention
- United States Department of Education Office of Special Education and Rehabilitative Services. (2005). *Educational expenses for children in private residential facilities*. Washington, DC: United States Department of Education Office of Special Education and Rehabilitative Services
- Use of Amounts, 20 U.S.C. 1413 (2011).
- Vogel, M., & Messner, S. F. (2012). Social correlates of delinquency for youth in need of mental health services: Examining the scope conditions of criminological theories. *JQ: Justice Quarterly, 29*(4), 546-572. doi:10.1080/07418825.2011.582879
- Wilkerson, K. L., Gagnon, J. C., Melekoglu, M. A., & Cakiroglu, O. (2012). Reading instruction in secondary day treatment and residential schools for youth with emotional or behavioral disorders. *Remedial & Special Education, 33*(2), 78-88. doi:10.1177/0741932510364546

- Zhang, D., Barrett, D. E., Katsiyannis, A., & Yoon, M. (2011). Juvenile offenders with and without disabilities: Risks and patterns of recidivism. *Learning and Individual Differences, 21*(1), 12-18.
- Zirkel, P. A. (2013). Is it time for elevating the standard for FAPE under IDEA? *Exceptional Children, 79*(4), 497-508.
- Zirkel, P. A., & Skidmore, C. A. (2014). National trends in the frequency and outcomes of hearing and review officer decisions under the IDEA: An empirical analysis. *Ohio State Journal on Dispute Resolution, 29*(3), 525-575.