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AN EXPLORATION OF FACTORS RELATING TO VARIATION AMONG STATES IN THE FREQUENCY OF DUE PROCESS HEARINGS

A Dissertation
Presented for the
Doctor of Education
Degree
The University of Tennessee, Knoxville

Sandra L. Earnest
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DEDICATION

This dissertation is dedicated to
my Family, my Friends, and my God.
Without your love, encouragement, and strength,
this work would not have been possible.

ABSTRACT

The Individuals with Disabilities Education Act (IDEA) establishes the due process hearing as a major component of the mechanism for conflict resolution between schools and parents regarding students eligible for special education services. Current research indicates that hearings are costly, both in financial terms and in terms of diminished relationships between schools and families. The purpose of this study was to explore whether various components of the comprehensive state plans and/or cultural factors were related to the frequency of due process hearings.

The fifty states were grouped in terms of population and special education enrollment and subdivided by the number of hearings held in 1993. Three pairs of states were carefully chosen: each pair exhibiting a strong correlation in cultural factors while displaying marked differences in the number of hearings.

Comprehensive state plans and information from Annual Reports to Congress were used to analyze state policies and practices regarding least restrictive environment, identification, and due process procedures. Data obtained from the U.S. Census Bureau and other sources, were used to explore cultural elements of the state including factors related to population, education, and socio-economics. The "litigiousness" of the states, or the inclination to resolve conflicts through the court systems, was also examined.

Analysis of the data was performed on three levels: intra-spectively in terms of the individual states; inter-spectively in terms of paired states; and

between groups of high and low due process states. As neither the probability nor chi square analysis could effectively differentiate significance among factors, a numerical analysis was based on marked deviations among percentages.

The study uncovered three factors which clearly distinguished high and low due process states: 1) Least Restrictive Environment: High due process states placed a greater number of students in more restrictive environments and developed state plans containing a higher level of detail and elaboration; 2) Identification: High due process states used procedures other than a regression formula to identify students with specific learning disabilities; and 3) Litigiousness: High due process states exhibited higher numbers in the three factors comprising "litigiousness." Given the scope of this study, findings did not establish a causal relationship between the frequency of due process hearings and these factors. However, compelling questions for further research were raised.

Further study is indicated comparing state policies and practices against the issues presented at due process hearings, mediation practices and effectiveness, criteria for special education eligibility and for determining least restrictive environment, and case studies exploring local policies, practices, and attitudes regarding hearings. The replication of this study using a wider range of states would also contribute significantly to the knowledge base involving factors impacting due process litigation.

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Chapter 1

Introduction and Background

The Individuals with Disabilities Education Act (I.D.E.A.) is arguably the most substantial piece of educational legislation of the 20th century. This mandate was the Congressional reaction to findings that children with disabilities, especially severe disabilities, were often totally excluded from the educational system or received inadequate educational services. Congressional measures began with the Education of the Handicapped Act of 1970, which furnished financial assistance to states providing children with a free appropriate public education (FAPE) according to federal requirements. The Act was amended in 1975, becoming the Education for All Handicapped Children Act (EAHCA) (P.L. 94-142), which emphasized many of the legal safeguards found in the current revision, re-authorized in 1997, known as the Individuals with Disabilities Education Act (I.D.E.A.). A significant amendment to the act in 1986 (Handicapped Children's Protection Act, P.L. 99-372), allowed for the awarding of attorneys' fees to students and families who prevailed in due process hearings. The passage of these acts resulted in a landslide of litigation by the families of children with disabilities, compelling state adherence to the new federal laws.

Technically speaking, I.D.E.A. and its predecessors, are grant statutes. As such, states are only required to develop plans to meet the minimum

requirements of the Act if they are requesting federal funds to enhance their efforts. It has been reasoned that because education is not a right guaranteed by the Constitution, repealing I.D.E.A. would alleviate the state's obligation to provide an appropriate education to students with disabilities. However, the courts have ruled that if a state chooses to provide an educational system to the populace, civil rights laws applying to protected classes govern service delivery to students with disabilities. The mandates of I.D.E.A. are intertwined with the judicial interpretation of civil rights laws applying to discrimination. To date, all fifty states have agreed to comply with the regulations of I.D.E.A., thereby obtaining funding to assist them in fulfilling the obligations of civil rights laws which are in place regardless of I.D.E.A. mandates.

A major component of I.D.E.A. is the establishment of procedural safeguards to ensure the provision of a free appropriate public education in the least restrictive environment. The safeguards include due process procedures for the resolution of conflicts between the school system and the parents/legal guardians of students with disabilities. Although variations exist among the states in time allowances, qualifications of administrative law judges or panels, number of tiers in the legal system, and availability and practice of mediation, the basic elements of due process are consistent. Two types of procedures are available to resolve disagreements with the school system. The first procedure, an administrative complaint, is filed with the State Department of Education when a

parent/legal guardian believes that the school system has failed to comply with state or federal guidelines regarding the education of one or more children with disabilities. Within a given time frame (usually 60 days), the State must investigate and issue a written decision to the complainant addressing each concern. The second procedure, known as a request for a due process hearing, may be filed by the parent/legal guardian or school system to settle a conflict regarding the provision of a free appropriate public education to an eligible child or a child alleged to be eligible. A written request is filed with the director of the school system. A time line of approximately 30 days is allowed for the settlement of the dispute, commencing with the date the complaint is filed. The process differs from an administrative complaint in that an actual hearing is conducted. The decision rendered at this level is final pending appeal to the state, district, or federal court.

The mechanics of the due process hearing may be more clearly understood through a parallel comparison to the civil court process. In this procedure, two parties have a disagreement where one party claims that the other has violated their rights through an infraction of the law. Both parties are generally represented by legal counsel and present witnesses, testimony, cross-examination, and documentation or other evidence to support their position. The administrative law judge will apply the law and legal precedents to determine a final resolution. Court costs and attorney fees will then be assigned to one or

both parties. Should the aggrieved party disagree with the decision, an appeal can be made to a higher court.

Due process decisions perform the function of clarifying the intent of the federal law. Consistency in the interpretation of the law among states is advanced through an interdependency among the courts. For example, final orders are frequently founded on the decisions of other courts - especially courts within the same civil circuit. Appellate court decisions have the effect of binding lower courts, thereby having the effect of law within their court systems. State and federal court systems function independently of each other, although judges at all levels often consider opinions from the other courts.

Occasionally, the U.S. Supreme Court considers appeals from the highest courts of the states. For this action to occur, a distinct question regarding federal law must exist and at least four justices must agree on the importance of the question. Several due process hearings initiated by parents have been taken to the Supreme Court on writs of certiorari, including the landmark cases of Hendrick Hudson Central School District Board of Education v. Rowley (1982), Irving Independent School District v. Tatro (1984), and Honig v. Doe (1988). Thus, due process hearings play a major role - albeit costly - in the interpretation and practice of I.D.E.A.

The existing research and literature related to special education and due process has identified inconsistencies in the interpretation and implementation of

I.D.E.A.. Bienstock (1992) found that although state policies and procedures generally met or exceeded federal mandates, a significant amount of variation existed among states in the number of policies that were consistent with federal regulations. Beyond variations among states, Doyle (1988) found vast differences in service delivery within a state subject to the same policies. Similarly, the National Council on Disability (1993) which examined state compliance to the federal law nationally, found that up to 66% of the IEPs examined were not in compliance with federal mandates, the proper sequence for IEP development had not been followed, parental rights were not appropriately presented, and a disproportionate number of minorities were represented as disabled.

Under I.D.E.A., state management systems established to handle complaints show similar inconsistencies in interpretation and implementation. Prior to initiating due process hearing procedures, parents may elect to file an administrative complaint with the State Department of Education. State Departments of Education (SEAs) are permitted considerable latitude in the development of complaint management systems. Yaryan (1992) found that complaint managers received a minimum of training, that the 1990 federal monitoring of the systems resulted in numerous citations requiring corrective action in over half the states, and that 33% of the SEAs had no one coordinating complaint management. The inconsistency among states in the provision of

alternative forms of complaint resolution may impact the frequency of due process hearings.

This inconsistency has been somewhat alleviated through the implementation of mediation. Prior to engaging in a due process hearing, several states allow parties to engage in voluntary mediation procedures. Ahearn (1994) found that thirty-nine states currently had mediation available and that the use of mediation significantly reduced the occurrence of due process hearings, and produced less stress and hostility between the parties. Additionally, Lake (1991) found that the cost of a due process hearing was a minimum of 3.1 times more expensive than mediation.

Given the advantages of mediation, Frampton (1988) studied the factors which led families to pursue the more difficult road to resolution through due process litigation. Significant correlations were discovered between the use of due process hearings and the source of information regarding special education programs, use of parent advocates, and prior use of due process hearings.

Nationally, the use of due process litigation has increased dramatically during the 1990s. As a result, assorted aspects of due process litigation have been examined and published. The literature has explored the experiences and perceptions of participants and provides rich descriptions of the process and proceedings (Abeson, Bolick, & Hass,1976; Budoff & Orenstein,1982; Penland,1985).

Penland (1985) found that despite the fact that adversarial relationships between the parties were common and the respondents lacked confidence that the Administrative Law Judge (ALJ) would be both capable and impartial, the participants were generally convinced that their rights were being protected during the procedures. The ALJs, however, were highly critical of local education agencies (LEAs) regarding adherence to parental rights, compliance with the ALJ's final decision, and payment for the transcription of the proceedings.

In spite of the fact that the majority of special education students are identified as having learning disabilities and speech impairments, Robinett (1993) found that contrary to expectation, there was no predictable relationship between the size of the special education population and the frequency of due process litigation. In other research, Henderson (1982) found that a disproportionate number of emotionally disturbed, mentally retarded, and hearing impaired students were involved in due process.

A decade of federal court decisions between 1984 and 1994 and the impact on the provision of related services and administrative policies in the public schools as a result of those decisions were described and analyzed by Sahlstrom (1994). The author recreated the inner chambers of the court by discussing the legal reasoning used in reaching a decision and exploring the factors considered in making those decisions. On an annual basis, the specifics of special education court cases are presented categorically in a publication

entitled Students with Disabilities and Special Education, published by Data Research. These texts summarize the reasoning behind the final orders of due process hearings, providing clarity and direction for those practicing in the field.

The research and literature that exist adequately describes and critically examines the content and implementation of I.D.E.A., (Bienstock, 1992; Doyle, 1988; and the National Council on Disability, 1993), state level complaint management systems (Yaryan, 1992), the advantages of mediation (Ahearn, 1994; and Lake, 1991), participant's perceptions of the process (Frampton, 1988; Abeson, Bolick, & Hass, 1976; Budoff & Orenstein, 1982; and Penland, 1985), other aspects of due process hearings (Robinett, 1993; and Henderson, 1982), and critical analyses of due process litigation (Sahlstrom, 1994; Rothstein, 1990; Osborne, 1988 and Students with Disabilities and Special Education, published annually). This literature has made a tremendous contribution to the field of special education. However, none of the literature has considered, much less examined, the wide variance in the frequency of due process hearings that exists among states.

Each state is bound by federal law to provide a given range of services to similar special education populations. States are also obligated to provide procedural safeguards culminating in a due process hearing for the resolution of disputes between school systems and the parents of students with disabilities. Given these similarities in mandated services and procedural safeguards, it

might reasonably be assumed that little variance would exist among states in the frequency of due process hearings. However, the statistics regarding the frequency of litigation among states in 1993 run counter to that assumption. The data, presented in Table 1, show a range of frequencies from 609 cases heard in New York to 0 cases in the states of Alaska, North Dakota, & Utah. Further, the five states experiencing the highest number of hearings account for 1,342 of the 2,010 cases heard in 1993, equaling 67%. The top fifteen states experienced 1,797 cases or 89% of all due process hearings. The remaining 35 states had slightly under 11% of all due process hearings, none of which individually accounted for as much as 1% of the total hearings held.

Considered in isolation, the existence of variability in the frequency of hearings between states may not necessarily be significant. Extraneous factors could account for these differences, such as the size of the special education populations, the percentage of the special education populations participating in hearings, and the size of the total student populations. If the variability in the number of hearings were caused by these extraneous factors, individual states would be powerless to effectively impact the frequency of hearings. The states would have to resign themselves to merely predicting the frequency of litigation and planning accordingly. However, an examination of these extraneous factors in relation to 1993 data does not account for the variability among states in the frequency of due process litigation.

Table 1

1993 Due Process Hearings Held

According to Raw Data and Cumulative Percentages

Ranking	State	Hearings Held	Percent of Total Hearings	Cum. Percent of Total Hearings
1	New York	609	30.30%	30.30%
2	District of Columbia	363	18.06%	48.36%
3	New Jersey	176	8.76%	57.11%
4	Illinois	105	5.22%	62.34%
5	Massachusetts	89	4.43%	66.77%
6	Pennsylvania	78	3.88%	70.65%
7	Connecticut	77	3.83%	74.48%
8	Washington	72	3.58%	78.06%
9	California	58	2.89%	80.95%
10	Maryland	46	2.29%	83.23%
11	Virginia	39	1.94%	85.17%
12	Georgia	24	1.19%	86.37%
13	Maine	23	1.14%	87.51%
14	Alabama	19	0.95%	88.46%
14	Michigan	19	0.95%	89.40%
16	Florida	17	0.85%	90.25%
16	Indiana	17	0.85%	91.09%
18	New Hampshire	15	0.75%	91.84%
19	Arkansas	13	0.65%	92.49%
20	Tennessee	12	0.60%	93.08%
21	Kansas	11	0.55%	93.63%
22	Ohio	10	0.50%	94.13%
22	Mississippi	10	0.50%	94.63%
24	Kentucky	9	0.45%	95.07%
24	Wisconsin	9	0.45%	95.52%
26	West Virginia	8	0.40%	95.92%
27	Arizona	7	0.35%	96.27%
27	Louisiana	7	0.35%	96.62%
27	Missouri	7	0.35%	96.97%
27	Oregon	7	0.35%	97.31%
27	Vermont	7	0.35%	97.66%
32	Hawaii	6	0.30%	97.96%
33	Iowa	5	0.25%	98.21%
33	Nevada	5	0.25%	98.46%
33	Oklahoma	5	0.25%	98.71%
36	Rhode Island	4	0.20%	98.91%
37	Delaware	3	0.15%	99.05%
37	Minnesota	3	0.15%	99.20%
37	Montana	3	0.15%	99.35%
37	South Carolina	3	0.15%	99.50%
41	Colorado	2	0.10%	99.60%
41	Idaho	2	0.10%	99.70%
41	North Carolina	2	0.10%	99.80%
44	Nebraska	1	0.05%	99.85%
44	New Mexico	1	0.05%	99.90%
44	South Dakota	1	0.05%	99.95%
44	Wyoming	1	0.05%	100.00%
48	Alaska	0	0.00%	100.00%
48	North Dakota	0	0.00%	100.00%
48	Utah	0	0.00%	100.00%
No Data: Texas				
Total Hearings: 1993	**2,010**			
Total Hearings: Top 5 States:	**1,342**			
Percent of Total Hearings:	**66.77%**			
Total Hearings: Top 15 States:	**1,797**			
Percent of Total Hearings	**89.40%**			

It might be expected that the frequency of litigation would be proportionately related to the size of the special education population, i.e., the states with the highest special education enrollments would experience the highest frequency of litigation. However, this was not the case. The correlation coefficient between the size of the state special education populations and due process hearings held was nominal (0.39); the percentage of the special education population participating in due process hearings varied widely among the states ranging from 0% in three states to 5.147% in the District of Columbia (hereafter to be included in the term "states"); and the District of Columbia, which has the smallest student enrollment, experienced the second highest number of due process hearings. Table 2, which presents state special education populations, the number of hearings held per state, and state percentages of national totals, indicates a moderate correlation (0.34) between a state's percentage of the national special education population and the state's percentage of total due process hearings. This finding indicates that the size of the special education population was not proportionately related to the frequency of due process hearings.

Federal law allows for the initiation of due process procedures contesting the absence of identification/eligibility of a child for special education. Thus, students not enrolled in special education may be involved in due process litigation. Considering this fact, it might be reasonable to assume that there is a

Table 2
1993 Due Process Hearings
According to Special Ed. Populations

State	Special Education Population 1992-93	State Percent of National Sp. Ed. Population 1992-93	Hearings Held: 1993	Percent of Sp. Ed. Pop. Participating in Hearings	State % of Hearings Held Nationally
California	513,757	10.02%	58	0.011%	2.89%
Texas	390,113	7.61%	nd	nd	nd
New York	336,051	6.56%	609	0.181%	30.30%
Florida	263,592	5.14%	17	0.006%	0.85%
Illinois	250,955	4.90%	105	0.042%	5.22%
Ohio	216,745	4.23%	10	0.005%	0.50%
Pennsylvania	209,578	4.09%	78	0.037%	3.88%
New Jersey	188,578	3.68%	176	0.093%	8.76%
Michigan	176,861	3.45%	19	0.011%	0.95%
Massachusetts	157,839	3.08%	89	0.056%	4.43%
North Carolina	132,861	2.59%	2	0.002%	0.10%
Virginia	127,967	2.50%	39	0.030%	1.94%
Indiana	124,180	2.42%	17	0.014%	0.85%
Georgia	115,893	2.26%	24	0.021%	1.19%
Tennessee	115,232	2.25%	12	0.010%	0.60%
Missouri	109,199	2.13%	7	0.006%	0.35%
Wisconsin	97,626	1.90%	9	0.009%	0.45%
Alabama	97,363	1.90%	19	0.020%	0.95%
Washington	96,334	1.88%	72	0.075%	3.58%
Maryland	94,922	1.85%	46	0.048%	2.29%
Minnesota	86,340	1.68%	3	0.003%	0.15%
Louisiana	82,300	1.61%	7	0.009%	0.35%
Kentucky	81,683	1.59%	9	0.011%	0.45%
South Carolina	80,713	1.57%	3	0.004%	0.15%
Oklahoma	71,603	1.40%	5	0.007%	0.25%
Connecticut	68,753	1.34%	77	0.112%	3.83%
Arizona	65,380	1.28%	7	0.011%	0.35%
Oregon	64,454	1.26%	7	0.011%	0.35%
Colorado	63,552	1.24%	2	0.003%	0.10%
Mississippi	62,968	1.23%	10	0.016%	0.50%
Iowa	62,552	1.22%	5	0.008%	0.25%
Utah	51,995	1.01%	0	0.000%	0.00%
Arkansas	51,669	1.01%	13	0.025%	0.65%
Kansas	48,873	0.95%	11	0.023%	0.55%
West Virginia	45,345	0.88%	8	0.018%	0.40%
New Mexico	40,926	0.80%	1	0.002%	0.05%
Nebraska	36,985	0.72%	1	0.003%	0.05%
Maine	29,005	0.57%	23	0.079%	1.14%
Idaho	23,292	0.45%	2	0.009%	0.10%
Nevada	23,074	0.45%	5	0.022%	0.25%
Rhode Island	22,460	0.44%	4	0.018%	0.20%
New Hampshire	22,323	0.44%	15	0.067%	0.75%
Montana	18,846	0.37%	3	0.016%	0.15%
Alaska	17,358	0.34%	0	0.000%	0.00%
South Dakota	15,536	0.30%	1	0.006%	0.05%
Hawaii	14,577	0.28%	6	0.041%	0.30%
Delaware	14,172	0.28%	3	0.021%	0.15%
North Dakota	12,832	0.25%	0	0.000%	0.00%
Wyoming	12,228	0.24%	1	0.008%	0.05%
Vermont	10,452	0.20%	7	0.067%	0.35%
District of Columbia	7,053	0.14%	363	5.147%	18.06%

Correlations:		**Correlations w/o Dist. of Columbia:**	
1993 Special Education Population:	**5,038,095**	**1993 Special Education Population:**	**5,020,737**
1993 Hearings Held:	**2,010**	**1993 Hearings Held:**	**3,622**
Special Ed. Pop. \ Hearings Held:	**0.39**	**Special Ed. Pop. \ Hearings Held:**	**0.52**
Special Ed. Pop. \ % in Hearings:	**-0.12**	**Special Ed. Pop. \ % in Hearings:**	**0.25**

relationship between the size of the total student population and the frequency of due process hearings. Table 3, which compares the total student enrollment and the frequency of due process hearings, shows an insignificant correlation (0.33) between these variables. The percentage of the total enrollment identified as special education ranged from 8.24% in Hawaii to 18.39% in Massachusetts. However, the correlation between state special education populations and total enrollments was 0.98, indicating a robust relationship. The national identification average was 12.15% - approximating the 12% maximum funding level of I.D.E.A.

Special education enrollments, total student populations and other factors have been compared with the number of due process hearings held per state without adequately accounting for the wide variance in the frequency of due process hearings. These efforts have not yielded viable explanations for the variance in hearings among the states. If these elements do not account for the unexplained variance in the frequency of hearings among the states, what does?

STATEMENT OF THE PROBLEM

The intent of the Individuals with Disabilities Education Act of 1975 was to offer the states funding in return for legislative compliance which would facilitate the inclusion of children with disabilities within the public education system. The federal law delineates categories of disabilities, the boundaries of services which are to be offered, and the funding formula to be used in the distribution of

Table 3
1992-93 Special Education Population
Compared to Total Student Enrollment

State	Total Enrollment Pre-K- 12	Special Education Population: 1992\1993	Percentage of Total Enrollment Identified as Special Education	Hearings Held: 1993
California	5,200,000	513,757	9.88	58
Texas	3,235,052	390,113	12.06	no data
New York	2,670,000	336,051	12.59	609
Florida	1,981,887	263,592	13.30	17
Illinois	1,814,798	250,955	13.83	105
Ohio	1,780,000	216,745	12.18	10
Pennsylvania	1,716,670	209,578	12.21	78
New Jersey	1,129,883	188,578	16.69	176
Michigan	1,595,100	176,861	11.09	19
Massachusetts	858,095	157,839	18.39	89
North Carolina	1,106,876	132,861	12.00	2
Virginia	1,032,058	127,967	12.40	39
Indiana	958,397	124,180	12.96	17
Georgia	1,203,620	115,893	9.63	24
Tennessee	845,328	115,232	13.63	12
Missouri	838,758	109,199	13.02	7
Wisconsin	830,964	97,626	11.75	9
Alabama	727,533	97,363	13.38	19
Washington	899,990	96,334	10.70	72
Maryland	751,604	94,922	12.63	46
Minnesota	784,420	86,340	11.01	3
Louisiana	746,889	82,300	11.02	7
Kentucky	640,477	81,683	12.75	9
South Carolina	633,424	80,713	12.74	3
Oklahoma	591,000	71,603	12.12	5
Connecticut	488,400	68,753	14.08	77
Arizona	672,679	65,380	9.72	7
Oregon	510,229	64,454	12.63	7
Colorado	612,635	63,552	10.37	2
Mississippi	504,013	62,968	12.49	10
Iowa	493,691	62,552	12.67	5
Utah	461,259	51,995	11.27	0
Arkansas	440,761	51,669	11.72	13
Kansas	452,071	48,873	10.81	11
West Virginia	317,719	45,345	14.27	8
New Mexico	303,417	40,926	13.49	1
Nebraska	281,813	36,985	13.12	1
Maine	217,042	29,005	13.36	23
Idaho	231,668	23,292	10.05	2
Nevada	222,846	23,074	10.35	5
Rhode Island	143,043	22,460	15.70	4
New Hampshire	175,979	22,323	12.69	15
Montana	158,031	18,846	11.93	3
Alaska	119,528	17,358	14.52	0
South Dakota	134,573	15,536	11.54	1
Hawaii	176,923	14,577	8.24	6
Delaware	104,799	14,172	13.52	3
North Dakota	118,930	12,832	10.79	0
Wyoming	100,313	12,228	12.19	1
Vermont	98,532	10,452	10.61	7
District of Columbia	80,937	7,053	8.71	363
Correlations:				
Total Enroll\Sp. Ed. Population		**0.98**		
Total Enroll\Hearings:		**0.33**		
Sp. Ed. Enroll\Hearings:		**0.34**		
Percent. Ident. Sp. Ed. \ Hearings:		**0.03**		
Total Enrollment Pre K - 12:		**42,194,654**		
Total Special Ed. Population:		**5,124,945**		
Percent of Total Enrollment Identified as Special Education:		**12.15%**		

monies. In order to obtain federal funding, each state must submit a plan in compliance with federal mandates outlining the manner in which students with disabilities will be served. A significant component of federal law addresses the substantive and procedural rights of individuals with disabilities. Perceived breeches of these rights are frequently addressed through due process procedures.

Excluding the District of Columbia as an outlier, a significant variance ($\bar{x}$ = 34, σ = 88.87) exists among the states in the frequency of due process litigation. Given the fact that the states are operating under the same federal law and that similar procedures and formats have been developed under this law to address breeches of procedural and substantive rights, the reasons for the variance in the frequency of hearings among states are not readily apparent.

PURPOSE OF THE STUDY

The purpose of this study was to determine whether various components of the comprehensive state plans and/or cultural factors are related to the frequency of due process hearings.

RESEARCH QUESTIONS

1. What are the differences/similarities among state interpretations of I.D.E.A. as evidenced in the comprehensive state plans?

2. What are the differences among the state cultures of the selected states?

3. What are the differences/similarities between comprehensive state plans and state cultures and the frequency of due process hearings between paired states?

4. What factors emerge in terms of comprehensive state plans and in terms of cultural elements which differentiate between high and low due process frequency groupings?

SIGNIFICANCE OF THE STUDY

The state-to-state variance in the frequency of due process litigation has not been previously researched. It is critical that this void in the literature be filled for several reasons including escalating hearing costs, inconsistency in the states' interpretation of disability policies and procedures, and an end product of adversarial school-parent relationships as a result of the hearing process. These efforts often produce a negligible impact on the actual educational services delivered to the student.

Due process hearings are expensive. The cost of a hearing varies, but one Texas Education Agency newsletter estimated that a single hearing averaged $60,000 (Ahearn, 1994). In a two year period, the number of hearings rose nationally 120% from 1,670 in 1992 to 2,010 in 1993. A determination of

causative factors might lead to the development of policies, practices, and tools to minimize the occurrence of litigation thereby allowing for the redirection of monies provided for litigation to direct educational spending for all children.

The identification of variances among the state plans which may be impacting the frequency of hearings might lead to needed policy changes at the state level. These adjustments could produce more consistency in policies among states and could lead to valuable partnerships involving the sharing of information and of services.

Numerous studies have indicated that relationships between the parents and the schools significantly deteriorate as a result of due process procedures - regardless of whom "wins." Minimizing the occurrence of these hearings could avoid the resultant hostilities between the parties. Any understanding which contributes to decreasing negative relationships between the schools and the home is in and of itself significant.

DESIGN, METHODS, AND PROCEDURES

Given the limited amount of research and information available concerning this topic, a descriptive and exploratory research design was chosen to broadly explore possible factors related to the rate of due process hearings.

Using existing data, the study examined two areas focusing on the statistics, state plans, and practices of six states during the 1992-1993 school

year, which may impact the frequency of due process litigation: state interpretations of federal laws as expressed in comprehensive state plans; and state cultures, i.e., culturally defined differences among people which may impact decisions to initiate court proceedings.

Data analysis occurred in three stages: an "intra-spective" examination of state policies and culture; an "inter-spective" analysis contracting these same elements between paired states; and a categorical comparison seeking commonalities among state reporting "high" due process litigation and those reporting "low' litigation rates. The design, methods, and procedures are detailed in Chapter 3.

ASSUMPTIONS

Due to numerous and contrasting interpretations and definitions, the following factors cannot be determined with a reasonable degree of accuracy. For the purposes of this study, it will be assumed that:

1) each state accommodates similar ranges and types of disabilities among their children;
2) the level of parental concern for their children is consistent among states; and
3) similar percentages of parents in different states question some element of their child's special education program.

DELIMITATIONS

Many factors may potentially impact the frequency of due process hearings. As a ground breaking study, this investigation will be delimited to the consideration of four factors considered to be logical explanations for the variance in the frequency of due process hearings: state statutes, interpretation of least restrictive environment, legal models and procedures, and elements of the state culture. Thus, no claim is made to examining all possible factors and variables involved.

DEFINITIONS

Administrative Complaint: A grievance filed with the State Department of Education when a parent believes the school system has failed to comply with state or federal regulations governing the education of children with disabilities. The State may carry out an on-site investigation, give the complainant the opportunity to submit additional information, and/or review all relevant information prior to issuing a written decision. No formal hearing is held in this process. (STEP, July, 1994, p. 23)

Children with disabilities (I.D.E.A.): means children -
(I) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments, including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
(II) who, by reason thereof, need special education and related services (I.D.E.A., 1990).

Due Process Hearing: A formal administrative procedure whereby an impartial, state-appointed hearing officer hears presentations from parents and school district representatives regarding the appropriateness of the child's educational plan (Budoff, 1982).

Free Appropriate Public Education (FAPE): Special education and related services:

(A) that have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency,
(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and
(D) are provided in conformity with the individualized education program required under Section 1414(a)(5) of this title (I.D.E.A., 1990).

Full Continuum of Educational Settings: Special education services can be offered in a variety of ways including Supplementary Services (including consultation, direct instruction (less than one hour per week) and related services), Resource Program (allowing for pull-out to special education classes), Ancillary Person (provides specific services to enable the child to remain in the regular classroom), Full-Time Special Program (a special class or comprehensive development class), Special Residential Program (continuous intervention is required and lesser options cannot meet those needs), and Home and Hospital Instruction (provided to students who are not able to attend school).

Individualized Education Program (IEP): a written plan for each child with a disability developed in an M-Team meeting by a representative of the educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of the child, and whenever appropriate, the child, which statement shall include -

(A) a statement of the present levels of educational performance,
(B) annual goals and short-term instructional objectives,
(C) specific educational services to be provided to such child and the extent to which such child will be able to participate in regular educational programs,
(D) a statement of the needed transition services for students beginning no later than 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting,

(E) the projected date for initiation and anticipated duration of such services, and
(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved (I.D.E.A.,1990).

Least Restrictive Environment: I.D.E.A. specifies that "...to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, [should be] educated with children who are not handicapped, and that separate schooling, or other removal of handicapped children from the regular educational environment [should] occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (Alexander, 1992, p. 381).

Local Education Agency (LEA): The educational system charged by the State with the delivery of educational services which encompasses the legal residence of a given student.

M-Team / IEP-Team: Decisions made about a child's Individualized Educational Program in the Least Restrictive Environment must be developed by the Multi-disciplinary Team (M-Team), also known as the IEP-Team. This team is also responsible for determining eligibility for special education and related services. The M-Team is a group of people that must include at least: the parent, or legal guardian; the child, when appropriate; a teacher who knows about the instructional needs of the child; the principal or designees who authorize the provision of resources and can assure the parent that the program will be carried out; a specialist who understands and can explain the assessment procedures; and/or other specials as deemed appropriate (STEP, July, 1994, p. 4).

Mediation: A voluntary informal process conducted with the agreement of the parents and schools by a regionally deployed state education mediator. The parties meet together to clarify the issues in dispute and settle issues when possible. The mediation process cannot extend or delay the mandated time lines of due process hearing requirements. Mediation is not binding and if resolution cannot be achieved, no evidence is forwarded to the hearing (Budoff, 1982).

Related Services: transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitative counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children (I.D.E.A., 1990).

Special Education: specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including -

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education (I.D.E.A., 1990).

Statute: Law enacted by the legislative power of a county or state (Alexander,1992).

Transition Services: a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation (I.D.E.A., 1990).

Writ of Certiorari: An action moving a case from a lower to a higher court for trial. "Cases may be taken to the Supreme Court... where a state or federal statute is questioned as to its validity under the federal Constitution or where any title, right, privilege, or immunity is claimed under the Constitution (Alexander, 1992, p.14)."

ORGANIZATION OF THE STUDY

This study will be reported in five chapters. Chapter 1 will present the background, statement of the problem, purpose and significance, assumptions, limitations, definitions, and a preview of the methods and procedures used in the study. Chapter 2 will explore critical research and relevant literature related to due process hearings. Chapter 3 will detail the design methods and procedures used in the study. Chapter 4 will report the analysis of data and findings of the study. Chapter 5 will provide a summary of the study, including the findings, conclusions, and results, and will make recommendations for future studies.

Chapter 2

Review of Research and Literature Related to I.D.E.A. and Due Process

This chapter examines the research and literature related to the Individuals with Disabilities Education Act (I.D.E.A.) and due process litigation. It is presented in seven sections. The first section reviews the history and educational background of persons with disabilities which ultimately led to the drafting of I.D.E.A. The second section describes federal legislation prior to I.D.E.A. which impacted persons with disabilities and special education. The third section examines the content and provisions of I.D.E.A.. The fourth section focuses on the mechanism of due process hearings. The fifth section explores the implementation of I.D.E.A. including the differences among state plans, differences among states in levels of compliance with I.D.E.A., and elements of procedural safeguards and state complaint management systems. The sixth section surveys the impact of the legal system and the courts on the substance and administration of I.D.E.A.. The seventh section examines available literature related to due process hearings.

INTRODUCTION

Professional discussions among educators often focus on topics such as block scheduling, achievement test scores, curriculum, authentic assessment, year-round calendars, and site-based management. Within the past few years,

conversations more often center on the judicial aspects of special education: individual versus group rights, attorneys, due process hearings, and court costs. Educators complain that more and more of their time is spent in Multi-disciplinary meetings (M-Teams), exploring and developing modifications of the curriculum for students with special needs, and educating themselves as to the educational impact of certain disabilities. Why has the focus of conversation shifted from addressing the educational needs of all students to one of legalities and procedures for students with disabilities?

In order to fully comprehend the country's increasing reliance on due process hearings and the court system to resolve conflicts between the schools and the families of children with disabilities, one must first examine the historical journey undertaken by people with disabilities from the isolation of the eighteenth and nineteenth centuries to current day practices of full inclusion. The following paragraphs will present an overview of the history of persons with disabilities and the development of special education, including public perceptions and responses to persons with disabilities, educational provisions for children with disabilities, and the intervention of laws and the courts, which eventually led to federal legislation.

HISTORY OF PERSONS WITH DISABILITIES

Since the founding of America, public benevolence and support of persons with disabilities has vacillated from support, admiration, or at least a

sense that they were worthy of charity, to fear, resentment, and even loathing. *"Social attitudes concerning the education and care of exceptional individuals reflect general cultural attitudes concerning the obligations of a society to its individual citizens* (Winzer, 1993, p. 3)."

Sympathetic historical periods during the early 1800s and again in the mid-1900s saw the establishment of institutions for the education of children who were deaf or blind, the initiation of collegiate training for teachers of students with disabilities, the founding of the International Council for the Education of Exceptional Children, and the passage of the Individuals with Disabilities Education Act (also known as the Education for All Handicapped Children Act and Public Law 94-142).

Unsympathetic eras, specifically the time span between the closing years of the nineteenth century through the mid twentieth century, were characterized by practices of isolation and segregation (mid-1800s through mid-1900s), the forbidding of marriages among deaf persons under the age of forty-five(1895), the passage of compulsory sterilization laws (1907-1921), support of Social Darwinism and eugenics (hereditary determinism)(early 1900s - 1930s), and the writings of Henry Goddard (1910-1920), which emphasized heredity as the critical factor in a variety of unacceptable behaviors (Winzer, 1993).

The writings of the 1800s and early 1900s clearly depict the negativity of public sentiment toward persons with disabilities. The commentaries imply that the deaf individual's "moral and intellectual condition before instruction was little

above that of the more intelligent brutes, and lower than that of the most enlightened savages" (McGann, 1888, p.43). In 1858, W.W. Turner declared that a deaf person lacking education unavoidably became "a grief and shame to his relatives; a burden to society" (as cited in Winzer, 1993). People with disabilities were characterized as totally dependent on others for care and "irresponsible... in many cases dangerous to the community" (McGann, 1888, p.5). Inevitably, Dunscombe (1836) argued, schooling for blind children would remove from society "so many dead weights" and prevent them from becoming "taxes on the community" (as cited in Winzer, 1993). During this period, laws created to address the treatment of persons with these identifiable disabilities were not intended to protect persons with disabilities from discrimination, but were written to limit their rights and privileges. For example, practices including marriage and procreation were governed and the number of immigrants with obvious disabilities permitted into the country was drastically curbed.

In conformation with these prevailing societal attitudes, children with disabilities were excluded from early nineteenth century public schools. The children were regarded as distinctly different from regular education students and exhibiting unique needs thought to require institutional isolation. "The standard constellation of educational influences in society - the family, the community, and the church - were not viewed as appropriate socializing agencies for disabled persons, for whom education was judged to be even more completely dependent on schooling than it was for normal children (Winzer, 1993, p. 93)." These unique

students included those with epilepsy, blindness, deafness, mental retardation, and those with behavioral difficulties. The educational system for special education did not align with the common schools, but reflected the customary opinions of people with disabilities as recipients of charity and in need of institutionalization. (Winzer, 1993).

In consonance with these views, special schools were established for children with specific disabilities. Children who were deaf received the earliest attention. On April 15, 1817, the Connecticut Asylum for the Education and Instruction of Deaf and Dumb Persons, the first educational institution in North America designed especially to serve people with disabilities, was established in Hartford by Thomas Hopkins Gallaudet. In the next few years, several other schools addressing the needs of deaf children were founded in New York and Pennsylvania. In 1830, Horace Mann instituted the first state hospital for the mentally ill and solicited legislative support in eradicating the abominable living conditions of the insane. Shortly thereafter, the first school for children who were blind was established in New York.

Schools were then developed addressing the training of mentally retarded children. By 1852, New York, Pennsylvania, and Massachusetts had appropriated funding for programs for students with mental retardation. The creation of special training centers outside of the public school system for socially maladjusted children described as neglected and delinquent, completed the educational system of institutionalization. These schools and institutions

were all based on a philosophy of the segregation of individuals with disabilities. Near the close of the nineteenth century, the issue of segregation prompted court action by parents of children with disabilities.

Educational segregation was affirmed in 1893 when the Supreme Judicial Court of Massachusetts upheld a lower court ruling excluding a mentally retarded student from the public schools in Watson v. City of Cambridge. The student was regarded as too "weak minded" to benefit from instruction. The court further stated, "...that if acts of disorder interfered with the operation of the school, whether committed voluntarily or because of imbecility, the school committee should be able to exclude the offender without being overruled by a jury that had no expertise to deal with educational matters (Osborne,1988, p.2)"

A quarter of a century later, a Wisconsin court ruled in State v. Antigo that an academically able student could be excluded from public schools, asserting that his disability had "a depressing and nauseating effect on the teachers and school children (Beattie v. Board of Ed., 169 Wis. 231, 172 N.W. 153 (1919))." The student had average intellectual skills but his paralysis caused him to drool and make involuntary facial contortions. Officials suggested that the parents enroll the child in a school for the deaf. The family refused, but the board would not readmit him to the public schools.

In essence, these decisions, coupled with similar court findings, prevented a myriad of students with mental retardation, cerebral palsy, or poliomyelitis from attending regular public schools. Unintentionally, however, the introduction of

compulsory attendance laws associated with Horace Mann's efforts to establish the common schools (1830s -1840s) cracked the walls barring students with disabilities from the public school system.

The compulsory attendance law was first applied to special education students in the Board of Education v. Goldman, 47 Oh. App. 417 (1934). In this case, the Goldman family demanded that their child with mental retardation be allowed to attend public schools. According to Ohio statutes, all children between the ages of 6 and 18 were mandated to attend school. However, the Ohio State Department, had statutory authority to exclude children who were not capable of benefitting from instruction - interpreted by the State as applying to students with an IQ score below 50. The court ruled that Goldman was to be admitted to the public schools, but only because local officials had violated technical requirements maintaining that only the State Department could make exclusionary determinations. During these procedures, the Court of Appeals in Ohio acknowledged the dilemma resulting from the co-existence of state compulsory attendance requirements and exclusionary provisions relating to special education students. This dilemma would eventually provide leverage for the admission of a multitude of students with disabilities into the public schools.

The foundation for equal access to public education for all children was unknowingly laid in the 1954 case of Brown v. Board of Education (347 U.S. 483, 74 S. Ct. 686). In Brown, the court ordered the desegregation of the public schools. Stating that education was a vital function of the government, Chief

Justice Warren elaborated, "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right that must be made available to all on equal terms (p. 493)." This precedent setting case eventually extended equal educational opportunity within the public school systems to all children, including those with disabilities. However, desegregation alone could not open the public school doors to students with disabilities. Separatism continued until persons with disabilities were given the special status of a "suspect class" by the courts.

In San Antonio v. Rodriguez (411 U.S. 1, 93 S. Ct. 1278 (1973)), the Supreme Court was asked to determine if the use of property taxes as a mechanism of funding the public schools was discriminatory. As a part of its decision, the Court clarified the parameters of "a suspect class" by ruling that the poor were not a protected class and that education was not a fundamental right. However, the Court further stated that a suspect class was one "...saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process (P.28)." In this landmark statement, children with disabilities gained the protection of a "suspect class."

In 1971, the issue of segregation of retarded children was brought before a federal district court in Pennsylvania Association for Retarded Children v.

Commonwealth (PARC) (334 F. Supp. 1257 (E.D. Pa. (1971)). Thirteen parents of children who were mentally retarded brought suit on behalf of all school aged children who were similarly disabled and had been excluded from the public schools. The prohibition of these children was the result of the implementation of statutes in four states which permitted the exclusion of children deemed to be untrainable or uneducable by a school psychologist. The district court ruled that children who were mentally retarded were entitled to a free public education and had to be educated in a regular classroom whenever possible. The court stated,

> ...a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class [i.e., a class for "handicapped" children] and placement in a special public school class is preferable to placement in any other type of program of education and training...(PARC, 1971).

In the consent agreement, the district court included mandated procedural due process and periodic reevaluation of children with mental retardation.

The PARC decision was expanded to include children with other disabilities through Mills v. Board of Education of the District of Columbia (348 F. Supp. 866 (D.D.C.) (1972)). This civil action case was presented on behalf of seven children who had been labeled as behaviorally or emotionally disturbed, mentally retarded, and/or hyperactive. These students were excluded from public schools with no provision for an alternative educational placement.

While granting a summary judgement for the plaintiffs, the court adopted a comprehensive educational plan developed by the District of Columbia Board of

Education. This plan included provisions for a free appropriate public education for all children, an individualized educational plan (IEP), and due process procedures for resolving disputes between the parents and the schools. These procedures were elaborately outlined and later formed the basis of due process safeguards which were legislated for all children with disabilities under the Education of All Handicapped Children Act (EAHCA)(1975). Additionally, the court stated that lack of adequate funding was not an appropriate defense for the district's failure to provide a free, appropriate education to students with disabilities. These two court cases served as the impetus for similar cases in other federal circuits and laid the legal foundation for the provision of special education services in public school systems across the country.

PARC and Mills served to reduce legally sanctioned institutional isolation of students with disabilities and provided the legal framework for the current system of special education. The Vocational Rehabilitation Act of 1973: Section 504 and the Education of the Handicapped Amendment (P.L. 380) interpreted this legal framework into federal law. However, it was not until the enactment of the Education of All Handicapped Children's Act of 1975 (EAHCA), (P.L. 92-142), that provisions for state funding were addressed. The combination and enactment of these three federal laws were the fulfillment of tremendous legislative efforts.

FEDERAL LEGISLATION PRIOR TO I.D.E.A

The Vocational Rehabilitation Act: Section 504

National attention was drawn to the educational needs of persons with disabilities as the veterans of World War I returned to the states. Congress offered job training and counseling to veterans in need of vocational rehabilitation services through the passage of the Soldiers' Rehabilitation Act in 1918 and the Smith-Bankhead Act in 1920. By 1944, vocational rehabilitation services were expanded to include veterans who were mentally ill and mentally retarded.

The House and Senate addressed the needs of people with disabilities in the workplace in 1971 with the introduction of a House Bill by Congressman Charles Vanik of Ohio (117 Cong. Rec. 45,974-75) and a similar bill in 1972 introduced by Senator Hubert Humphrey (118 Cong. Rec. 106-07). These bills eventually became Section 504 of the Vocational Rehabilitation Act of 1973 (29 U.S.C. Section 794)(Neal & Kirp, 1985). In addition to protecting the rights of people with disabilities in the workplace, the Act also pertained to any agency receiving federal funding, i.e., the public schools. This application of the law became the first effort of the government to address the needs of individuals with disabilities in the schools.

Section 504 of the Act provided that, "No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance (29 U.S.C. Sec. 794(a))." The protection of Section 504 applied to "...any person who (I) had a physical or mental impairment which substantially limited one or more of such person's major life activities, (ii) had a record of such an impairment, or (iii) was regarded as having such an impairment (29 U.S.C. Section 706(7)(B)." The definition of "major life activities" included "...caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, *learning,* and working (34 C.F.R. Sec.104 3(f) &(h)."

Despite the fact that this legislation clearly applied to students with disabilities, it was not until the late 1980s that the significance of the law was recognized by the schools. Prior to this time, the educational needs of students with disabilities were addressed through special education legislation alone. Section 504 was considered to be a non-funded duplication of those efforts, and therefore, largely ignored. However, with the increased involvement of attorneys in due process litigation, partially as a result of the enactment of the Handicapped Children's Protection Act of 1986 allowing for the awarding of attorney fees, the significance of Section 504 was brought to the forefront. Lawyers asserted that under Section 504, monetary damages could be collected from individuals (teachers or administrators) or school systems who violated the civil rights of a student based on the presence of a disability. The recognition of personal volatility coupled with the recognition of regulations associated with Section 504 motivated educators to investigate the parameters of the Act.

Section 504 contains five directives which specifically apply to the education of students with disabilities:

1.) **Location and notification:** School systems must identify and locate every qualified child in the district who is not receiving a public education. Parents must be notified of the school system's responsibility to locate all children with disabilities; (Sec. 104.32)

2.) **Free appropriate public education:** The school system must provide a free appropriate public education to each child with a disability who resided in the district - regardless of the severity of the disability. Available services included transportation, residential placement, and the provision of regular or special education and related services; (Sec. 104.33)

3.) **Educational setting:** A child with disabilities must be provided academic instruction with non-disabled peers to the maximum extent appropriate with the use of supplemental aids and services. Children with disabilities must participate with non-disabled peers in non-academic settings such as meals and recess. When a facility is identifiable as location for students with disabilities, the facility must be comparable to those recognized as regular education facilities; (Sec. 104.34)

4.) **Evaluation and Placement:** An evaluation must be conducted for any child who is suspected of needing special education services. Tests must be validated and must accurately reflect the student's aptitude or achievement level. Placement must be based on information from a variety of sources and determined by a group of persons knowledgeable about the child, curriculum, and evaluation data; (Sec. 104.35)

5.) **Procedural Safeguards:** The school system must establish procedural safeguards for all students with respect to identification, evaluation and placement, including notification to the parents, an opportunity to review records, and an opportunity to participate in an impartial hearing to resolve conflicts. (Sec. 104.36)

These educational elements would be included and expanded in the Education for All Handicapped Children's Act (EAHCA)(1975). Section 504 also specifically addressed non-academic services (104.37). The school districts were mandated to provide students with disabilities an equal opportunity to participate in athletic

activities, recreational activities, and special interest groups or clubs. Discrimination against any child based on their disability was strictly prohibited (Zirkel, 1995). The application of Section 504 to educational settings was muddled when the Supreme Court, in Grove City College v. Bell, decreed that the Act applied only to the portions of the educational program which were federally funded. However, in 1987, the Civil Rights Restoration Act clarified that Section 504 applied to all functions of public education, thus preserving the anti-discrimination rights of all students within the public education system (Alexander, 1992).

Education of the Handicapped Amendment: P.L. 93-380

Following the implementation of the Vocational Rehabilitation Act of 1973, Congress specifically addressed the provision of an appropriate education and funding for children with disabilities in educational settings. The Education of the Handicapped Amendment of 1974, (P.L. 93-380), (EHA), confirmed the national priority of providing educational opportunities to all students and assisting them in the development of their full potential by providing explicit funding for the education of children with disabilities, drafting due process procedures for the resolution of disputes, and affording children with disabilities an educational placement within the least restrictive environment (Osborne, 1988). The requirement of education within the least restrictive environment encouraged the integration of students with disabilities within regular education classrooms. The

EHA was an amendment to the Elementary and Secondary Education Act and required periodic reauthorization. In order to stabilize its provisions, the Education of All Handicapped Children Act (EAHCA),(P.L. 94-142), was passed in November, 1975, as an amendment to P.L. 93-380, and became permanent legislation.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (I.D.E.A.)(P.L. 101-476)

Prior to the passage of I.D.E.A., the development of "mainstreaming" (providing an education for a child with a disability within the regular education environment) paralleled the desegregation movement. Educational separation and isolation were increasingly viewed as negative and undesirable. Although Congress initiated opportunities for personnel development through grant initiatives in 1966 and 1970, special education services across the nation were at best inconsistent. According to Rothstein (1990),

> By the 1970s, special education could usually be described by a number of common practices. Identification and placement of handicapped children was haphazard, inconsistent, and generally inappropriate. Blacks, Hispanics, and some other groups were often stereotyped and disproportionately placed in special education programs. Parental involvement was generally discouraged. Special education placements were often made with the goal of avoiding disruption in the regular classroom. Both special educators and regular educators were competitors for resources, and the two groups did not work in a spirit of cooperation (p. 2).

Following the PARC (1971) and Mills (1972) cases, Congress suspected that the states might encounter difficulties in providing special education

services. As a result of Congressional hearings in 1973 and 1974, Congress concluded that, "...states that were acting in good faith and attempting to provide special education services had serious problems in administration and financing..." (Rothstein, 1990, p. 4) and that many students were still being excluded from the schools. Specifically, Congress found:

(1) There are more than eight million children with disabilities in the United States today;
(2) The special educational needs of such children are not being fully met;
(3) More than half of the children with disabilities in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;
(4) One million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;
(5) There are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;
(6) Because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance of their residence and at their own expense;
(7) Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;
(8) State and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and
(9) It is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law (EAHCA, 20 U.S.C.A., Sec.1400(b)).

In the face of these findings, Congress passed the Individuals with Disabilities Education Act (P.L. 101-476)(I.D.E.A.). I.D.E.A. embodied many of the requirements found in earlier legislation including the following provisions: "(1) a free appropriate public education; (2) an individualized education program (IEP); (3) special education services; (4) related services; (5) due process procedures; and (6) the least restrictive environment (LRE) in which to learn (Ibid., Section 1401 (16-91))." Congress established two priorities regarding the implementation of I.D.E.A.. The first priority was to address the educational needs of children who were not currently receiving any type of educational services. The second priority was to provide adequate services for the most severely disabled children who were receiving inadequate or inappropriate services. In addition to these priorities, the Act further ordered that children with disabilities between the ages of three and eighteen receive appropriate educational services by September,1978. The age range expanded to include all children with disabilities from age three to twenty-one by the year 1980.

I.D.E.A. has been revised several times. In 1986, Congress amended I.D.E.A. to provide special education services to children with disabilities aged three to five (Part B of the EAHCA) and established a new federal education program for infants with disabilities aged birth to two (Part G of the EAHCA). As mentioned earlier, this amendment entitled, the Handicapped Children's Protection Act (HCPA), also allowed children with disabilities or their parents to claim attorney's fees if successful in litigation against state or local agencies.

Although the states have primary control of public education, special education, in practice, is federally regulated by the I.D.E.A.. I.D.E.A. is a grant statute, not a law. The Act interprets civil rights laws applying to a protected class (in this case, students with disabilities) and translates the law into concrete regulations. States are not required to follow I.D.E.A. requirements, however, compliance is mandated if the states seek federal funding for special education. Regardless of whether a state receives federal funding, state compliance is required with many of the substantive and procedural requirements of the law. When offered initially, all but one state submitted comprehensive plans and applied for I.D.E.A. funding. All states currently receive I.D.E.A. funding and are committed to comprehensive state plans which have been approved by the federal government.

I.D.E.A. clearly mandated that the states develop policies and procedures congruent with the requirements of the federal law. Federal rules and regulations provided some guidance as to the meaning of certain terms. However, the individual states were afforded significant latitude in the interpretation of the law and in the delivery of special education services. For example, the parameters of terms such as "appropriate," "education," and "satisfactory," continue to be heatedly debated between parents and the schools. As the courts have been left to act as the final arbiter in determining the meaning and intent of the law, this ambiguity coupled with the latitude afforded the states, may contribute to varying frequencies of due process hearings.

Comprehensive state plans must address certain critical provisions of the law including: a) Free Appropriate Public Education (FAPE); b) Least Restrictive Environment (LRE); c) Individualized Education Plan (IEP); and d) Procedural Safeguards. The following sections will discuss the parameters and educational applications of these crucial components of I.D.E.A..

Free Appropriate Public Education

The provision of a free appropriate public education (FAPE) is the cornerstone of I.D.E.A. and the philosophy of special education. This term is legally defined as:

> ...special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the state education agency, (C) include an appropriate preschool, elementary, or secondary education in the state involved, and (D) are provided in conformity with the individualized education program required...(20 U.S.C.A. Section 1414(a)(5).

The variations among states in the interpretation of this important provision can be linked to three phrases in the definition: 1) The reference in (B) to "meet the standards of the state education agency," allows varied state rules and regulations; 2) The meaning of the term "appropriate" in (C) is defined through the development of diverse standards among state plans; 3) The term "individualized" in (D) opens the door to a wide array of services, aids, and programs. The use of these terms within the definition of FAPE permits tremendous latitude for interpretation to the states and individual multi-

disciplinary teams and it is these interpretations and the provision or denial of FAPE that is the most frequently used basis of legal reasoning by the federal courts in deciding cases (between 1984 - 1994) (Sahlstrom, 1994, p. 330). The ambiguous language of I.D.E.A. thus permits tremendous variability among states in establishing the parameters of FAPE through the state plans.

Least Restrictive Environment

I.D.E.A. requires that whenever possible, children with disabilities should be educated in the least restrictive environment with non-disabled peers. This practice is intended to maximize the students' opportunities for socialization and to reduce the amount of isolation and separation in special classes, which often generalizes to their stigmatization. Specifically, 20 U.S.C.A. Section 1412 (5)(B) states:

> ... to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, [should be] educated with children who are not handicapped, and that separate schooling, or other removal of handicapped children from the regular educational environment [should] occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Although the law supports a preference for regular education participation, states must provide a full continuum of alternative placements. These alternative placements must include instruction in regular education classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions (34 C.F.R., Section 300.551).

The federal law clearly delineates the scope of options to be provided by the states. However, I.D.E.A. does not specify what circumstances merit the use of the various options. For example, one child with mental retardation and multiple physical disabilities may spend the majority of the day in a self-contained special education classroom. Another child exhibiting similar disabilities may spend most of the day in regular education classes. The same latitude exists with students exhibiting mild disabilities, i.e., a child with a minimal reading disability may spend two to three hours per day in a resource pull-out program while a comparable child may not be pulled from regular classes at all. Clearly, I.D.E.A. allows tremendous latitude to the states/local education agencies - specifically to the M-Teams - in determining appropriate options of service for individual students. The M-Team, in fact, is responsible for determining what conditions constitute the least restrictive environment, whether the child is eligible for special education services, the nature and extent of related services to be provided, and the total development of an Individualized Education Plan (IEP) delineating specific details of the child's program. As this high degree of latitude is afforded the M-Team, it is reasonable to assume that educational decisions vary markedly both between M-teams and among states.

Individualized Education Plan (IEP)

I.D.E.A. requires that an Individualized Education Plan (IEP) be developed for every child with a disability. The IEP is a legal and binding contract between

the school system and the parents. The document explicitly delineates the type and extent of special education services, modifications within the classroom and on state mandated tests, and whether extended school year services are to be provided. The IEP also requires a justification statement for the exclusion of a child from the regular education curriculum. The educational goals and objectives specified in the IEP must be reviewed by the teacher at least four times annually.

Once again, federal law did not specify universal goals and objectives to be accomplished, required modifications, or the nature of the program to be provided. The development of the IEP is left exclusively to the M-Team. As the law provided non-specific options of resources and services for all children with disabilities, whether the M-Team has provided an appropriate IEP can only be determined through due process litigation. Given this latitude, the states could differ significantly in IEP development.

The student's right to the development of an appropriate IEP and the delivery of designated services is fortified by the provision of procedural safeguards, a critical component of special education and the avenue for due process procedures.

Procedural Safeguards

I.D.E.A. requires the provision of procedural safeguards to assure that parents are informed and provided with the opportunity to participate in the

educational decision making process for the child with a disability. To ensure the provision of Constitutional safeguards as delineated under the Fourteenth Amendment: "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws," I.D.E.A. requires that the state plans provide procedural safeguards including:

(1) Opportunity to examine records;

The parents of the child with a disability will be afforded an opportunity to inspect and review all records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE.

(2) Independent educational evaluation;

If the parents disagree with the evaluation provided by the school system, the parents have the right to an independent evaluation at public expense to be conducted by a qualified examiner who is not employed by the school system responsible for the child in question.

(3) Prior Notice; Parental Consent;

Written notice must be provided to the parents within a reasonable time before a school proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child or the school's refusal to initiate or change the same. Parental consent must be obtained before conducting a pre-placement evaluation or prior to the initial placement of a child with a disability in a program providing special education.

(4) Content of Notice;

The notice must include a full explanation of all procedural safeguards and descriptions of the action proposed or refused by the public agency, options considered and rejected, evaluation procedures, and other factors relevant to the agency's proposal or refusal. The notice must be written in terms generally understood by the public and provided in either the native language of the parent or in an appropriate mode of communication, such as sign language.

(5) Impartial Due Process Hearing;

An impartial due process hearing is available to the parents and the school system to settle a dispute concerning the provision of FAPE to an eligible child or a child suspected of being eligible for special education. More specifically, a due process hearing may be requested when:

> ...the child has been or is about to be:
>
> (1). Denied identification, evaluation, entry or continuation in a special program appropriate to his/her special needs;
> (2). Provided a program which is not appropriate to his/her special needs;
> (3). Denied needed special education and/or related services;
> (4). Provided special education or other education which is insufficient in quantity to satisfy the law;
> (5). Provided with special education or other education to which the child is entitled only by units of government or in situations which are not those having the primary responsibility for providing services in question;
> (6). Assigned to a special education program when he/she is not eligible;
> (7). Denied his/her rights to privacy of information;
> (8). Denied an evaluation request by the parents;
> (9). Improperly identified; and/or
> (10). Placed in a setting which is not the least restrictive environment (Tn. Dept. of Ed., 1993).

The due process hearing must be conducted by an impartial hearing officer (sometimes called an administrative law judge). Both parties have the right of appeal to the hearing decision. A final decision must be reached within 45 days of the receipt of the request for a hearing and the child is to remain in the current educational placement pending the outcome of the hearing unless otherwise agreed to by the parents and the school. This critical element of procedural due process will be examined extensively in the following section.

(6) Surrogate Parents;

Surrogate parents with the knowledge and skills to represent the interests of the child shall be provided when no parent can be identified, the school cannot determine the whereabouts of the parent, or when the child is a legal ward of the State.

(7) Attorney Fees

The court may award parents reasonable attorney fees if it is determined that the school system failed to provide FAPE to an eligible child or a child suspected to be eligible under the law.

These seven safeguards are required by federal law to be provided to the parents by the states. A closer examination of these requirements suggests that state plans may again vary in the provision of these stipulates. Consider the following questions: Which records constitute educational records (#1) and which records are considered to be the private notes of the staff? Can the parent disagree with any portion of the evaluation - significant or otherwise - in order to

warrant an independent evaluation paid by the schools? What constitutes a "reasonable time" (#3) or "reasonable" attorney fees" (#7)? These questions are left for the courts to decide and suggest that differences may exist among the states in the interpretation of these provisions. In order to convey the critical nature of procedural due process, the following paragraphs will discuss the constitutional basis of due process hearings and the mechanics of the process.

THE MECHANISM OF DUE PROCESS HEARINGS

The concept of due process includes both substantial and procedural law. In general, "the rules of substantive law govern the rights and responsibilities of people in their ordinary relations with each other or with the community as a whole. The rules of procedural law govern the means by which individuals can maintain their substantive rights when they have been violated, threatened, or ignored (Shrybman, 1982)." In the field of special education, substantive rights include the provision of a free appropriate public education within the least restrictive environment. Procedural rights involve the required notices, consents, time lines, evaluations, etc.

A due process hearing may be initiated by either the parents or the school system whenever the identification, evaluation, educational placement, or provision of a free appropriate public education to a child having, or suspected of having, a disability is questioned (Section 300.506). The hearing is conducted by an impartial hearing officer who is specially trained by the State in special

education law. This officer may not be an employee of any organization that is involved in the education or care of the child or have a personal or professional conflict of interest in the case. Each state is required to keep a list of hearing officers and a statement of their qualifications. The hearing officer does not have jurisdiction within any court. However, the decision concerning the educational provisions, placement, etc. made by the officer is binding unless the parent or school appeals the decision to a higher tier or civil court.

Any party involved in a hearing has the right to be accompanied by counsel and individuals with knowledge of the educational impact of the child's disabilities. Evidence will be presented and examined through witnesses and documentation. Federal law mandates that all evidence must be disclosed to both parties a minimum of five days prior to the hearing, a written or verbatim record of the hearing be maintained, and written findings and decisions be provided to the parties (Section 500.508).

Either party has the right to appeal the decision to the State Education Agency. At this level, the hearing record is examined, the procedures of the hearing are reviewed to insure consistency with the law, and additional evidence is obtained if requested by the review official. The parties may be given an opportunity to present additional evidence at the discretion of the official. A decision is issued at the completion of the review which is final, unless civil action is initiated (Section 300.510).

Civil action and attorney fees are discussed in 20 U.S.C. Section 1415(e). In brief, a party in disagreement with the decision of the SEA may initiate civil action in any State court of "competent jurisdiction" or United States district court. At this level, the court reviews previous administrative proceedings, allows additional evidence to be presented by the parties, and issues a decision. If the parents are found to be the prevailing party, the court may also award attorney fees and related costs. In that all students eligible for special education are also protected by the Vocational Rehabilitation Act of 1973 (Section 504), a federal court may also award punitive or damage awards to the prevailing parents, providing all administrative remedies have been exhausted prior to petitioning the court (Rothstein, 1990).

Under I.D.E.A. (20 U.S.C. Sec. 1415(e)(4)(B), a prevailing party is "...one who has succeeded in changing the legal relationship between the parties by gaining at least some part of the relief requested in an administrative hearing or lawsuit (Statutes, Regulations and Case Law Protecting Individuals with Disabilities, 1994)." This definition coupled with Section 504 allows financial relief to be provided to the parents if any segment of the complaint filed against the school system is found to be valid.

The initiation of due process procedures is founded in disputes concerning the provision of FAPE. However, the specific practices and procedures often brought into question are determined by the individual states via state plans. As a result of the latitude permitted the states in the development

of state plans, the states may not draw similar conclusions in the interpretation of the federal law, thereby producing a variety of practices in the provision of FAPE among the states. These inconsistent practices may contribute to the variance among states in the frequency of due process hearings.

IMPLEMENTATION OF I.D.E.A.

The implementation of I.D.E.A. is strongly impacted by two factors. The first factor involves the content of comprehensive state plans. The second concerns the state's level of compliance to the comprehensive plan.

The latitude awarded to the states in the development of state plans allows for the possibility of significant differences in the interpretation of federal mandates. Bienenstock (1992) examined individual state policies and procedures regarding the implementation of I.D.E.A. regulations in the determination of the least restrictive environment and in recognized categories of disabilities. The author compared the comprehensive plan of each state against fifteen specific requirements of the law to ascertain whether the plan exceeded federal law, met the letter of the law, was inconsistent with the requirement, partially met the law (incomplete), or totally omitted the mandate. Bienenstock found that the states generally developed comprehensive plans which were consistent with federal requirements. However, when examined individually rather than as a whole, the researcher discovered a wide range in the number of policies which were consistent with I.D.E.A.. For example, the author found that

only seven states had policies that met or exceeded all of the requirements of I.D.E.A., while twelve states included all but one of the required elements. In contrast, five states developed inconsistent or incomplete policies, or totally omitted more than fifty percent of the federal mandates (Bienenstock, 1992, p.91)(See Table 4). The author could not find one specific requirement of least restrictive environment that was adequately addressed in every state.

Bienenstock verified significant differences among comprehensive state plans in policies addressing the determination of least restrictive environment. In the same manner, the author documented significant differences among states in categories of disabilities. Twenty-two disabling conditions were used by various states (Bienenstock (1992))(See Table 5). Of the twenty-two categories, only eleven are identified by the federal statute. Bienenstock found that a total of twelve States and Territories used the exact conditions specified in I.D.E.A.. The remaining states either added or omitted categories designated by the law. To the extent that these changes did not conflict with the federal law, they were permissible.

Wyman (1997) examined the eligibility requirements for the category of learning disabled among the states. The researcher found that fifty percent of the states used the following formula:(IQ x years in school x .5). The remaining fifty percent of the states used a measure of standard deviation comparing the student's IQ with scores on a standardized achievement test. The number of

Table 4
Survey of State Plans and Policies as Compared to I.D.E.A. Requirements: Fifty-three (53) States and Territories

	Beyond Federal Requirements	Consistent with Federal Requirements	Inconsistent with Federal Regulations	Incomplete	Omitted Federal Regulations
300.550(b)(1) maximum extent appropriate	1	37	2	12	1
300.550(b)(2) supplementary aids	0	50	3	0	0
300.551(a) continuum of alternative placements	0	44	5	2	2
300.551(b)(1) placements in continuum	0	43	2	7	1
300.551(b)(2) supplementary services in regular class	0	43	1	1	8
300.552(a)(1) placement determined annually	2	41	1	0	8
300.552(a)(2) placement based on IEP	1	50	0	1	2
300.552(a)(3) placement close to child's home	0	39	2	0	12
300.552(b) alternative placements available to implement IEP	0	45	3	0	5
300.552(c) placement in same school if not handicapped	1	48	1	1	2
300.552(d) placement considers harmful effects	2	41	1	1	8
300.553 extracurricular activities	4	29	2	9	9
300.554 public and private institutions	0	42	0	2	9
300.555(a)(b) technical assistance	0	29	0	4	20
300.556 monitoring	0	38	0	4	11

Data collected and analyzed by Bienenstock (1992).

Table 5
Use of Federally Recognized Disabling Conditions
Fifty-three (53) States and Territories

Disabling Condition	Number of States Recognizing Disability
Mentally Retarded	52
Speech or Language Impaired	46
Other Health Impaired	44
Orthopedically Impaired	32
Specific Learning Disability	52
Multi-Handicapped	39
Visually Impaired	52
Deaf / Blind	42
Seriously Emotionally Disturbed	34
Deaf	40
Hard of Hearing	38
Hearing Impaired	14
Neurologically Impaired	4
Autism	17
Traumatic Brain Injury	9
Physically Handicapped	17
Socially Maladjusted	4
Behavior Disordered	18
Communication Disorder	8
Severely Profoundly Handicapped	1
Emotional Conflict	1
Severely Handicapped	1

Data collected and analyzed by Bienenstock (1992)

Note: Only the eleven categories listed above the double line are recognized by the federal government.

required standard deviations for eligibility varied, including 1.0, 1.5, 1.75, 2.0, and greater than 2.0. Wyman's study confirmed that states differ in procedures and eligibility requirements for special education. Based on these inconsistencies in state plans, the degree and scope of disabilities within the special education populations may well vary among states. Mercer, Hughes, & Mercer (1985) confirmed state variances in identification. The researchers examined state definitions of learning disabilities and found that 72% of the states used the federal definition and guidelines while the remaining 28% used a different definition or totally excluded the category.

Yaryan (1992) compared state level complaint management systems (staffing patterns and procedures) and the number of complaints processed by each state. The author surveyed each of the fifty state departments of education from 1988 - 1990 and found significant differences in the staffing patterns among states ranging from 36% of the states having no one responsible for complaint management to 5% of the states having more than one person responsible. The author also identified ten routine steps involved in complaint resolution procedures. The first steps involving logging and acknowledging the complaint and reviewing documentation, were steps generally practiced by all states. The practices of on-site reviews, investigations, and reporting of findings however, varied greatly among respondents. The author illustrated the degree of variations in complaint management by citing the 1990 findings of the United States Office

of Special Education Programs (OSEP). OSEP's monitoring of state department complaint management systems resulted in the issuance of citations requiring corrective action in over half of the states (Yaryan, 1992).

Yaryan also explored the number of complaints processed by each state through frequency count procedures over a three year period. The author discovered a wide range in the number of complaints filed from zero for some states to 258 for one state. Further evidence of deviations in frequencies of complaints is illustrated in Table 6.

As evidenced in Yaryan's work, states differ in staffing patterns and procedures for complaint resolution. The frequency of complaints filed also differs significantly. Whether a correlation exists between complaint resolution procedures and the frequency of complaints is unknown, but the variance in management systems and complaints among states is verified.

Mediation is one alternative offered in several state plans as a part of the complaint management system. Ahearn (1994), in conjunction with the National Association of State Directors of Special Education (NASDSE), surveyed each state in terms of mediation options and procedures, and the frequency of due

Table 6
Complaints Filed by Year

Year	Complaints Filed	Mean	Median
1988-89	592	23.7	12
1989-90	1,022	34.0	16
1990-91	981	31.6	17

process hearing requests, hearings held, and mediation procedures during 1991, 1992, and 1993. The author found that 39 of the 50 states, or 78%, offered mediation as an option for complaint resolution. One-half of state plans did not permit the mediation process to extend the required time line between the request for a due process hearing and the occurrence of the hearing (ibid., p.6). The training requirements and acceptable affiliations for mediators varied greatly among states. Ahearn explored the effectiveness of mediation procedures by comparing the number of due process hearings requested, the number of mediations held, and the number of due process hearings held (Table 7). According to Ahearn, "...some measure of the impact of mediation and other conflict resolution strategies can be deduced from a review of the number of mediations held, and the difference between the number of hearings requested and the number of hearings held (ibid., p.13)." California's statistics are notable: 772 hearings requested, 656 mediations, and 72 formal hearings held.

The provision in the state plans regarding the availability and procedures of mediation is one area of variability in complaint resolution procedures explored by Ahearn. The author also investigated the number of tiers available for the appeal of a due process hearing decision through the state plans. Ahearn found that the states were evenly split between 1-tiered and 2-tiered systems and found consequential differences among time lines for appeals to the State Education Association and the Courts (Table 8). These findings verify significant differences among state plans in the complaint resolution process.

Table 7
Mediations and Hearings in 1992 For States with Mediation Systems

State	Children Served 1991-1992	Mediations Held 1992	Hearings Requested 1992	Hearings Held 1992
Alabama	95,021	10	44	10
Arizona	59,281	4	nd	5
Arkansas	45,573	7	15	2
California	489,716	656	772	72
Colorado	55,430	10	27	3
Connecticut	61,851	76	195	56
Florida	243,546	1	43	12
Georgia	105,206	26	48	9
Hawaii	13,220	18	23	7
Idaho	21,654	6	2	1
Illinois	201,987	156	507	133
Indiana	110,943	32	59	19
Iowa	60,016	8	25	5
Kentucky	78,967	3	34	8
Louisiana	74,437	4	7	3
Maine	26,908	15	35	10
Maryland	88,069	5	40	19
Massachusetts	136,640	805	343	111
Michigan	156,828	12	34	14
Montana	17,560	3	4	2
Nevada	19,957	4	31	6
New Hampshire	19,276	24	80	16
New Jersey	178,324	139	550	162
New York	306,511	nd	500	500
North Dakota	11,886	0	4	2
Ohio	202,156	22	49	12
Oklahoma	67,209	nd	83	16
Oregon	47,101	11	43	5
Pennsylvania	190,791	55	256	106
Rhode Island	20,582	24	20	2
South Dakota	14,609	17	19	6
Tennessee	107,918	22	58	19
Texas	353,120	116	134	nd
Utah	47,317	8	8	1
Vermont	9,500	27	25	9
Wyoming	11,446	1	3	3

nd - no data
Source: Ahearn (1994), p. 12 -13

Table 8
Number of Tiers and Time lines Available for Appeal

State	Number of Tiers	Time line for Appeal to SEA	Time line for Appeal to Court
Alabama	1 tier	not applicable	30 days
Alaska	2 tier	30 days	none
Arizona	2 tier	35 days	none
Arkansas	1 tier	not applicable	none
California	1 tier	not applicable	90 days
Colorado	2 tier	30 days	none
Connecticut	1 tier	not applicable	45 days
Delaware	1 tier	not applicable	30 days
Florida	1 tier	not applicable	30 days
Georgia	1 tier	not applicable	none
Hawaii	1 tier	not applicable	30 days
Idaho	1 tier	not applicable	28 days
Illinois	2 tier	30 days	120 days
Indiana	2 tier	30 days	30 days
Iowa	1 tier	not applicable	none
Kansas	2 tier	30 days	30 days
Kentucky	2 tier	30 days	none
Louisiana	2 tier	15 days	30 days
Maine	1 tier	not applicable	30 days
Maryland	2 tier	45 days	180 days
Massachusetts	1 tier	not applicable	30 days
Michigan	2 tier	none	none
Minnesota	2 tier	30 days	none
Mississippi	1 tier	not applicable	none
Missouri	2 tier	30 days	30 days
Montana	1 tier	not applicable	none
Nebraska	1 tier	not applicable	30 days
Nevada	2 tier	none	none
New Hampshire	1 tier	not applicable	120 days
New Jersey	1 tier	not applicable	45 days
New Mexico	2 tier	30 days	none
New York	2 tier	30 days	30 days
North Carolina	2 tier	30 days	30 days
North Dakota	1 tier	not applicable	none
Ohio	2 tier	none	none
Oklahoma	2 tier	30 days	none
Oregon	2 tier	none	none
Pennsylvania	2 tier	none	none
Rhode Island	2 tier	none	none
South Carolina	2 tier	10 days	10 days
South Dakota	1 tier	not applicable	none
Tennessee	1 tier	not applicable	none
Texas	1 tier	not applicable	2 years
Utah	2 tier	30 days	30 days
Vermont	1 tier	not applicable	90 days
Virginia	2 tier	none	none
Washington	1 tier	not applicable	30 days
West Virginia	1 tier	not applicable	120 days
Wisconsin	2 tier	45 days	45 days
Wyoming	1 tier	not applicable	30 days

Source: Ahearn (1994) p. 20 - 21.

Robinett (1993) surveyed state directors of special education regarding state due process procedures from 1986 - 1991, specifically examining the tier system, disputed issues presented, categories of disability involved in litigation, and state involvement in litigation. Robinett found that 26 (51%) of the states used one-tiered systems while 25 (49%) used the two-tiered approach. Placement was found to be the most litigated issue during this time frame (22%), closely followed by the awarding of attorney fees (18%). The category of disability most frequently involved in litigation was learning disabled (23%), followed by seriously emotionally disturbed (16%). Twelve states had not experienced due process procedures. Of the remaining states, the District of Columbia engaged in 16% of due process litigation, followed by New York (11%), New Hampshire (8%), Tennessee (6%), and Virginia and California (5% each). The author found that compared against the mean population, the number of due process hearings was not consistent.

Robinett's study confirmed substantial differences among states in the number of tiers used for appeal and in the frequency of hearings during the same time period. The states experiencing the highest number of hearings are similar to findings presented in Chapter 1 for 1992. In that year, all of the states listed above were in the top fifteen states with the highest number of litigation with the exception of New Hampshire (18th) and Tennessee (20th). Robinett's findings confirm that states differ in the frequency of due process litigation. However, the reason for this variation is not apparent.

Katsiyannis and Klare (1991) interviewed state personnel involved with monitoring or persons familiar with state due process procedures and reviewed research from the Office of Civil Rights (OCR) and State Education agencies to examine state implementation of due process procedures. They found that states were commonly in violation of federal mandates regarding due process procedures citing violations in the required time lines for completing due process appeals and in the impartiality requirement for hearing officers.

The characteristics of hearing officers varied greatly among states. Three states used a panel of officers, forty-nine states used lawyers (18 states exclusively used lawyers), 31 states involved educators, 3 states required educators with special education backgrounds, and 3 states chose hearing officers from other professions. The number of officers also varied among states ranging from 1 officer in Kansas, to over 300 in Arizona, 150 in New York and Ohio, and 3 in California (ibid., p. 55).

The ratio of students with disabilities to decisions also varied greatly. For example, "...the District of Columbia, 42:1; New York, 538:1; Louisiana, 69,460:1; Minnesota, 29742:1; and New Mexico, 31,383:1, (ibid., p.57)."

The authors clearly documented differences among states in compliance to required time lines of due process procedures, characteristics of hearing officers, and caseloads of administrative law judges. These findings raise questions as to whether these differences among states in due process procedures contribute to the variation in the frequency of due process litigation.

Differences have been documented confirming diversities in state practices and procedures. The question may then arise, do these variations from the federal requirements impact special education delivery? Are special education programs within the same state similar?

Doyle (1988) examined components of special education service delivery systems in several communities in Massachusetts. The selected school systems demonstrated "...significant variability in the areas of 1) educational expectations, 2) administrative characteristics, 3) staff background, 4) student characteristics, and 5) parental activity (Doyle, 1988, p. 44)." Massachusetts expanded the federal requirement of providing special needs students with a standard of "adequate progress" to assuring "maximum feasible benefits within the least restrictive environment (ibid., p. 123)." In response, reactions among the communities included the experiencing of financial difficulties which leaders attributed to special education, consistent efforts to reduce the number of special education students served, and a perception of hearing officers bias toward the granting the wishes of the parents over the school system. These variables strongly impacted the development of special education programs.

The findings of this study are significant within two dimensions. First, the study emphasizes the frustration felt toward special education in the schools and communities in meeting the higher standard of service delivery established by the state, suggesting that expanding requirements beyond federal standards could have negative consequences for the schools. The second dimension

addresses differences among communities within the same state. Four communities bound by the same federal regulations provided significantly different systems of service delivery. It would logically follow that these differences due to variables outside of the control of state/federal regulations. Could these variables also impact the frequency of due process litigation? The existence of differences among communities following the same regulations suggests that differences also exist among states following regulations developed by each state.

The National Council on Disability (NCD), citing several of the findings of the Office of Special Education Programs (OSEP) accompanied by their own results, formulated a report to Congress as to how I.D.E.A. was working. Along with other factors, the commission studied state policies and procedures concerning individualized education plans, least restrictive environment, procedural safeguards, and multicultural and multidisciplinary education.

The Office of Special Education Programs (OSEP) monitored twenty-six states between 1989 and 1992. OSEP found varying levels of non-compliance in the areas of IEP content and development (35% - 66% non-compliance). These findings were corroborated by the National Council on Disabilities (NCD, 1993, p. 3), finding that 66% of the Individualized Education Plans (IEPs) studied were not written according to federal guidelines and had not been developed as mandated by federal law. The placement of the student within the least restrictive environment according to federal guidelines was also inconsistent (143 of 165

sites in non-compliance)(NCD, 1993, p.4). In the area of procedural safeguards, OSEP findings reflected highly questionable practices in that 152 of 165 sites visited, or 92%, were cited for varying degrees of non-compliance (NCD, 1993, p.6). Across all states, OSEP found that 54% of the required procedural safeguards had not been established and 62% of the required information describing the safeguards to the parents was not included in parental notices. The presentation of parental rights was found to be neglected or omitted altogether in several states and a disproportionate number of minority students were identified as being eligible for special education services.

The implications of these findings are profound. Speaking simplistically, the study suggested that, in varying degrees, the states were generally not complying with federal regulations. Whereas the degree of compliance may be linked to the degree of success in due process hearings, could variations in the degree of compliance be related to the frequency of due process litigation?

The NCD summarized OSEP's findings by stating that the implementation of Congressional mandates for special education at the state level could best be described as "variable." The significance of this variability may be summarized in the words of Thomas Dewey:

> The goal of American education is to value each child as equally an individual and entitled to equal opportunity of development of his own capacities, be they large or small in range...Each has needs of his own as significant to him as those of others are to them. The very fact of natural and psychological inequality is all the more reason for establishment by law of equality of opportunity, since otherwise the former becomes a means of oppression of the less gifted (as cited in Turnbull,1978).

Dewey's words both confirmed the existence of individual differences and stressed the importance of providing an equal educational opportunity to all students. The data regarding the implementation of I.D.E.A. indicated that this equality was not consistent among states. This inequality emphasized the necessity of procedural safeguards which established a mechanism for protecting the right of every child to a free appropriate public education.

THE LEGAL SYSTEM AND THE IMPACT OF THE COURTS

The courts play a significant role in delineating the Congressional intent of I.D.E.A.. Parents and school systems are appealing to the courts with increasing frequency to settle disputes involving the parameters and intent of terminology found in the federal law while presenting specific questions as to the appropriate application of federal standards. Studies demonstrate that a decade of decisions by the federal courts has significantly impacted special education procedures throughout the nation (Sahlstom, 1994). The following cases began as simple disputes between the parents and school systems, but ended in the courts and significantly affected special education law and practice for all students with disabilities.

In the Board of Education of Hendrick Hudson Central School District v. Rowley (1982), the Supreme Court interpreted the standard of a free appropriate public education in terms of the level of effort required of a school system to provide educational benefit to a child. In this case, a student who was deaf, Amy

Rowley, demonstrated satisfactory progress during her kindergarten year with the use of an FM unit, which amplified words spoken into a wireless receiver. The IEP developed for Amy's first grade year allocated several supplemental services for Amy, but did not allow for the provision of an interpreter. The parents agreed with several components of the IEP, but argued that an interpreter was also necessary to ensure Amy's progress and to provide FAPE. The Court disagreed stating that FAPE required the provision of supplementary aides and services that permitted the child "to benefit" from instruction - not "to maximize" the child's benefit from instruction. The focus of FAPE according to the Court was to ensure that students with disabilities receive *equal* educational opportunity - not *maximum* educational opportunity (Alexander, 1992, p. 373). The Court ruled that an interpreter therefore, was not required, and the "Rowley Standard" of educational benefit was developed (458 U.S. 176, 102 S. Ct. 3034). As a direct result of this case, school systems were not required to provide the best possible education to children with disabilities, but were held to a lower standard of providing the opportunity for "meaningful" progress.

In Timothy W. v. Rochester, New Hampshire School District (1989), the United States Court of Appeals determined that a child was not required to demonstrate educational benefit as a pre-requisite to receiving a free appropriate public education (875 F.2d 954). Timothy W. was mentally retarded with multiple disabilities and had been denied enrollment into the public schools based on the premise that he was not educationally handicapped as he was not capable of

benefitting from an education, and was therefore, not entitled to FAPE. The Court interpreted the phrase "all handicapped children" explicitly stated in I.D.E.A. to mean all children with disabilities, regardless of the severity of the disability. Further, the Court found that services to children with the most severe disabilities were given top priority in the Act and that a guarantee of educational benefit was not a prerequisite to the provision of FAPE (Alexander, 1992, p. 380). This decision eliminated the practice of excluding low functioning children from the schools - a practice common in many states.

In Irving Independent School District v. Tatro (1984), the courts addressed the issue of medical versus related services. As a result of spinal bifida, eight year old Amber Tatro required clean intermittent catheterization during the school day to avoid injury to her kidneys. The school system claimed this procedure was medical and therefore refused to provide catheterization as a related service. The Court disagreed. Because catheterization could be performed by a school nurse or trained layperson and did not require a physician, the procedure was considered to be a related service provided under I.D.E.A.. This ruling led to the addition of nursing services within the schools to enable medically fragile students to receive FAPE.

In some cases, the Supreme Court's interpretation of I.D.E.A. conflicts with current legislative opinions. This type of confrontation occurred in Smith v. Robinson (468 U.S. 992(1984)). The Court determined that parents could not be awarded attorney fees under I.D.E.A.. In reaction to the ruling, Congress

amended the law, passing the Handicapped Children's Protection Act in 1986, allowing parents the recovery of attorney fees under certain circumstances.

The frequency of due process litigation is increasing (Ahearn, 1994). The number of cases being appealed to higher levels of the federal court system - even the Supreme Court - is also escalating. As final arbiters, the decisions of the Court often result in the altering of policies, procedures, and services for students with disabilities across the nation. Indeed, the significance of the court and role of due process litigation in the implementation of I.D.E.A. is perhaps the most potent of all variables impacting service delivery to students with special needs. If the due process hearing may be viewed as a powerful vehicle for change, the question remains: Why do the states vary so greatly in the use of this tool? The next section reviews current knowledge of due process hearings.

DUE PROCESS HEARINGS: CURRENT KNOWLEDGE BASE

"Although the right to a fair hearing is guaranteed by federal law, the procedures for conducting such hearings are left to the states, and the procedures vary from state-to-state (Penland, 1985, p. 3)." Several researchers addressed state differences in the due process mechanism and authored texts to guide disputants through the procedure.

Disputants in due process hearings were frequently unfamiliar with hearing procedures. Shrybman (1982) authored a comprehensive text on due process hearings, *Due Process in Special Education,* written primarily for

educators. It provided a step-by-step guide through the hearing process, including an overview of I.D.E.A. and key characteristics of the law, definitions of critical terms used in the field of special education, explanations of hearing procedures, testimonies and roles of the participants, required time lines, and alternatives for action after the hearing is ended.

In a much briefer text, Abeson, Bolick, and Hass(1976), presented a "primer" on due process hearings. The authors reviewed the process and intent of the hearing and focused on the role and responsibilities of the hearing officer.

Edmister & Ekstrand (1987) emphasized the opportunity available for attorneys to lessen the trauma of due process through the proper presentation of testimony, prehearing preparation, preparation of participants for cross examination, and clarification of the roles of witnesses and attorneys.

Budoff & Orenstein (1982) not only presented a sequential guide through the hearing process, but reported a longitudinal study of due process participants. The educational activities of students involved in litigation were followed for several years after the conclusion of the hearing. The researchers found that within a relatively short time frame, the students returned to their original status prior to due process proceedings. In consideration of the emotional and financial toll of due process proceedings, these findings effectually negated the efforts of both the parents and the school systems.

Henderson (1982) studied the perceptions of school officials and other hearing participants in Texas. All parties (parents, hearing officers, and local

education agencies) perceived that their rights were being protected throughout the proceedings and believed that the hearings were conducted fairly. In spite of these positive reactions, participants also felt that the hearing was not necessarily centered on the needs of the child and that the outcomes were not always in the child's best interest.

In a parallel study, Penland (1985) examined the attitudes of hearings officers, parents, and school officials in Maine toward due process focusing on whether the rules of conduct were being fairly implemented. Again, a survey of the participants indicated the belief that their rights were being protected. However, the hearing officers were critical of a perceived lack of compliance by school officials to the decision of hearing officer. The parents seriously questioned the ability of the hearing officers to be impartial and to arrive at a decision in the best educational interest of the child. Special education directors found the interpretation of the law by hearing officers to be more inclusive than educational interpretations. All parties believed an adversarial relationship between parents and schools would develop or continue beyond the hearing.

Are the perceptions of disputants involved in due process and mediation similar? Lake (1991) found that although similar issues were presented in due process and mediation, parents were not particularly positive toward either method of conflict resolution. In fact, only the schools would potentially leave due process proceedings satisfied.

Several researchers also explored the characteristics of students and parents who participated in hearings. Henderson (1982) determined that a disproportionate number of students eligible for special education as seriously emotionally disturbed, mentally retarded, and hearing impaired were involved in due process litigation. These students did not comprise the majority of the special education population. Further, Robinett (1993) confirmed that no predictable relationship could be established between the size of the disabled population and the frequency of due process litigation.

As for the characteristics of parents, Lake (1991) found that most hearings were initiated by the parents with some level of college education who earned in excess of $40,000 annually. In examining the motives for the initiation of litigation, Frampton (1988) found that parents in California initiated due process proceedings more often when they received information regarding their rights from sources other than school personnel, had prior involvement in due process, or involved parent advocates.

The issues most frequently litigated in due process hearings have also been explored in the literature. Alexander (1992) defined these issues:

> a) provision of a free appropriate public education,
> b) violations of procedural safeguards,
> c) content / development of the individualized education plan,
> d) interpretation of the least restrictive environment,
> e) separate school placement,
> f) provision of related services,
> g) administration of discipline / "stay-put,"
> h) reimbursement for attorney fees, and
> I) tuition reimbursement (Alexander, 1992, p.368).

Robinett (1993) found that students eligible for special education as learning disabled, emotionally disturbed, and mentally retarded were most frequently involved in due process litigation. These three categories of disabilities, combined with "unknown disabilities" involved in class action suits between the years 1986 - 1991, participated in 73% of all due process litigation.

Unexplained Variations in the Frequencies of Due Process Hearings

All states are bound by the mandates of I.D.E.A. Similar procedural safeguards exist in each state to resolve disagreements between the parents and the school. It is unknown why highly dissimilar numbers of persons among states claim that a Free Appropriate Public Education is not being provided for their child.

The variability in the number of due process hearings conducted is staggering. In 1993, 89% of all due process hearings occurred within 15 states. The remaining 35 states accounted for a mere 11% of all hearings. It may be expected that a strong correlation exists between the size of the state's special education population and the number of hearings. The 1993 statistics revealed a correlation of only 0.39 in this area and an even lower correlation (0.33) between the number of hearings and the state's total student enrollment. The literature has contributed greatly to the knowledge base in the field of special education. However, none of these writings acknowledge or address the huge variance among states in the frequency of due process hearings.

Research indicates that the financial cost of due process hearings is high and that the frequency of hearings is expanding. The emotional cost and the strain on the interpersonal relationships of all parties involved, is tremendous. Based on current information regarding due process hearings, it would be of great benefit to all parties to diligently work for the avoidance of due process litigation. A major step toward the accomplishment of this objective would be the identification of the source(s) of variability among states in the frequency of due process hearings.

This chapter examined current literature and knowledge concerning special education and due process hearings. In the next chapter, the methods and procedures used to explore the sources of variability among seven states are discussed.

Chapter 3

Research Design and Methodology

The purpose of this study was to determine whether various components of the comprehensive state plans and/or cultural factors are related to the frequency of due process hearings. Research questions included:

1. What are the differences/similarities among state interpretations of I.D.E.A. as evidenced in the comprehensive state plans?
2. What are the differences among the state cultures of the selected states?
3. What are the differences/ similarities between comprehensive state plans and state cultures and the frequency of due process hearings between paired states?
4. What factors distinguish high due process states from low due process states in terms of state policies and practices and in terms of cultural elements?

This chapter described the methods and procedures used in the conduct of the research. The chapter begins with a discussion of the rationale for the selection of the research design of the study, followed by a description of the procedures used in selecting the states used for the study. The research questions are then presented individually in order to concisely describe the data collection procedures and data analysis used to address each question.

RATIONALE: RESEARCH DESIGN

A descriptive and exploratory research design was chosen to allow for the emergence and examination of data which potentially influenced the frequency of due process hearings among the states. As this study was the first to investigate factors impacting these frequencies, the emphasis was on discovery and inquiry rather than on the verification or refutation of a predetermined hypothesis. In choosing this design, it was hoped that through full and open exploration, factors would surface which influence state variations in litigation. Using existing data, this study focused on two areas: state interpretations of federal laws as expressed in comprehensive state plans; and state cultures, i.e., culturally defined differences among people which may impact decisions to initiate court proceedings.

POPULATION/SAMPLE

The study was limited to states carefully selected to provide defensible examination of factors which may contribute to the frequency of due process litigation. Using data obtained from multiple sources on each of the fifty states, a four-step procedure was used to select the states to be studied. In step one, data taken from *To Assure the Free Appropriate Public Education of All Children with Disabilities: The Sixteenth Annual Report to Congress on the Implementation of The Individuals with Disabilities Education Act (1994)* were used to determine the number of students enrolled in special education and

regular education programs in each state. Using this information, states were grouped according to similar population sizes, with heavier weight given to the size of the special education populations.

In step two, the number of due process hearings held in each state was calculated during 1993. These data were obtained from the report *Mediation and Due Process Procedures in Special Education: An Analysis of State Policies* (Ahearn, 1994) and from the Office of Special Education Programs (OSEP). The fifty states were subdivided within the population groupings according to high and low frequencies of due process hearings. The District of Columbia was considered to be an outlier due to the incredible discrepancy between the population, hearing frequency, and percentage of the population engaging in hearings (7,053 & 363 (0.05%)), and was omitted from the study. These statistics were unique and not similar to any other state. States falling within the "medium" ranges of due process litigation were also eliminated. Other states (i.e., Utah, North Dakota, and Alaska) were omitted due to a total absence of hearings.

States were further eliminated in step three through consideration of information from the United States Census Bureau (1990). In this phase, the selection of states was "fine tuned" by expanding the search for numerical similarities in the following areas: number of metropolitan cities with populations greater than 200,000; disposable personal income; unemployment rate; percent of the state population receiving social security; percent of the population receiving public aid; racial composition; and the degree of education obtained.

These data were examined in terms of raw data (Table 9) and state rankings (Table 10). Correlations of a variety of pairings were compared which represented high levels of similarities while exhibiting marked differences in the occurrence of due process litigation. This process of comparing both the raw data and the ranked data allowed the researcher to minimize the impact of extraneous variables and accentuate the domains specified for exploration in the study.

Several pairs of states displayed similar incongruities and met the criterion established for this study. In step four, six states were chosen that both met the established criterion and represented various geographic regions and judicial circuits across the country. New York, with a special education population of 336,051 and 609 due process hearings, was paired with California (513,757 & 58). Illinois (250,955 & 105) was teamed with Florida (263,592 & 17). Pennsylvania (209,578 & 78) was matched to Ohio (216,745 & 10). Table 11 compares the paired states in terms of the variables used to select and pair them. The correlations between identified factors of the paired states (excluding hearings) were extremely strong, ranging from 0.9890 to 0.9996. These state pairings represented strong similarities in the state rankings of extraneous variables while registering extremely different frequencies of due process litigation.

Table 9
State Comparisons: Numerical Data

State	Hearings Held: 1993	Total Population: 1990	Metropolitan Cities > 200,000	Disposable Personal Income	Unemployment Percentage Rate	% Social Security Recipients	% Public Aid Recipients	Racial: Caucasian	Racial: Other	Violent Crimes per 100,000	% High School (+)	% Bachelor Degree (+)
Alabama	19	4,040,587	2	$15,332	7.5	17.9	7.1	73.65	26.35	872	66.9	15.7
Alaska	0	550,043	1	$20,306	7.6	6.3	6.7	75.54	24.46	660	86.6	23.0
Arizona	no data	3,665,228	3	$15,921	6.2	16.6	6.4	80.85	19.15	671	78.7	20.3
Arkansas	13	2,350,725	0	$14,424	6.2	20.1	6.8	82.73	17.27	577	66.3	13.3
California	58	29,760,021	12	$18,997	9.2	12.4	10.7	68.97	31.03	1,120	76.2	23.4
Colorado	2	3,294,394	4	$18,628	5.2	13.1	5.0	88.19	11.81	579	84.4	27.0
Connecticut	77	3,287,116	0	$23,776	6.2	16.7	6.0	86.99	13.01	495	79.2	27.2
Delaware	3	666,168	0	$18,374	5.3	16.2	5.2	80.32	19.68	621	77.5	21.4
Florida	17	12,937,926	4	$18,531	7.0	20.8	6.8	83.08	16.92	1,207	74.4	18.3
Georgia	24	6,478,216	1	$16,871	5.8	13.8	8.5	71.01	28.99	733	70.9	19.3
Hawaii	6	1,108,229	1	$20,038	4.2	13.4	5.9	33.35	66.65	258	80.1	22.9
Idaho	2	1,006,749	0	$15,974	6.1	15.6	3.2	94.41	5.59	281	79.7	17.7
Illinois	105	11,430,602	1	$19,648	7.4	15.5	7.9	78.32	21.68	977	76.2	21.0
Indiana	17	5,544,159	1	$16,824	5.3	16.6	5.0	90.56	9.44	508	75.6	15.6
Iowa	5	2,776,755	0	$15,782	4.0	19.0	5.0	96.63	3.37	278	80.1	16.9
Kansas	11	2,477,574	1	$17,635	5.0	16.7	4.6	90.09	9.91	511	81.3	21.1
Kentucky	9	3,685,296	2	$15,010	6.2	18.0	9.8	92.04	7.96	535	64.6	13.6
Louisiana	7	4,219,973	2	$14,947	7.4	15.9	10.2	67.28	32.72	985	68.3	16.1
Maine	23	1,227,928	0	$16,898	7.9	18.1	7.6	98.41	1.59	131	78.8	18.8
Maryland	46	4,781,468	1	$20,552	6.2	13.0	6.0	70.98	29.02	1,000	78.4	26.5
Massachusetts	89	6,016,425	1	$20,985	6.9	16.9	7.5	89.84	10.16	779	80.0	27.2
Michigan	19	9,295,297	1	$17,886	7.0	16.4	9.0	83.44	16.56	770	76.8	17.4
Minnesota	3	4,375,099	2	$17,907	5.1	15.4	5.7	94.41	5.59	338	82.4	21.8
Mississippi	10	2,573,216	0	$13,631	6.3	17.9	11.8	63.48	36.52	412	64.3	14.7
Missouri	no data	5,117,073	2	$17,158	6.4	18.1	6.8	87.67	12.33	740	73.9	17.0
Montana	3	799,065	0	$15,128	6.0	17.8	5.4	92.75	7.25	170	81.0	19.8
Nebraska	1	1,578,385	1	$17,416	2.6	17.2	4.2	93.80	6.20	349	81.8	18.9
Nevada	5	1,201,833	1	$19,781	7.2	14.4	3.6	84.26	15.74	697	78.6	15.3
New Hampshire	15	1,109,252	0	$20,278	6.6	15.4	3.4	98.03	1.97	126	82.2	24.4
New Jersey	176	7,730,188	2	$23,354	7.4	16.2	6.1	79.31	20.69	626	76.7	24.9
New Mexico	1	1,515,069	1	$14,587	7.5	14.9	8.0	75.64	24.36	935	75.1	20.4
New York	609	17,990,455	3	$20,948	7.7	16.1	9.0	74.40	25.60	1,122	74.8	23.1
North Carolina	2	6,628,637	2	$16,421	4.9	16.7	7.2	75.56	24.44	681	70.0	18.1
North Dakota	0	638,800	0	$15,688	4.3	18.0	4.3	94.57	5.43	83	76.7	18.1
Ohio	10	10,847,115	5	$17,180	6.5	16.9	8.7	87.78	12.22	526	75.7	17.0
Oklahoma	5	3,145,585	2	$15,060	6.0	17.2	6.4	82.13	17.87	623	74.6	17.8
Oregon	7	2,842,321	1	$16,731	7.2	17.5	5.2	92.77	7.23	510	81.5	20.6
Pennsylvania	78	11,881,643	2	$18,632	7.0	19.1	6.9	88.54	11.46	427	74.7	17.9
Rhode Island	4	1,003,464	0	$18,384	7.7	18.6	8.0	91.42	8.58	395	72.0	21.3
South Carolina	3	3,486,703	0	$15,071	7.5	16.0	6.7	69.03	30.97	944	68.3	16.6
South Dakota	1	696,004	0	$15,981	3.5	18.6	4.6	91.60	8.40	195	77.1	17.2
Tennessee	12	4,877,185	2	$16,705	5.7	17.3	8.6	83.00	17.00	746	67.1	16.0
Texas	no data	16,986,510	8	$17,116	7.0	13.1	6.3	75.21	24.79	806	72.1	20.3
Utah	0	1,722,850	0	$14,066	3.9	11.3	3.8	93.79	6.21	291	85.1	22.3
Vermont	7	562,758	0	$17,076	5.4	16.1	7.2	98.64	1.36	109	80.8	24.3
Virginia	39	6,187,358	3	$18,762	5.0	13.8	4.8	77.44	22.56	375	75.2	24.5
Washington	no data	4,866,692	1	$19,290	7.5	14.5	6.9	88.54	11.46	535	83.8	22.9
West Virginia	8	1,793,477	0	$14,552	10.8	20.8	9.7	96.21	3.79	212	66.0	12.3
Wisconsin	9	4,891,769	1	$17,196	4.7	17.3	6.9	92.25	7.75	276	78.6	17.7
Wyoming	1	453,588	0	$17,504	5.4	14.2	5.2	94.15	5.85	320	83.0	18.8
Dis. of Col.	363	606,900	1	$24,595	8.5	13.5	13.3	29.60	70.40	2,833	73.1	33.3

Table 10
State Comparisons: Rankings According to Raw Data

State	Hearings Held: 1993	Total Population: 1990	Special Ed. Population: 1992-1993	Total Civil Cases: 1993	Metropolitan Cities Above 200,000	Disposable Personal Income	Unemployment Percentage Rate	% Social Security Recipients	% Public Aid Recipients	Racial: % Caucasian	Racial:% Other	Violent Crimes Per 100,000	% High School (+)	% Bachelor's Degree (+)
Alabama	14	22	18	6	9	41	8	12	19	43	9	10	47	45
Alaska	48	50	44	41	19	7	7	51	26	40	12	20	1	12
Arizona	27	24	27	21	6	38	26	25	28	33	19	19	20	23
Arkansas	19	33	33	27	35	49	26	3	23	31	21	25	48	50
California	9	1	1	2	1	13	2	49	3	47	5	4	28	10
Colorado	41	26	29	29	4	16	40	46	40	23	29	24	3	4
Connecticut	7	27	26	26	35	2	26	22	32	26	26	32	17	2
Delaware	37	46	47	45	35	19	38	28	37	34	18	23	23	17
Florida	16	4	17	5	4	17	17	1	23	29	23	2	37	30
Georgia	12	11	14	12	19	31	34	42	11	44	8	16	42	26
Hawaii	32	41	46	40	19	9	47	45	34	50	2	44	13	13
Idaho	41	42	39	46	35	37	31	34	51	7	45	41	16	35
Illinois	4	6	5	7	19	11	12	35	14	36	16	7	28	20
Indiana	16	14	13	17	19	32	38	25	40	18	34	31	31	46
Iowa	33	30	31	34	35	39	48	5	40	4	48	42	13	41
Kansas	21	32	34	35	19	22	42	22	44	19	33	29	10	19
Kentucky	24	23	23	23	9	45	26	10	5	15	37	27	50	49
Louisiana	27	21	22	9	9	46	12	33	4	48	4	6	44	43
Maine	13	38	38	47	35	30	4	8	15	2	50	48	18	28
Maryland	10	19	20	18	19	6	26	48	32	45	7	5	22	5
Massachusetts	5	13	10	19	19	4	21	20	16	20	32	12	15	2
Michigan	14	8	9	10	19	21	17	27	7	28	24	13	25	37
Minnesota	37	20	21	30	9	20	41	36	35	8	44	38	6	16
Mississippi	22	31	30	22	35	51	25	12	2	49	3	34	51	48
Missouri	27	15	16	13	9	27	24	8	23	25	27	15	38	39
Montana	37	44	43	42	35	42	32	14	36	13	39	47	11	25
Nebraska	44	36	37	39	19	24	51	18	47	10	42	37	8	27
Nevada	33	39	40	33	19	10	15	40	49	27	25	17	18	47
New Hampshire	18	40	42	43	35	8	22	36	50	3	49	49	7	8
New Jersey	3	9	8	11	9	3	12	28	31	35	17	21	26	6
New Mexico	44	37	36	37	19	47	8	38	12	38	14	9	33	22
New York	1	2	3	1	6	5	5	30	7	42	10	3	34	11
North Carolina	41	10	11	24	9	35	44	22	17	39	13	18	43	31
North Dakota	48	47	48	51	35	40	46	10	46	6	46	51	26	31
Ohio	22	7	6	8	3	26	23	20	9	24	28	28	30	39
Oklahoma	33	28	25	16	9	44	32	18	28	32	20	22	36	34
Oregon	27	29	28	32	19	33	15	15	37	12	40	30	9	21
Pennsylvania	6	5	7	4	9	15	17	4	20	21	31	33	35	33
Rhode Island	36	43	41	44	35	18	5	6	12	17	35	35	41	18
South Carolina	37	25	24	20	35	43	8	32	26	46	6	8	44	42
South Dakota	44	45	45	48	35	36	50	6	44	16	36	46	24	38
Tennessee	20	17	15	15	9	34	35	16	10	30	22	14	46	44
Texas	no data	3	no data	3	2	28	17	46	30	41	11	11	40	23
Utah	48	35	32	38	35	50	49	50	48	11	41	40	2	15
Vermont	27	49	50	49	35	29	36	30	17	1	51	50	12	9
Virginia	11	12	12	14	6	14	42	42	43	37	15	36	32	7
Washington	8	18	19	25	19	12	8	39	20	22	30	26	4	13
West Virginia	26	34	35	36	35	48	1	1	6	5	47	45	49	51
Wisconsin	24	16	17	31	19	25	45	16	20	14	38	43	21	35
Wyoming	44	51	49	50	35	23	36	41	37	9	43	39	5	28
Dis. of Columbia	2	48	51	51	28	19	1	3	44	51	1	1	39	1

Table 11
Numerical Data of Paired States

State	Hearings Held: 1993	Total Population: 1990	Total Student Enrollment: 1992-1993	Special Ed. Population: 1992-1993	Total Civil Cases: 1993	Metropolitan Cities: > 200,000	Disposable Personal Income
New York	609	17,990,455	2,670,000	336,051	62,580	3	20,948
California	58	29,760,021	5,200,000	513,757	58,128	12	18,997
Illinois	105	11,430,602	1,814,798	250,955	29,978	1	19,648
Florida	17	12,937,926	1,981,887	263,592	35,088	4	18,531
Pennsylvania	78	11,881,643	1,716,670	209,578	40,745	2	18,632
Ohio	10	10,847,115	1,780,000	216,745	27,678	5	17,180

State	Unemployment Rate	Social Security Recipients	Public Aid Recipients	Racial: Caucasian	Racial: Other Ethnic Groups	High School (+)	Bachelor's Degree (+)
New York	1,385,265	2,896,463	1,619,141	13,384,899	4,605,556	13,456,860	4,155,795
California	2,737,922	3,690,243	3,184,322	20,525,486	9,234,535	22,677,136	6,963,845
Illinois	845,865	1,771,743	903,018	8,952,447	2,478,155	8,710,119	2,400,426
Florida	905,655	2,691,039	879,779	10,748,829	2,189,097	9,625,817	2,367,640
Pennsylvania	831,715	2,269,394	819,833	10,520,007	1,361,636	8,875,587	2,126,814
Ohio	705,062	1,833,162	943,699	9,521,598	1,325,517	8,211,266	1,844,010

Correlations : (All areas included except number of due process hearings)

New York / California: 0.9975
Illinois / Florida: 0.9977
Pennsylvania / Ohio: 0.9996

RESEARCH QUESTIONS

Research Question 1: What are the similarities/differences among the state interpretations of I.D.E.A. as evidenced in the comprehensive state plans?

The first research question involved state interpretations of the federal law. Rather than dictating special education procedures, I.D.E.A. often provides the states with a framework for policy development and affords the states great latitude in interpreting and operationalizing the process. In order to comprehensively address the question, an examination of state rules was followed by a study of state practices. In the following section, elements of the comprehensive state plans were analyzed in terms of state policies and procedures. These elements included least restrictive environment, eligibility for special education, and procedural safeguards. The second step involves an examination of state practices in these areas.

Least Restrictive Environment

The determination of the least restrictive environment in which a child can receive a satisfactory education could be considered to be the most critical yet most subjective decision made by the IEP-Team. The federal law provides that:

> ...to the maximum extent appropriate, children with disabilities... are educated with children who are non-disabled; and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (Fed. Sta. 300.550(1)(2)).

Comprehensive state plans were examined in terms of policies and procedures related to the provision of an appropriate education within the least restrictive environment. This examination included a review of the range of required options of service delivery (i.e., resource room, separate classroom, etc.), settings requiring teaching assistants, maximum caseloads, and hours per service option.

Eligibility for Special Education

The Individuals with Disabilities Education Act (I.D.E.A.) identifies thirteen categories of disabilities under which a child would be eligible for special education and related services. Although the federal government provides some guidelines for determining eligibility, it is left to the states to define requirements.

Comprehensive state plans were evaluated in terms of the categories of eligibility for special education. Specifically, the researcher questioned whether the state exceeded federal guidelines in the identification of eligibility categories or omitted federal categories. Regardless of the policies and procedures, each state was required to submit an annual report to Congress designating the number of students enrolled in each of the federal categories.

Procedural Safeguards

According to the federal law, due process hearing procedures may be initiated by the parents or the schools whenever the public agency "...(1)

proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provisions of FAPE to the child (Fed. Statute 300.504)."

In sections 300.506 - 300.512, I.D.E.A. provides a framework for the States describing the requirements of the process. The federal code places the responsibility for conducting the hearing on the State Education Agency (SEA) or the public agency directly responsible for the education of the child (300.506).

A two-stage process was used to gather data about each state's policies and practices regarding the interpretation of the least restrictive environment, identification (eligibility) for special education, and conflict resolution. An analysis of state plans clearly indicated the individual state's understanding of the federal mandates. Information pertaining to policies and procedures surrounding conflict resolution was obtained from a report of the National Association of State Directors of Special Education, Inc. (1994), a study by Bienenstock (1992), and through an examination of comprehensive state plans. These resources provided a statistical and narrative overview of the comprehensive plans of the individual states.

The second stage of the process involved an examination of actual state practices within the given categories. Numerical information was available in placement options, categories of identification, the number of tiers used in complaint resolution, and mediation practices. Information regarding the state's

practices in the areas of least restrictive environment and identification were secured from the *Sixteenth and Seventeenth Annual Reports to Congress on the Implementation of The Individuals with Disabilities Education Act (1994) & (1995).* This publication provided comprehensive raw data on a state by state basis designating the number of children being served in each option (or number of hours) in special education programs. Data pertaining to practices associated with procedural safeguards were obtained from a report by Ahearn (1994), *Mediation and Due Process Procedures in Special Education, An Analysis of State Polices;* a study by Robinett (1993), *Special Education Due Process Hearings: State Differences*; and comprehensive state plans.

Data analysis of state regulations involved a narrative summary of state policies and procedures using I.D.E.A. as a basis for comparison. Actual state practices, reported numerically, were presented in terms of high and low frequencies and the resultant range between the extremes.

Research Question 2: What are the differences among the state cultures of the selected states?

The second research question involved individual state cultures. It would be reasonable to assume that states develop unique characteristics based on the heritage, needs, and priorities of its citizenry. Could the culture of a state be related to the willingness of an individual to take court action in resolving special education disputes?

Selected categories of cultural elements were explored including population variables, socio-economics, education, and "litigiousness," i.e., the inclination of the state's citizenry to use the court system to resolve disputes. These factors were chosen due to commonly held perceptions that these particular elements influence the frequency of litigation in all areas.

Using data from the United States Census Bureau (1990), the Social Security Administration, and a study by Ahearn (1994), statistics regarding selected cultural factors were obtained including demographics, educational attainment, and socio-economic status. Data were presented in the form of percentages and analyzed in terms of numeric ranges among all states.

Information specifying the frequency of civil court cases filed per state was obtained through the United States District Court Offices. These data were specifically chosen as a measure of "litigiousness" as opposed to other courts for several reasons. The District Courts are federal courts, thereby ensuring uniformity among the states in their use. State courts are not consistent in the rules of the court or in procedures for filing a complaint, and often overlap in the types of cases addressed. Additionally, while a frequency count of the number of cases filed within the courts of any given state was not accessible, the number of filings in district courts was obtainable. Although the federal courts address both criminal and civil complaints, this study focused only on private civil cases. This process eliminated mandatory cases due to violations of statutes and corresponds to the voluntary element of due process filings.

The study of "litigiousness" also examined the number of practicing attorneys per state. West's Law, state bar associations, and state courts provided these data.

Finally, the appeal process for Social Security recipients is somewhat similar to the due process procedure outlined in I.D.E.A.. It could be hypothesized that the percentage of social security recipients filing appeals would be similar to the percentage of the special education population filing for due process hearings. Information regarding the number of social security appeals per state was obtained from the Social Security Administration.

It is not known whether any of these factors contribute to the variance in the frequency of due process hearings. The net was "cast widely" to include as many elements as possible for consideration and comparison.

Research Question 3: What are the differences/similarities between comprehensive state plans and state cultures and the frequency of due process hearings between paired states?

The third research question involved the integration of information obtained while responding to the first and second research questions. The previous research questions analyzed data "intra-spectively" by state. Comprehensive state plans and practices were analyzed without comparison to other states, using the Individuals with Disabilities Education Act as an anchor for exploration. The third research question involved an "inter-spective" approach to analysis of data through a comparison of paired states.

This "inter-spective" analysis contrasted the contents of the paired state plans, practices, and cultural elements within the context of the high or low due process member of the pair. A chi-square analysis was performed on all pairs of data to establish whether significant differences existed. Due to the enormity of the size of the state population, the results of all comparisons were significant at a .001 level. A probability study was also attempted which also yielded significance in all comparisons. Following consultation with Professor Schuyler Huck of the University of Tennessee (January,1999), it was determined that an appropriate approach to analysis was to examine the percentages of each factor being analyzed, focusing on percentages markedly out of the range of other results. These aberrant factors became the focus of analysis and discussion.

Research Question 4: What factors distinguish high due process states from low due process states in terms of state policies and practices and in terms of cultural elements?

The fourth research question required an in-depth analysis of the data presented in the previous research question. The data obtained in the comparison of paired states in the areas of state policies and practices and cultural elements were re-organized in terms of high and low due process frequency states. Data were examined for commonalities and/or differences exclusive to the high or low group.

State groupings were scrutinized as to whether policies exceeded the mandates of I.D.E.A. in the areas of least restrictive environment, identification,

and procedural safeguards. The analysis of numerical data found in the examination of state practices and cultural elements involved an examination of the percentages and ranges within the high and low due process frequency groups. Specifically, numerical ranges between the groups which demonstrated little or no overlaps were emphasized. The findings of all components of the study were presented narratively and graphically.

Chapter 4

Findings and Analysis

The purpose of this study was to determine whether various components of the comprehensive state plans and/or cultural factors were related to the frequency of due process litigation. Data pertaining to state policies and practices and cultural data were collected and analyzed according to marked differences in percentages between paired states and among the high and low due process state groupings.

Chapter 4 presents the results of the data analysis. The findings are presented by research questions:

1. What are the differences/similarities among the state interpretations of I.D.E.A. as evidenced in the comprehensive state plans?
2. What are the differences among the state cultures of the selected states?
3. What are the differences/similarities between comprehensive state plans and state cultures and the frequency of due process hearings between paired states?
4. What factors distinguish high due process states from low due process states in terms of state policies and practices and in terms of cultural elements?

RESEARCH QUESTION 1: WHAT ARE THE DIFFERENCES/SIMILARITIES AMONG THE STATE INTERPRETATIONS OF I.D.E.A. AS EVIDENCED IN THE COMPREHENSIVE STATE PLANS?

The first research question was addressed through an examination of the variables within two contexts: 1) state policies and procedures; and 2) actual practices of the states in the designated areas of study.

The study of the comprehensive state plans consisted of an examination of the policies and procedures concerning the least restrictive environment, identification of students with disabilities, and procedural safeguards. The purpose of this examination was to ascertain differences and similarities within the state plans, to determine whether these differences/similarities warranted further analysis, and to determine whether the findings were related to the frequency of due process litigation.

Least Restrictive Environment & Placement Practices

Federal regulations provide for a full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The states are required to provide supplementary services in conjunction with regular classroom placement, i.e. resource room or itinerant instruction (Fed. Sta. 300.551(1)(2)). I.D.E.A. also mandates that the determination of a child's placement be established at least annually, based on the child's IEP, and as close as possible to the child's home (Fed. Sta.300.552(1)(2)(3)).

The federal government's general philosophy of least restrictive environment, examined previously, is intertwined with the concept of placement. According to I.D.E.A., the term placement refers primarily to the amount of time the student spends engaged with non-disabled peers. A more restrictive placement indicates that the student is removed from non-disabled peers for a greater portion of the school day. Conversely, the lesser the restriction, the greater the amount of time spent with non-disabled peers.

Each state is required to develop a state plan providing a full continuum of educational placements for students with disabilities. In examining these plans, significant variations in the interpretation of placement options as well as practices were discovered. Although all states complied with federal mandates to provide a full continuum of services, noteworthy differences existed among the states in the frequencies with which given options of service were used. The following sections compare state policies and practices in the interpretation of least restrictive environment and the use of various options of placement among the states, by state, focusing on elements of the state plans in which I.D.E.A. mandates were supplemented with additional state procedures.

Least Restrictive Environment: State Policy

California

California's Education Code (Section 56361 - 56367) provided the state's definition of a continuum of program options. The resource option, referred to as

the resource specialist program, exceeded federal regulations by requiring the teacher to have had three or more years of teaching experience including both regular and special education. Maximum caseloads for the program were established at twenty-eight pupils. Other service options mirrored those outlined in the federal law. Throughout the California plan, the concept of mainstreaming was emphasized, possibly due to the decision of the Ninth Circuit Court of Appeals (California) in Sacramento City Unified School District v. Rachel H.(14 F.3d 1398 (9th Cir. 1994)). In this case, the Court enunciated four factors to be considered to determine an appropriate placement for a child with a disability. These factors were: educational benefit to the child, non-academic benefits of non-disabled peer interactions, effect of the child's presence on the teacher and other children in the class, and cost. These elements served as a basis for state policies and procedures for placement in the least restrictive environment.

New York

While addressing the continuum of services to be provided students with disabilities in New York, the State Department of Education (200.6(3)) indicated that students could be placed together for purposes of special education by similarity of individual needs while considering: academic achievement; social development; physical development; and management needs. This statement was unusual in that federal law clearly demonstrated a preference toward the non-segregation of students with specific disabilities in favor of an inclusive approach.

New York addressed all program options in terms of hours per week and maximum caseloads. For example, consultation teacher services providing direct and/or indirect services to students enrolled full time in regular education classrooms have a maximum caseload of twenty students. Each student must be served for a minimum of two hours per week. In the resource program, students must be removed from the regular classrooms not less than three hours per week nor more than fifty percent of their time and the instructional group size cannot exceed five students per classroom period. The maximum caseload per teacher was limited: twenty for elementary and twenty-five for secondary levels.

New York also provided specific procedures in addressing the format of special classes, far exceeding the requirements of I.D.E.A. The requirements for special classes were established on a level system dependent on the "management needs" of the students. For example, the first special class level allowed a maximum class size of fifteen students. At the second level, a maximum of twelve students were permitted where "...management needs interfere with instruction..." and an educational assistant was required during instructional times. Class size limits diminished as the needs of the student moved to an "intensive" level, and again as the student displayed "highly intensive management needs." Classes which addressed the needs of students with severe multiple disabilities had a maximum class size of twelve. In all special education classes, the maximum age range permitted with students younger than 16 years of age was limited to 36 months.

New York also specified that twelve month special services and programs were provided in accordance with student needs to prevent "substantial regression." These "extended school year" programs were federally required for consideration, but not specifically designated as a program option by the other states studied. All other programs in New York mirrored federal specifications.

Florida

Florida Statutes and State Board of Education Rules (Vol. 1-B, 1997) provided services to exceptional students under two categories: (1) Continuum of placements and (2) varying exceptionalities (6A-6.0311). Procedures were also designated for the identification and assignment of exceptional students to special programs (6A-6.0331).

The basic continuum of services provided by the Florida Statutes lacked specific requirements for class size, teacher requirements, or minimum hours for students. Discussions of program options focused on a description of services rather than specific mandates. For example, the resource room was described as providing supplemental instruction to exceptional students who received their major educational program in other basic, vocational, or exceptional classes. Special classes provided instruction to exceptional students who received the major portion of their educational program in special classes located in the regular school. Residential schools were special schools which provided special education, related services, and room and board. None of these program options provided specific guidelines for services.

The option of "varying exceptionalities" was unique to Florida, referring to a setting which provided for the assignment of students of more than one exceptionality to one teacher per instructional class period, or more than one exceptionality to one teacher during a school week.

Illinois

The Illinois regulations focus heavily on the curriculum to be provided to the child. For example, the Standard Program with Modifications states that "...the child will receive basic educational experiences through the standard program with modifications through additional or specialized education from the teacher, consultation to and with the teacher, provision of special equipment and materials, and modifications in the instructional program (e.g., grading, multi-age placement, expectations)(23 Illinois Administrative Code CH. I, S. 226.115)." The Alternate Standard Program provides that the child will receive basic educational experience through the standard program whose curricular content and educational methodology have been profoundly changed, similar to the resource room and special class designated in the federal law.

Illinois also specifies age groupings, age ranges, and maximum class sizes (23 Illinois Administrative Code Ch. I. S. 226.220 - 226.225). Age groupings are considered in "general terms: early childhood (3 - 5); primary (6 - 8); intermediate (9 - 11); junior high ((12 - 14) and secondary (15 - 21). Age ranges within the special education classes cannot exceed four years. Maximum class sizes were regulated by the nature and degree of disability. For example,

instructional programs serving students whose disabilities were "...profound in degree or multiple in nature..." required a maximum limit of five students. Programs which served students with moderate visual or hearing disabilities could serve up to twelve students.

Ohio

In addressing options of service, Ohio limited the range of programs discussed to a minimum. However, each category of service was presented in terms of pupil - teacher ratio, teacher qualifications, teaching responsibilities, and in some cases, allowable age ranges within the option. For example, when discussing individual / small group instruction, general statements were made describing the parameters of specialized instruction, i.e., "... shall serve handicapped children who are enrolled in regular classes but who require additional instruction in one or more academic areas to make satisfactory achievement in regular class placement. This instruction may supplement the instruction provided in the regular classes in which the child is experiencing serious difficulty, but may not supplant the regular classroom instruction..." The teacher/pupil ratio was then established: "Individual: ... shall not serve more than one child during any single instructional period. Small Group:...shall serve two or three children during any single instruction period..." The age range was then addressed, followed by a discussion on housing, facilities, materials and equipment. Finally, special education teacher qualifications and responsibilities were specified.

Pennsylvania

Using a system somewhat similar to the "management intensity" system found in New York, the focal point for placement in Pennsylvania (Chapter 342.41) is based on the "levels of intervention" required. Placement of an exceptional student involves the following criteria: 1) appropriate level of intervention (where the student performs successfully); 2) appropriate location of intervention; and 3) appropriate grouping of students. Caseloads for all options of service are clearly established. However, specifications for student hours are not always clear. For example, three levels of intensity are provided under the heading "regular school." *Supportive Intervention in the regular class* clearly states that the student is in the regular classroom for the entire day with support and modifications. The next level, *Supplemental intervention in the regular classroom,* states that the student will be included in the regular class for most of the day with special education services provided inside or outside of the regular class for a part of the day. The final level, *Supplemental intervention in the resource classroom,* places the student in the regular classroom for most of the day with special education services and programs provided by special education personnel in a resource classroom for part of the school day. The lack of specificity regarding allowable ranges of time is noticeable. Instead, Pennsylvania uses terms such as "most," "part of," or "some."

In describing options of programs, Pennsylvania provides an extensive list of placements including: part-time special education class in the regular school,

alternative regular education school located within the student's district, full-time special education class in the regular school, alternative regular education school located in a neighboring school district, special education public school, approved private school, approved private school on a residential basis, an out of state placement, and instruction in the home.

Additionally, regulations in Pennsylvania allow school districts to establish classes for exceptional students in the following categories: gifted; life skills support; emotional support; sensory support (deaf, blind); speech and language support; physical support; autistic support; multiple disabilities support.

Least Restrictive Environment: State Practices

In examining the placement practices of the states included in this study, variations were discovered in several areas. The greatest differences were found within three options: providing services within the regular classroom, providing services within the resource room, and employing the use of a separate class.(See Table 12). California more than doubled New York and Illinois in a preference toward placement within the regular classroom. The three remaining states functioned within a median range of the two extremes. A fourteen percentage point variance was found in the use of the resource room. California chose that option for 22.79% of the students, while Ohio and Illinois placed over

Table 12
Percentage of Special Education Students* (6 - 21) Enrolled in Federal Placement Options
1992-93 School Year

	Regular Classroom	Resource Room	Separate Class	Public Separate Facility	Private Separate Facility	Public Residential Facility	Private Residential Facility	Homebound Hospital Environment
California	50.85%	22.79%	23.17%	0.94%	1.28%	0.22%	0.28%	0.46%
Florida	43.37%	24.59%	27.46%	3.62%	0.24%	0.40%	0.01%	0.32%
Illinois	25.18%	36.55%	30.90%	3.38%	2.46%	0.72%	0.32%	0.49%
New York	24.23%	26.74%	37.67%	7.95%	2.07%	0.36%	0.47%	0.51%
Ohio	34.72%	37.33%	15.86%	4.41%	5.91%	0.37%	0.00%	1.40%
Pennsylvania	37.02%	28.20%	29.52%	2.64%	1.50%	0.60%	0.28%	0.24%

* Count includes I.D.E.A., Part B and Chapter 1 of ESEA
17th Annual report to Congress, Table AB2, (1995)

35% of the students in the "pull-out" program. Placement in a separate special education classroom demonstrated more than a 20% variance among states, New York exhibiting the high at 37.67% and Ohio, the low of 15.86%. Other variability generally surrounded the practices of only one state. For example, New York placed approximately 8% of their students in public separate facilities, while the other states averaged 3%. Ohio utilized the private separate facility for nearly 6% of their students compared to an average of 2.00% in the other states.

The greatest ranges in state interpretations of least restrictive environment occurred within the three most common options for the placement of special education students within the regular school building: regular classroom (26.62%), resource room (14.54%), and separate classes (21.81%). Placement practices within options requiring higher levels of restriction varied 7.00% or less among all states. Table 13 showed differences ranging from 0.5% (public residential & private residential) to 26.62% (regular classroom).

Table 13
State Ranges in the Use of Federal Placement Options (Percentage)

Placement	High	Low	Range
Regular Class	50.85 (CA)	24.23 (NY)	26.62
Resource Room	37.33 (OH)	22.79 (CA)	14.54
Separate Class	37.67 (NY)	15.86 (OH)	21.81
Public Separate Facility	7.95 (NY)	0.94 (CA)	7.01
Private Separate Facility	5.91 (OH)	0.24 (FL)	5.67
Public Residential Facility	0.72 (IL)	0.22 (CA)	0.50
Private Residential Facility	0.47 (NY)	0.01 (FL)	0.46
Homebound/Hospital Environment	1.40 (OH)	0.24 (PA)	1.16

Identification of Students with Disabilities

The Individuals with Disabilities Education Act (I.D.E.A.) identifies thirteen categories of disabilities yielding eligibility for special education and related services. These categories include: autism; deafness; deaf-blindness; hearing impairment; mental retardation; multiple disabilities; orthopedic impairment; other health impairment; serious emotional disturbance; specific learning disability; speech or language impairment; traumatic brain injury; and visual impairment.

An examination of identification procedures among states investigated two domains. The first domain focused on individual state rules and regulations in the definition of specific categories of eligibility as compared to the federal law. The second domain examined the actual practices of the states in the frequencies of identification per category of eligibility. In reporting the incidence of various categories of disabilities, the Office of Special Education Programs (OSEP) combines the eligibility categories of deafness and hearing impairments. For this reason, the incidence of twelve rather than thirteen disabilities are compiled.

Identification of Students with Disabilities: State Policy

In reviewing state policy and procedures for special education, it became evident that the states varied in the categories of disabilities deemed eligible for special education services within the state (See Table 14 for a comparison of categories). States are required to report the frequency of the incidence of a given list of disabilities, however, individual states collapsed and expanded the

Table 14
Summary of Eligibility Categories

Federal	California	Florida	Illinois	New York	Ohio	Pennsylvania
Autism	X	X	X	X	X	Autism/ Pervasive Dev. Delay
Deaf-blindness	X	Dual Sensory Impaired		X		
Deafness	X	Deaf or Hard of Hearing				Deafness/Hearing Impairment
Hearing Impairments	X	X	X	X	X	Deafness/Hearing Impairment
Mental Retardation	X	Mentally Handicapped	Mental Impairment	X	Developmentally Handicapped	X
Multiple Disabilities	X		Multiple Impairment	X	Multi handicapped	Multi Handicap
Orthopedic Impairment	X	Physically Impaired		X	X	Physical Disability
Other Health Impairment	X		Physical and Health Impairment	X	Other Health Handicapped	X
Serious Emotional Disturbance	X	Emotionally Handicapped	Behavior Disorder / Emotional Disorder	X	Severe Behavior Handicapped	X
Specific Learning Disability	X	X	X	X	X	X
Speech/Language Impairment	X	X	X	X	Speech Handicapped	X
Traumatic Brain Injury	X		X	X	X	Neurological Impairment
Visual Impairment Blindness	X	X	X	X	X	X
	Established Medical Disability	Developmentally Delayed	Developmental Delay			Developmental Delay
		Hospital and Homebound				Mentally Gifted

X - indicates federal categories of disabilities recognized by the state

definitions of certain disabilities to meet federal guidelines. For example, Florida's state plan does not segregate the categories of multiple disabilities, other health impairments, or traumatic brain injury. For the purposes of federal reports, multiple disabilities are reported under the primary disability category, and traumatic brain injuries and other health impairments are reported in other disability categories.

In reviewing state policies, New York and California closely mirrored the federal categories of disabilities. Florida and Pennsylvania renamed several categories, i.e. "dual sensory impaired" rather than "deaf-blindness (FL)," "emotionally handicapped" rather than "serious emotional disturbance" (FL), "multi-handicap" in place of "multiple disabilities" (PA), and "physical disability" rather than "orthopedic impairment" (PA). In addition to changes in terminology, three states added the category of developmentally delayed and two states added gifted. Neither category is found under I.D.E.A..

Florida, Illinois, and Ohio each omitted a minimum of three federal categories in their state plans. These exclusions (deaf-blindness, deafness, orthopedic impairment, traumatic brain injury, and other health impaired) generally involve severe disabilities which can be verified medically.

In addition to the naming of categories of disabilities, the federal government provided some guidelines for determining eligibility. However, to a great extent, specific requirements for eligibility were largely left to the states. The impact of this latitude is clearly evident as the criteria for learning disabled

are examined. The majority - but not all - of the fifty states require the existence of a discrepancy between the actual and expected achievement of a child within one or more academic areas. Various states refer to this discrepancy as "severe," "significant," or "substantial." Deni & Anderton (1998) found that of thirty-eight states studied, fourteen did not provide a formula to determine the existence of a discrepancy. Of those states using established procedures, three types of formulas were used. The "expectancy formula" (achievement is equal to or less than 50% of expected achievement) was used by 8% of the states. A "regression formula" was used by 13%. The remaining states used standard score differences between intelligence and achievement. However, even within this standard score definition, the minimum discrepancy varied from 1.0 standard deviation, 1.5 standard deviations, 2.0 standard deviations, and other discrepancy requirements. In yet other states, the local districts determine eligibility requirements (Wyman, 1996).

Within the current study, the required minimum discrepancy for eligibility for a specific learning disability varies as illustrated in Table 15. Of the six states included in this study, five different procedures / formulas are used in determining the presence of a specific learning disability.

Another example of differing eligibility among states was found in the age range for the compulsory provision of services for special education. Nationally, the age span included for special education service provision ranges from birth through 25 years.

Table 15
State Rules for Identifying Specific Learning Disabilities

State	Criterion
California	1.5 Standard Deviations
Florida	1.0 Standard Deviation: Ages 7 - 10 1.5 Standard Deviations: Ages 11+
Illinois	No Formula; M-Team decision
New York	50% (IQ x years in school x .5)
Ohio	2.0+ Standard Deviations
Pennsylvania	No Formula; M-Team decision

Within this study, California, New York, Ohio, and Pennsylvania all include ages 3 - 21 years inclusive. Florida uses a 3 -18 year old span. Illinois offers services from 3 - 20 years (Digest of Education Statistics, 1995 - Table 148).

Identification of Students with Disabilities: State Practices

In order to maintain consistency, the identification practices of each state were explored in terms of federally identified categories. Other categories employed by the states, such as gifted and developmentally delayed, were either included within the federally identified categories or excluded totally.

Tables 16 and 17 show the state identification frequencies reported by state to Congress in terms of the twelve federal categories of disabilities. Data are presented in frequency counts and percentages to provide a complete portrayal of state identification practices. This table also includes the national averages reported of the occurrence of these disabilities. Using national means as anchors, the variability among states in identification rates was examined.

Table 16
Frequencies of Special Education Population Identified under I.D.E.A. (ages 6 - 21) by Category of Disability 1992-1993

	All Disabilities	Autism	Deaf-Blind	Hearing Impairment	Mental Retardation	Multiple Disabilities	Orthopedic Impairment	Other Health Impairment	Serious Emotional Disturbance	Specific Learning Disability	Speech or Language Impairment	Traumatic Brain Injury	Visual Impairment
California	462,886	1,605	116	6,863	25,757	5,271	8,427	10,761	14,163	283,717	102,956	213	3,037
Florida	237,287	582	14	847	24,437	0	3,321	1,737	27,382	111,032	67,274	0	751
Illinois	178,422	5	6	1,057	12,262	0	938	971	12,390	98,347	51,573	5	688
New York	285,836	1,648	37	2,756	15,939	10,432	1,707	3,667	41,062	178,110	29,419	41	1,018
Ohio	195,757	22	8	2,085	43,509	6,212	2,134	2,087	9,703	77,854	51,288	23	832
Pennsylvania	171,207	346	3	2,021	24,303	519	1,154	89	14,535	83,618	43,246	356	1,017
United States	4,442,283	12,222	736	43,607	483,710	85,916	46,443	63,876	368,028	2,328,183	988,572	2,891	18,099

*Child Count Numbers provided by U.S. Department of Education (1994) Sixteenth Annual Report to Congress

Table 17
Percentages of Special Education Population Identified under I.D.E.A. (ages 6 - 21) by Category of Disability 1992-1993

	All Disabilities	Autism	Deaf-Blind	Hearing Impairment	Mental Retardation	Multiple Disabilities	Orthopedic Impairment	Other Health Impairment	Serious Emotional Disturbance	Specific Learning Disability	Speech or Language Impairment	Traumatic Brain Injury	Visual Impairment
California	100.00	0.35	0.001	1.48	5.56	1.14	1.82	2.32	3.06	61.29	22.24	0.005	0.66
Florida	100.00	0.25	0.010	0.36	10.30	0.00	1.40	0.73	11.54	46.79	28.35	0.000	0.32
Illinois	100.00	0.00	0.003	0.59	6.87	0.00	0.53	0.54	6.94	55.12	28.91	0.003	0.39
New York	100.00	0.58	0.013	1.96	5.58	3.65	0.60	1.28	14.37	62.31	10.29	0.014	0.36
Ohio	100.00	0.01	0.004	1.07	22.23	3.17	1.09	1.07	4.96	39.77	26.20	0.012	0.43
Pennsylvania	100.00	0.20	0.002	1.18	14.20	0.30	0.67	0.05	8.49	48.84	25.26	0.208	0.59
United States	100.00	0.26	0.017	2.11	10.89	1.93	1.05	1.44	8.29	52.41	22.25	0.065	0.47

*Child Count Numbers provided by U.S. Department of Education (1994) Sixteenth Annual Report to Congress

In examining the raw count figures (Table 16), differences emerged which could not readily be explained. For example, the number of children eligible under the category of autism was nearly identical in the states of California (1,605) and New York (1,648). Given the assumption that disabilities occur in proportionate amounts among states, this finding is puzzling due to great dissimilarity in state special education enrollments (California: 462,886 & New York: 285,836).

In the category of mental retardation, Ohio, ranking fourth in population size, ranked first in the frequency of the disorder - nearly double the occurrence of mental retardation in California. Pennsylvania identified only 89 students as other health impaired as compared to 10,761 in California. The other states averaged an identification rate of approximately 2,250. In the category of serious emotional disturbance, New York led all other states by a large margin, identifying 41,062 students as eligible. California identified only 14,163 students - ranking fourth among all states. New York displayed the lowest level of students identified as speech or language impaired (29,419). Compare this identification rate to that of California (102,956). The other states averaged approximately 52,500. Finally, traumatic brain injury, exhibited very small identification rates, less than 50 in most states (0, 5, 41, & 23). Surprisingly, Pennsylvania (356) and California (213) deviated from the pattern.

In examining the percentages of the special education population identified within the federally recognized categories (Table 17), state

identification rates varied in excess of 5.00% of the national average in four categories. Pennsylvania alone nearly mirrored the national averages in identification rates, falling consistently within 5.00%.

In the category of mental retardation, the national average was 10.89% of the special education population. California (5.56%) and New York (5.58%) both under-identified these students in excess of 5.00% while Ohio (22.23%) more than doubled the national rate. The national average of students identified as seriously emotionally disturbed was 8.29%. In this category, California (3.06%) under-identified students while New York (14.37%) over-identified students. The category of specific learning disability demonstrated tremendous discrepancies. The national average of identification was 52.41%. Four of the six states within this study varied from this average in excess of 5.00%. Florida (46.79%) and Ohio (39.77%) under-identified students. California (61.29%) and New York (62.31%) both over-identified students. The category of speech or language impairment also demonstrated discrepancies from the national average of 22.25%. New York under-identified students (10.29%) in excess of 10.00%. Florida (28.35%) and Illinois (28.91%) over-identified students.

A summary of the findings regarding these four categories is found in Table 18. New York, experiencing the highest rate of due process litigation in the country, was involved in all four of these categories. Pennsylvania, also a high due process state, was totally exempted. Among low due process states, California appeared three times, while Ohio and Florida each appeared twice.

Table 18
State Comparisons to National Average in High Incidence Disabilities

Disability	National Average	+5.00%	-5.00%
Mental Retardation	10.89%	Ohio	California New York
Serious Emotional Disturbance	8.29%	New York	California
Specific Learning Disability	52.41%	California New York	Florida Ohio
Speech/Language Impairment	22.25%	Florida	New York Illinois

Table 19 displays the range of identification percentages in each of the thirteen federal categories among the six states studied. The three identification categories which differed greater than 10% among all states included serious emotional disturbance (11.31%), speech or language impairment (18.62%), specific learning disability (22.54%), and mental retardation (16.67%). All other categories varied less than 4.00%.

Procedural Safeguards

The Individuals with Disabilities Education Act provides procedural safeguards in the areas of access to student records, assignment of surrogate parents, provision of written prior notice, and in the opportunity to present complaints regarding the identification, evaluation, placement, or provision of a free appropriate public education to the student. The specific procedural safeguard to be examined in this section involves the final mechanism for

Table 19
Identification Ranges among States (Percentage)

Disability	Low	Low State	High	High State	Range
Autism	0.00	IL	0.58	NY	0.574
Deaf-Blindness	0.001	CA	0.013	NY	0.012
Hearing Impairment	0.36	FL	1.48	CA	1.12
Mental Retardation	5.56	CA	22.23	OH	16.67
Multiple Disabilities	0.00	FL, IL	3.65	NY	3.65
Orthopedic Impairment	0.53	IL	1.82	CA	1.29
Other Health Impaired	0.05	PA	2.32	CA	2.27
Serious Emotional Disturbance	3.06	CA	14.37	NY	11.31
Specific Learning Disability	39.77	OH	62.31	NY	22.54
Speech or Language Impairment	10.29	NY	28.91	IL	18.62
Traumatic Brain Injury	0.000	FL	0.208	PA	0.208
Visual Impairment	0.32	FL	0.66	CA	0.34

complaint resolution between the parents and the schools: the impartial due process hearing. Selected procedural requirements of the hearing process are explored including hearing officer qualifications, reasons allowed for the initiation of due process, parental rights, allowable time lines, and consideration for time and place of the hearing. The study also examines the tier systems chosen by the individual states and the use of mediation. An overview of the elements of procedural safeguards, according to the individual states included in this study, are found in Table 20.

Table 20
Summary of Variations in Due Process Hearing Procedures

	Number of Tiers	Mediation Available?	Hearing Officer Qualifications	Reasons Allowed for Initiation of Due Process	Rights Presented to Parents	Time lines for Hearings	Consideration for Time & Place of Hearings
Federal	open	Mentioned in Note to Federal Policy Only	Focus on avoiding a conflict of interest (300.507)	Initiate, Change or Refusal to initiate or change identification, evaluation, educational placement, or provision of FAPE (300.504)	1) Accompanied / advised by counsel; 2) present evidence and confront, cross-examine, and compel attendance of witnesses; 3) prohibit the introduction of evidence undisclosed at least 5 days prior to the hearing; 4) obtain written /electronic verbatim record of hearing; 5) obtain written findings of fact and decisions (1415(d)	Decision must be presented 45 Days from receipt of hearing request; hearing officer has the right to extend the Time lines (300.512)	Reasonably convenient to the parents and the child involved (300.512(d))
California	1	Voluntary	...knowledgeable in the laws governing special education and administrative hearings....	Add: when parents refuse to consent to initial evaluation	Federal	Federal; Add: any extension shall extend the time for rendering the final administrative decision for a period only equal to the length of the extension (56505(l))	Reasonably convenient to parent and pupil (56502)
Florida	1	voluntary	Division of Administrative Hearings	Federal	Federal	45 Days - no extensions indicated	Reasonably convenient to the parent and student involved
Illinois	2	Voluntary	Federal; Add: Acquire training provided through the State Board of Education	Mandatory when parents refuse to consent to initial evaluation	Federal	15 days - conduct hearing after appointment of hearing officer; decision within 10 days of hearing; process no longer than 45 days; extension available	Convenient to both parties
New York	2	Voluntary	Certification required by the Commissioner of Education - must complete State sponsored training course	Federal; Add: Mandatory when consent for initial evaluation refused; when parents request an independent educational evaluation & the school believes their evaluation is correct; when parent refused consent for initial placement	Federal; Add: hearing officer may appoint a guardian ad litem;	School aged: 45 days from receipt of request; Preschool: 30 days from receipt of request; extension available	Convenient to parents and student
Ohio	2	Recommended	Attorneys; must complete training prescribed by Ohio Department of Ed.	Federal	Federal; Add: be informed on how to appeal decisions	Federal	Reasonably convenient to parent and child involved
Pennsylvania	2 (appeal to panel of hearing officers)	"Pre-hearing conference" available; voluntary mediation	Federal	Federal	Federal	30 - hearing held; 45 days - decision; No extensions indicated	Reasonably convenient to parents- specify may be held in evening

Procedural Safeguards: State Policy

The states exhibited general consistency with federal policy in approaching due process hearing procedures. However, differences which may appear to have minimal significance could definitely impact the hearing process.

Hearing Officer Qualifications

All states require hearing officers to complete various levels of training sponsored by the State Departments, and several states require certification. The greatest difference in hearing officer qualifications is found in Ohio. In addition to completing required training prescribed by the Ohio Department of Education, hearing officers are required to be licensed attorneys. All other states in this study begin with "lay persons" - usually familiar with special education - and teach them the substance of the law. Ohio begins with attorneys familiar with the law and teaches them the substance of special education. However, it should be noted that whereas the other states within this study do not require a law degree, they also do not prohibit attorneys from practicing as hearing officers.

Reasons Allowed for the Initiation of Due Process

Due process hearings may be initiated whenever a public agency "(1) proposes to initiate or change the identification, evaluation, educational placement of the child the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of FAPE to the child (300.504)." Three states (Fl, Oh, & Pa) mirrored these federal standards. Three states (Ca, Il, & NY) added that due

process would be initiated if a parent refused to consent to an initial evaluation. In addition to this condition, New York also added that due process would be initiated by the school system whenever a parent requested an independent educational evaluation and the school system believed their evaluation was accurate, and when a parent refused to consent to an initial placement. These elements may be technically viewed as clarification of the federal law rather than actually exceeding federal requirements.

Rights Presented to Parents

The federal law requires that parental rights be communicated prior to any meeting or action which proposes to change - or refuses to change - the identification, evaluation, educational placement, or provision of FAPE for any child. The content of the rights presented to the parents are notably similar among the states. Differences in parental rights are found in New York, which added that the hearing officer may appoint a guardian ad litem, and in Ohio, which mandated that the parents be informed as to how to appeal decisions. Other states may practice in similar fashions, but the actual rights presented to the parents do not contain these elements.

Time Lines for Hearings

The federal law states that a decision in a due process hearing must be presented within 45 days from the receipt of the hearing request. The statute adds that the hearing officer has the right to extend the time lines at the request of either party (300.512). Among the states included in this study, only Ohio

mirrored the federal rules. Florida matched federal regulations, but did not mention the availability of an extension of the time lines. California also matched the federal rules, but placed limits on the amount of time permitted in an extension. Pennsylvania and Illinois adhered to the 45 day rule, but fragmented the process. In Pennsylvania, the hearing must be conducted within 30 days and the decision rendered in 45 days. Illinois requires that the hearing be conducted within 15 days of the appointment of a hearing officer, that the decision be rendered within 10 days of the hearing, and that the process be completed within 45 days (extensions available). New York differentiates hearing time lines according to the age of the child. A due process hearing for a preschool child must be completed within 30 days of the receipt of the request. A hearing for school-aged children must be completed within 45 days (extensions available).

Consideration for Time and Place of Hearings

I.D.E.A. states that the time and place for a hearing must be "...reasonably convenient to the parents and the child involved... (300.512(d))." Only two states altered this procedural safeguard to a degree worthy of comment. Pennsylvania clarified the state interpretation of the intent of this right by specifying that a hearing may be held in the evening. Illinois deviated from the other states in stating that the hearing be conducted at a time and place reasonably convenient to both parties. None of the other states within this study provided latitude for the convenience of system employees. All other states duplicated requirements of the federal law.

Tier Systems

The I.D.E.A. does not dictate the number of tiers to be used in due process procedures. This decision is made solely at the discretion of the states. Across the nation, the number of states choosing one- or two- tiered systems is evenly split (Robinett, 1993). In a two-tiered system, the initial due process hearing is conducted at the local system level allowing for an appeal or review at the State Education Agency (SEA). In the one-tiered system, one hearing is conducted directly by the state or via contractual arrangement. Appeals of decisions in the single-tiered system must be directed to the courts. However, the court system may ultimately be used for appeal regardless of the type of tier system employed by the state.

Within the context of this study, the type of tiered systems employed by the states was split as may be seen in Table 21: two states (California and Florida) opted for single-tiered systems, while four states (New York, Illinois, Pennsylvania, and Ohio) employed two-tiered systems. Pennsylvania created a

Table 21
Tier Systems by State

State	Number of Tiers
California	1 tier
Florida	1 tier
Illinois	2 tiers
New York	2 tiers
Ohio	2 tiers
Pennsylvania	2 tiers

panel of three appellate hearing officers to hear appeals at the second tier, a process totally unique to the state.

Mediation

The mediation process is mentioned only as a "Note" in section 300.506 of the federal law and is discussed solely in the context of the success some states have experienced using its use. Mediation is an informal process offered after a complaint is filed but prior to a formal due process hearing. The purpose of mediation is to explore avenues for the resolution of conflict usually without the involvement of attorneys or the formality of the due process hearing. The mediation procedure is conducted by a mediator trained by the State department and costs considerably less than an actual hearing. The director of the Texas Education Agency reported that a single hearing costs approximately $60,000 for a school district, while mediation costs the state approximately $1,000 and is free to the parents and the school district. The report ascertained that mediation had saved the state an estimated five million dollars from 1992-1994 (Ahearn, 1994).

In examining the states involved in this study, California, Illinois, and Ohio initiated mediation procedures between 1980 - 1985. Pennsylvania and New York established mediation between 1986 and 1990, and Florida instituted procedures between 1990 - 1994. Therefore, at the time of this study, all states had established mediation procedures as a part of their state plans. Table 22 compares the number of mediations held, the number of hearings requested, and the number of hearings conducted, by state, in 1993. Prior to 1992, data on

Table 22
Mediations and Hearings by State, 1993

State	Hearings Requested	Mediations Conducted	Hearings Conducted
California	849	793	58
Florida	31	4	17
Illinois	393	132	105
New York	609	12	609
Ohio	51	26	10
Pennsylvania	213	55	78

mediation were not consistently collected for the states resulting in a limited database for effectively evaluating the performance of the mediation process.

If a correlation exists between mediation and low due process hearing frequencies, California (low due process), would appear to have used mediation effectively. However, Illinois (high due process), actively employed mediation, but still engaged in high levels of due process hearings. As can be noted, many hearing requests were dropped without employing mediation. To date, the impact of mediation on the frequency of due process hearings has not been established.

RESEARCH QUESTION 2 : WHAT ARE THE DIFFERENCES AMONG THE STATE CULTURES OF THE SELECTED STATES?

Cultural factors included in this study were chosen as a part of commonly perceived explanations of factors that influenced whether state residents and schools chose to initiate due process litigation to resolve conflicts. Factors included: population, socio-economics, education, and "litigiousness.

Population

Residential Area Inhabited

One commonly voiced belief regarding litigation is that people residing in urban areas more readily turn to the courts for conflict resolution. Given this perception, the study of cultural factors included an examination of the residential area inhabited. The majority of the population of the states included in this study inhabited urban areas. As can be seen in Table 23, California had the largest percentage of the population in urban areas (92.65%). Florida, Illinois, and New York were nearly identical with percentages of 84.79%, 84.59%, & 84.29%, respectively. In Ohio, 74.11% of the population lived in urban areas, and in Pennsylvania, 68.94%. The range among the states varied from 92.65% (California) to 68.94% (Pennsylvania), a difference of 23.71%. In considering the six states, an average of approximately 81% of the populace resided in the urban areas while 19% preferred the outer regions of the state.

Table 23
Residential Area Inhabited (Percentage)

State	Urban	Rural
California	92.65	7.35
Florida	84.79	15.21
Illinois	84.59	15.41
New York	84.29	15.71
Ohio	74.11	25.89
Pennsylvania	68.94	31.06
Ranges:		
Urban: 92.65 - 68.94	Rural: 31.06 - 7.35	

Gender

Gender differences in population among the states appeared to be negligible, as may be seen in Table 24. California was evenly split at 50.00% male and 50.01% female. Florida, Illinois, and Ohio exhibited gender rates within 1.00% of each other (male: 48.35%, 48.53%, & 48.12%, respectively). Pennsylvania and New York were also similar with male percentages of 47.92% and 47.89% and female percentages of 52.08% & 52.11%. The greatest range between the percentage of males and females was 4.23%, found in New York. Overall, the states ranged from 47.89% (New York) to 50.01% (California) males and 50.00% (California) to 52.11% (New York) females. Among the six states, the male population averaged 48.47%. The mean of the slightly larger female population among these six states was 51.52%.

Table 24
Gender Differences Among States (Percentage)

State	Male	Female
California	50.01	50.00
Florida	48.35	51.65
Illinois	48.53	51.47
New York	47.89	52.11
Ohio	48.12	51.82
Pennsylvania	47.92	52.08
Ranges:		
Male: 50.01 - 47-89	Female: 52.11 - 50.00	

Ethnicity

The populations of each of the states were predominantly Caucasian, as may be seen in Table 25. Florida, Ohio, and Pennsylvania exhibited Caucasian populations of 83.13%, 87.81%, & 88.57%, respectively. Illinois and New York demonstrated higher levels of diversity with Caucasian populations of 78.37% & 74.47%. California demonstrated the greatest level of ethnic diversity with 69.07% of the inhabitants being Caucasian. As can be seen in the table, the Caucasian population ranged from a low of 69.07% (California) to a high of 88.57% (Pennsylvania), a difference of 19.50%. Caucasian residents averaged 80.24% of the populations while the mean of other ethnic groups was 19.77%.

Primary Language Spoken

Among all states, "English Only" families prevailed within the population, as depicted in Table 26. Ohio exhibited the largest percentage of "English Only" families (87.74%) closely followed by Pennsylvania (86.51%). Illinois, Florida,

Table 25
Ethnicity Among States (Percentage)

State	Caucasian	Other Ethnic Groups
California	69.07	30.93
Florida	83.13	16.87
Illinois	78.37	21.63
New York	74.47	25.53
Ohio	87.81	12.19
Pennsylvania	88.57	11.44
Ranges:		
Caucasian: 88.57 - 69.07	**Other Ethnic Groups: 30.93 - 11.44**	

Table 26
Primary Language Preferences Among States (Percentage)

State	"English Only"	Other Languages
California	63.05	36.95
Florida	77.27	22.73
Illinois	79.50	20.51
New York	71.34	28.66
Ohio	87.74	12.26
Pennsylvania	86.51	13.49
Ranges:		
English Only: 86.51 - 63.05	**Other Languages: 36.95 - 12.26**	

and New York all demonstrated "English Only" percentages in the seventies (79.50%, 77.27% & 71.34%, respectively). California, with the highest level of ethnic diversity, also demonstrated the lowest level of "English Only" families with 63.05%. The range of "English Only" families varied from 63.05% (California) to 87.74% (Ohio), a difference of 24.69%. Collectively, the percentage of the states' "English Only" population averaged 77.57%, while the percentage of those speaking other languages averaged 22.43%.

Family Types

Family types were examined in terms of married couple, male householder, and female householder (See Table 27). In all states, the number of married couples predominated other family types. Pennsylvania displayed the largest percentage of married couples at 80.71%. California, Illinois, and Ohio exhibited similar percentages (78.04%, 78.24%, & 78.65%, respectively).

Table 27
Family Types Among States (Percentage)

State	Married Couple	Male Householder	Female Householder
California	78.04	4.77	17.19
Florida	75.49	4.25	20.26
Illinois	78.24	3.11	18.65
New York	74.89	3.40	21.71
Ohio	78.65	3.02	18.34
Pennsylvania	80.71	3.09	16.20
Ranges:			
Married Couple:	**80.71 - 74.89**		
Male Householder:	**4.77 - 3.02**		
Female Householder:	**21.71 - 16.20**		

Married couples in Florida comprised 75.49% of the population, while New York housed 74.89%, the lowest percentage of married couples among the states. The differences between states in the category of male householders were less than 2.00% with California demonstrating the largest group at 4.77% and Ohio displaying the smallest (3.02%). In the realm of female householders, New York had the largest percentage (21.71%) closely followed by Florida (20.26%). Illinois (18.65%) was very similar to Ohio (18.34%). The percentage of female householders in California was 17.19%, nearly 1.00% higher than Pennsylvania at 16.20%.

Among the six states, the percentage of married couples ranged from 74.89% (New York) to 80.71% (Pennsylvania), a difference of 5.82%. Male householders were consistently the smallest group followed by the female householder group approximately six times larger. Married couples represented

an average of 77.67% of the population, male householders represented 3.61%, and female householders,18.73%.

Socio-Economic Variables

The socio-economic state variables were examined within the context of families rather than per capita, to emphasize the economic conditions of school-aged children. Family income frequencies were divided into six categories: less than $10,000; less than $25,000, less than $50,000; less than $75,000; less than $100,000; and $100,000 and greater. Further, median family incomes, disposable personal incomes, and the poverty status of children were studied. Finally, the unemployment rate and numbers of social security and public aid recipients were reviewed.

Family Income

The family income of the majority of the state populations averaged between $10,000 and $74,999. The percentage of the state populations within these income categories also exhibited the greatest differences (See Table 28). In all six states, the greatest percent of the population fell in the <$50,000 range.

California demonstrated both the greatest percent of the population within higher income levels and the lowest percent within the lowest level. Illinois displayed a similar pattern. In general, the income patterns of the states did not vary markedly from each other. However, within several categories, one state

Table 28

Population Frequencies in Income Categories Among States (Percentage)

	<$10,000	<$25,000	<$50,000	<$75,000	<$100,000	≥$100,000
California	7.69%	20.41%	33.45%	21.03%	8.99%	8.43%
Florida	9.00%	27.33%	37.93%	15.78%	5.10%	4.85%
Illinois	8.54%	20.01%	37.40%	20.75%	7.13%	6.16%
New York	9.67%	19.54%	33.53%	20.30%	8.61%	8.36%
Ohio	9.68%	23.59%	40.05%	17.87%	5.07%	3.74%
Pennsylvania	8.22%	24.05%	39.92%	17.70%	5.52%	4.58%

would generate a percentage not aligned with the others. This pattern was not attributable to any given state or income category. Among all states examined, the differences in the percentages of the state population falling within any given income category ranged from 1.99% to 7.79%, both of these spans were found on the lower end of income categories (See Table 29).

Median Family Income

The highest level of median family income was found in California at $40,559, followed closely by New York ($39,741) and Illinois ($38,664). The

Table 29

Ranges in Income Frequencies Among States (Percentage)

Income Category	Low	High	Range
< $10,000	7.69	9.68	1.99
$10,000 -	19.54	27.33	7.79
$25,000 -	33.45	40.05	6.60
$50,000 -	15.78	21.03	5.25
$75,000 -	5.07	8.99	3.92
≥ $100,000	3.74	8.43	4.69

median family incomes of Pennsylvania ($34,856) and Ohio ($34,351) were very similar followed by Florida ($32,212), which exhibited the lowest level of the six states (See Table 30). The range between the highest and lowest levels of median family income was $8,347 with a mean among states studied of $36,731.

Disposable Personal Income

Table 31 shows the disposable personal income among the states studied. Although California exhibited the highest median family income among the states, the state ranked third in disposable personal income ($18,997). New York displayed the highest level ($20,948) followed by Illinois ($19,648). California ($18,997), Florida ($18,531), and Pennsylvania ($18,632) all fell within the $18,000 range. Ohio exhibited the lowest level at $17,180. The range between the highest and lowest levels of disposable personal income was $2,417. The mean disposable income among states was $18,989.

Table 30
Median Family Income Among the States

State	Median Family Income
California	**$40,559**
Florida	**$32,212**
Illinois	**$38,664**
New York	**$39,741**
Ohio	**$34,351**
Pennsylvania	**$34,856**
Range: $40,559 - $32,212	

Table 31
Disposable Personal Income Levels Among States

State	Disposable Personal Income
California	$18,997
Florida	$18,531
Illinois	$19,648
New York	$20,948
Ohio	$17,180
Pennsylvania	$18,632
Range: $20,948 - $17,180	

Poverty Status of Children

Pennsylvania (84.31%) demonstrated the highest percentage of children living above the poverty level. However, the percentages of children living above the poverty level in all six states were similar: Illinois (82.98%), Ohio (82.17%), California (81.75%), Florida (81.31%), and New York (80.88%) (See Table 32). The percentage of children under 18 years of age above the established poverty

Table 32
Poverty Status of Children Among States (Percentage)

State	Above Poverty Status	Below Poverty Status
California	81.75	18.25
Florida	81.31	18.69
Illinois	82.96	17.04
New York	80.88	19.12
Ohio	82.17	17.83
Pennsylvania	84.31	15.69
Ranges:		
Above Poverty Status: 84.31 - 80.88		
Below Poverty Status: 19.12 - 15.69		

level varied from a low of 80.88% to 84.31%, which yielded a range of 3.43%. Interestingly, the states displaying a high percentage of residents in higher income brackets, such as California, did not necessarily correlate to lower percentages of children in poverty.

Unemployment Rate

California demonstrated the largest rate of unemployment at 9.20%. New York demonstrated the next highest rate at 7.70%, followed closely by Illinois at 7.40%. Florida and Pennsylvania both exhibited rates of 7.00%, while Ohio demonstrated the lowest rate of 6.50% (See Table 33). Unemployment rates varied from a low of 6.50% in Ohio to a high of 9.20% found in California, which yielded a range of 2.70%. The average unemployment rate of the populations studied was 7.47%.

Table 33
Unemployment Rates Among States

State	Unemployment Rate
California	9.20%
Florida	7.00%
Illinois	7.40%
New York	7.70%
Ohio	6.50%
Pennsylvania	7.00%
Range: 9.20 - 6.50	

Social Security

Florida displayed the highest percentage of social security recipients at 23.06%, as might be expected in a major retirement location. This rate was so much higher than the other states, it should be considered an outlier. Among the remaining states, Ohio (17.64%) displayed the highest rate, closely followed by New York (16.52%) and Illinois (16.00%). Lower percentages of social security recipients were registered by California (13.39%) and Pennsylvania (11.21%)(See Table 34). The range of recipients by state varied from a low of 11.21% to a high of 23.06%, yielding a range of 11.85%. The mean percentage of recipients among the six states was 16.30% (14.95% without Florida).

Public Aid Recipients

California (10.70%) exhibited the highest percentage of public aid recipients, followed by New York (9.00%), Ohio (8.70%), and Illinois (7.90%). Lower rates were displayed by Pennsylvania (6.90%) and Florida (6.80%). The

Table 34
Social Security Recipients Among States

State	Social Security Recipients
California	13.39%
Florida	23.06%
Illinois	16.00%
New York	16.52%
Ohio	17.64%
Pennsylvania	11.21%
Range: 23.06 - 11.21	

range among recipients of public aid was 3.90%, from the highest level of 10.70% to the lowest level of 6.80%. The mean percentage of public aid recipients among the states was 8.33% (See Table 35).

Educational Variables

Educational variables were examined within two frameworks. The first area involved the educational attainment of the adult population (25 years and older), i.e. the most likely group to initiate due process proceedings. Educational attainment frequencies were subdivided into seven levels of achievement: less than 9th grade; 9th - 12th grade - no diploma; high school graduate (or equivalent); some college (no degree); associate's degree; bachelor's degree; and graduate/professional degree. The second area examined the percentage of students included in special education.

Table 35
Public Aid Recipients Among States

State	Public Aid Recipients
California	10.70%
Florida	6.80%
Illinois	7.90%
New York	9.00%
Ohio	8.70%
Pennsylvania	6.90%
Range: 10.70% - 6.80%	

Adult Population: Educational Attainment

The educational attainments among states are presented in Table 36 (percentages) and Table 37 (raw data). The highest percentages of the state populations earned a high school diploma or equivalent. The exception to this rule was found in California with a slightly higher percentage of the population attending some college (22.29% & 22.60%). The second highest group of state percentages was found in the attainment of some college, the sole exception being in Pennsylvania (12.93%) which displayed a higher percentage of the population in 9^{th} - 12^{th} grade achievement with no diploma (15.92%). As expected, the next group sequentially listed was 9^{th} - 12^{th} grade attendance with no diploma. However, California and Illinois were exceptions to the rule with higher percentages found in the Bachelor's degree category. In general, the next largest group of percentages was in the bachelor's degree category followed by < 9^{th} grade. The lowest percentage of the population was found in the graduate/professional degree and associate's degree groups.

The greatest range of educational attainment was found in the percentage of high school graduates (California: 22.29%; Pennsylvania: 38.55%; Range: 16.26) and in the percentage of those with some college experience without earning a degree (Pennsylvania: 12.93%; California: 22.60%; Range: 9.67) (See Table 38). Across the categories, California exhibited the greatest percentage of the population attaining higher levels of education in three of four post-high school categories. Interestingly, California also displayed the highest percentage

Table 36
Educational Attainment (Percentages) Among States

	Population: 25 years & over	< 9 th grade	9th - 12th grade No Diploma	H.S. Graduate (Includes Equiv.)	Some College (No degree)	Associate's Degree	Bachelor's Degree	Graduate/Prof. Degree
California	100.00%	11.16%	12.65%	22.29%	22.60%	7.94%	15.29%	8.07%
Florida	100.00%	9.48%	16.07%	30.15%	19.39%	6.63%	11.96%	6.32%
Illinois	100.00%	10.30%	13.50%	29.99%	19.39%	5.78%	13.57%	7.47%
New York	100.00%	10.16%	15.03%	29.49%	15.66%	6.52%	13.21%	9.92%
Ohio	100.00%	7.90%	16.43%	36.33%	17.03%	5.33%	11.09%	5.88%
Pennsylvania	100.00%	9.41%	15.92%	38.55%	12.93%	5.24%	11.31%	6.63%

Table 37
Educational Attainment (Raw Data) Among States

	Population: 25 years & over	< 9th grade	9th - 12th grade No Diploma	H.S. Graduate (Includes Equiv.)	Some College (No degree)	Associate's Degree	Bachelor's Degree	Graduate/Prof. Degree
California	18,695,499	2,085,905	2,364,623	4,167,897	4,225,911	1,484,489	2,858,107	1,508,567
Florida	8,887,168	842,811	1,428,263	2,679,285	1,723,385	589,019	1,062,649	561,756
Illinois	7,293,930	750,932	984,857	2,187,342	1,414,555	421,248	989,808	545,188
New York	11,818,569	1,200,827	1,776,777	3,485,686	1,851,182	770,268	1,561,719	1,172,110
Ohio	6,924,764	546,954	1,137,934	2,515,987	1,179,409	369,144	767,845	407,491
Pennsylvania	7,872,932	741,167	1,253,111	3,035,080	1,017,897	412,931	890,660	522,066

Table 38
Educational Attainment Ranges Among States (Percentage)

Educational Attainment	Low	High	Range
< 9th grade	7.90	11.16	3.26
9th - 12th (no diploma)	12.65	16.43	3.78
High School graduate	22.29	38.55	16.26
Some College (no degree)	12.93	22.60	9.67
Associate's Degree	5.24	7.94	2.70
Bachelor's Degree	11.09	15.29	4.20
Graduate/Professional Degree	5.88	9.92	4.04

of the population attaining less than a 9th grade education. Conversely, Pennsylvania exhibited both the highest rate of high school graduates and the lowest rate of attainment in two of four post high school education categories.

Student Populations

Illinois (13.83%) demonstrated the highest percentage of special education enrollment closely followed by Florida (13.30%). Three states enrolled students in the 12% range (New York: 12.59%; Ohio: 12.18%; & Pennsylvania: 12.21%).The lowest enrollment percentage was found in California at 9.88% (See Table 39). The states exhibited identification rates from 9.88% to 13.93%, yielding a range of 4.05 and an average rate of12.33%.

Litigiousness

Within the context of this study, litigiousness indicates the willingness of the populace to resolve differences through the utilization of the courts. Elements

Table 39
Special Education Enrollment Among States

State	Special Education Enrollment
California	9.88%
Florida	13.30%
Illinois	13.83%
New York	12.59%
Ohio	12.18%
Pennsylvania	12.21%
Range: 13.83% - 9.88%	

examined included: the number of attorneys licensed to practice in the state, the number of private civil cases terminated, the number of Social Security recipients appealing benefit determinations, and the number of due process hearings terminated. The purpose of examining "litigiousness" was to establish whether state residents demonstrated propensities for the utilization of attorneys and/or the courts to resolve disputes in areas other than special education.

Practicing Attorneys

Some practitioners theorize that the number of attorneys licensed to practice in a state virtually predetermines the amount of litigation that will occur. It has been countered that the amount of potential litigation in a state attracts a proportionate number of attorneys. A causal relationship between attorneys and the level of litigation has not been established. However, within the confines of this study, the number of licensed attorneys per state will be examined as potentially impacting variations in the frequencies of due process hearings.

As can be seen in Table 40, the state population was divided by the number of attorneys licensed to practice yielding a ratio for consideration. The highest ratio in this study is found in Illinois (.0062), which is closely followed by New York (.0061). The lower percentages of Florida (.0049), Pennsylvania (.0045), and California (.0042) are closely clustered. Finally, Ohio (.00034) registered the lowest ratio of attorneys / population. The ratio among the six states varied from .0061 - .00 34, yielding a range of .0034. Restated, the ratio of practicing attorneys to state citizenry varied from 1:161 (Illinois) to 1:293 (Ohio).

Civil Cases

The number of civil cases per state reflected a frequency count of the number of cases terminated during the twelve month period between October 1, 1993, and September 30, 1994. This process correlated to the reporting of due process hearings which are calculated by the number of cases finalized within a

Table 40
Practicing Attorneys Among States

State	Population	Licensed Attorneys	Ratio (Attorney:Pop.)
California	29,760,021	123,714	0.0042
Florida	12,937,926	63,563	0.0049
Illinois	11,430,602	71,186	0.0062
New York	17,990,455	109,589	0.0061
Ohio	10,847,115	37,062	0.0034
Pennsylvania	11,881,185	53,064	0.0045
Range: .0062 - .0034			

given calendar year. These numbers were divided by the state's population yielding the percentage of the population initiating civil action.

Pennsylvania (.098%) displayed the largest percentage of the population involved in private civil cases. New York and Illinois also displayed high percentages among the states, .089% & .078%, respectively. Florida displayed a rate of .065%, followed by California (.052%). Ohio (.046%) exhibited the lowest rate (See Table 41). The percentage of the state's population initiating civil cases ranged from a high of 0.098% to a low of 0.046%: a difference of 0.052%. The average percentage of state populations involved in private civil cases was .071%. Although the numbers were minute due to the enormity of state populations, the emerging differences were notable.

Social Security Appeals

The Social Security system embraces a system of appeal which is somewhat similar to due process in special education. The total number of social

Table 41
Private Civil Cases Terminated Among States

State	State Population	Private Civil Cases Terminated	Percent of Population Involved
California	29,760,021	15,431	0.052
Florida	12,937,926	8,377	0.065
Illinois	11,430,602	8,903	0.078
New York	17,990,455	15,973	0.089
Ohio	10,847,115	4,994	0.046
Pennsylvania	11,881,185	11,654	0.098
Range: 0.046% - 0.098%			

security recipients was obtained for the 1995 fiscal year. This number was divided by the total dispositions of social security appeals from December 30, 1995 - December 27, 1996. In this manner, the percent of social security recipients initiating appeals could reasonably be compared to the number of special education students initiating due process hearings.

New York (1.42%) demonstrated the largest percentage of the social security population initiating appeals, very closely followed by California (1.40%). Illinois (1.28%) was closely matched by Pennsylvania (1.25%), and closely followed by Florida (1.18%). The state with the lowest percentage of social security appeals was Ohio (.95%)(See Table 42).

The percentage of the population eligible for social security benefits was correlated to the percent of the population eligible for special education services. The result was a correlation of 0.9210. However, when the percentage of the social security population initiating appeals was correlated to the percentage of

Table 42
Social Security Appeals Among States

State	Social Security Recipients	Social Security Appeals Filed (1995)	Percent of Recipients Filing Appeals
California	3,984,000	55,733	1.40
Florida	2,984,000	35,315	1.18
Illinois	1,829,000	23,408	1.28
New York	2,972,000	42,055	1.42
Ohio	1,913,000	18,233	0.95
Pennsylvania	2,332,000	29,185	1.25
Range: 1.42% - 0.95%			

the special education population initiating due process hearings, the result dropped to 0.3639.

Due Process Litigation

Special Education enrollments in each state were divided by the number of due process hearings in order to determine the percentage of the special education population involved in due process litigation. New York displayed the largest percentage of the special education population involved in due process litigation with a percentage of 0.181%. Given the minute sizes of the percentages, the percentages of the other states included in this study were much smaller. Illinois (0.042%) was followed by Pennsylvania (0.037%). The remaining states displayed very small percentages: California (0.011%); Ohio (0.011%); and Florida (0.006%)(See Table 43).

Table 43
Special Education Population Involved in Due Process Litigation

State	Special Education Enrollment	Due Process Hearings Terminated (1993)	Percent of Special Education Population
California	513,757	58	0.011
Florida	263,592	17	0.006
Illinois	250,955	105	0.042
New York	336,051	609	0.181
Ohio	176,861	19	0.011
Pennsylvania	209,578	78	0.037
Range: 0.006% - 0.181%			

The percentages of the special education population initiating due process litigation ranged from 0.181% to 0.006%, yielding a difference of 0.175%. Logically, the high due process states consistently exhibited higher percentages of due process litigation. However, this information was necessary to provide a basis for comparisons in research question three and to correlate the impact of variations in state plans and cultural elements on the frequency of due process hearings.

RESEARCH QUESTION 3: WHAT ARE THE DIFFERENCES/SIMILARITIES BETWEEN COMPREHENSIVE STATE PLANS AND STATE CULTURES AND THE FREQUENCY OF DUE PROCESS HEARINGS BETWEEN PAIRED STATES?

A thorough examination of the elements of the state comprehensive plans and cultural elements was presented in response to research questions 1 and 2. The purpose of the following section is to compare and contrast these elements within the context of paired states. The states comprising the three pairs (high due process state listed first) were as follows: New York/California, Illinois/Florida, and Pennsylvania/Ohio. Comprehensive state plans were examined both in terms of state policies and in terms of actual practices. Cultural factors were analyzed in numerical terms to determine if differences existed between the states comprising the pair. Numerical differences in excess of 5% were considered to be noteworthy.

Comprehensive State Plans and Practices

Least Restrictive Environment: State Policy

In comparing the state policies of New York and California, similarities were found in the general mirroring of the federal law. Beyond I.D.E.A. mandates, the two states added mandatory caseload maximums for the various placement options. However, the states differed in several areas of the comprehensive plan. California focused heavily on required teacher training and regular education experience prior to entering the special education field. New York focused predominantly on the "management needs" of the students and options of service. These areas were presented with elaborate detail within the comprehensive plan.

The state plans of Florida and Illinois differed extensively. Florida's plan clarified very little beyond the wording of the federal law, but presented directives exceeding the federal law in the continuum of placements and "varying exceptionalities." Within these categories, Florida did not delineate specific requirements for maximum class size, allowable age ranges within a class or allowable age groupings. Conversely, Illinois' plan presented specifics in all of the above categories. In addition, the plan focused heavily on the curriculum to be provided within the realm of special education.

Ohio and Pennsylvania both presented extensive clarification of the procedures to be followed to address the needs of students with disabilities. Ohio presented requirements for pupil-teacher ratio, teacher qualifications,

teacher responsibilities, and, usually, permissible age ranges, for each option of service provided. In a similar fashion, Pennsylvania also elaborated on options of service. However, Pennsylvania offered programs far exceeding those of Ohio and well beyond the requirements of I.D.E.A. For example, the plan specifically allowed schools to develop programs to provide educational services for the "gifted," life support skills, emotional support, and several other purposes.

Least Restrictive Environment: State Practice

The placement practices of the states varied in excess of 5.00% in the use of four placement options: regular classroom, resource room, separate class, and public separate facility (See Table 44). In examining paired states, California and New York exhibited variations in excess of 5.00% in three placement categories: regular classroom (26.62%), separate classroom

Table 44
Placement Practices by Paired States (Percentage)

Paired States	Regular Classroom	Resource Room	Separate Class	Public Separate Facility
California (Low)	50.85	22.79	23.17	0.94
New York (High)	24.23	26.74	37.67	7.95
Difference	***26.62***	***3.95***	***14.50***	***7.01***
Florida (Low)	43.37	24.59	27.46	3.62
Illinois (High)	25.18	36.55	30.90	3.38
Difference	***18.19***	***11.96***	***3.44***	***0.24***
Ohio (Low)	34.72	37.33	15.86	4.41
Pennsylvania (High)	37.02	28.20	29.52	2.61
Difference	***2.30***	***9.13***	***13.66***	***1.80***

(14.50%), and public residential facility (7.01%). Florida and Illinois markedly differed in two placement options: regular classroom (18.19%) and resource room (11.96%). Ohio and Pennsylvania also differed in two categories: resource room (9.13%) and separate classroom (13.66%). These noteworthy differences indicated that the states provide special education services in markedly different manners. Controversies between the parents and the schools surrounding placement decisions are one of the contested areas which frequently lead to due process litigation (Alexander, 1992). Given the variance between the states, it may be assumed that the state plans allow tremendous latitude in the use of placement options, which may be related to the frequencies in due process litigation.

Identification: State Policy

Each state is required annually to report to Congress the frequency of a federally defined list of disability categories. However, in actual practice, state plans vary considerably both in the specifics of eligibility for a given category and in the naming and recognition of a disability category.

Between paired states, New York and California closely mirrored the federal law. New York added only the recognition of an established medical disability to the federal categories.

Florida and Illinois deviated significantly in categories of eligibility. Florida renamed five categories recognized by the federal law and added the

classifications of gifted, hospital/homebound, and developmentally delayed. Illinois renamed four federal categories, omitted/collapsed three identification categories, and added developmental delay.

Ohio and Pennsylvania also deviated from federal designations. Ohio renamed five categories and omitted/collapsed two federal categories. Pennsylvania renamed six federal categories, omitted/collapsed one category, and added developmentally delayed and gifted.

Tremendous differences were found in the identification of students with specific learning disabilities. For this reason, paired state requirements for eligibility in this category were analyzed. The formulas for California and New York differed: California based eligibility on the discrepancy formula using 1.5 standard deviations, while New York used an expectancy formula involving IQ and years in school. Florida used a discrepancy formula which varied according to the age of the child, while Illinois allowed the multi disciplinary team to determine eligibility, designating no state formula at all. Ohio and Pennsylvania also varied: Ohio used a discrepancy formula of 2.0 standard deviations, while Pennsylvania did not specify a procedure, which allowed the multi-disciplinary team to determine eligibility.

Identification: State Practice

In comparing the practices of paired states, California and New York exhibited differences in excess of 5.00% in the categories of serious emotional

disturbance and speech or language impairment. Florida and Illinois differed in the percentage of the special education population identified as having specific learning disabilities. Ohio and Pennsylvania varied in identification rates in the categories of mental retardation and specific learning disabilities. Interestingly, the three sets of paired states did not consistently differ in excess of 5.00% in the same category of identification. Two of the three pairs varied in the identification of specific learning disabilities. Other variances were interspersed among four categories (See Table 45).

Procedural Safeguards: State Policy

Paired states exhibited several differences in the area of procedural safeguards. New York and California varied in the number of tiers available

Table 45
Identification Practices by Paired States (Percentage)

Paired States	Mental Retardation	Serious Emotional Disturbance	Specific Learning Disability	Speech or Language Impairment
California (Low)	5.56	3.06	61.29	22.24
New York (High)	5.58	14.37	62.31	10.29
Difference	***0.02***	***11.31***	***1.02***	***11.95***
Florida (Low)	10.30	11.54	46.79	28.35
Illinois (High)	6.87	6.94	55.12	28.91
Difference	***3.43***	***4.60***	***8.33***	***0.56***
Ohio (Low)	22.23	4.96	39.77	26.20
Pennsylvania (High)	14.20	8.49	48.84	25.26
Difference	***8.03***	***3.53***	***9.07***	***0.94***

*Child Count Numbers provided by U.S. Department of Education (1994) Sixteenth Annual Report to Congress

(CA: 1; NY: 2), in the requirements for hearing officers (CA"...knowledgeable in the laws..."; NY: certification required), and in allowable time lines for hearings (CA: federal plus limited extension, NY: 45 days (no extensions), preschool: 30 days). The states both provided mediation as an option, similar rights for parents, comparable considerations for the time and place of the hearing, and both states added refusal of parental consent for an initial evaluation to the list of reasons allowed for the initiation of due process. An overview of the procedural safeguards provided by the paired states may be seen in Table 46.

Florida and Illinois also varied in the number of tiers available in due process (FL: 1; IL:2). Additionally, they varied in hearing officers qualifications (FL: Certified by the Division of Administrative Hearings, IL: training through State Board), the reasons allowed for the initiation of due process (FL: federal, IL: Federal plus mandatory when the parent refuses initial evaluation), and in the allowable time lines for hearing (FL: 45 days - no extensions, IL: 45 days - additional time lines for the completion of portions of the process (15 and 10 day requirements)). Commonalities included the availability of mediation, the rights presented to the parents, and the consideration of the time and place of the hearing.

Finally, Ohio and Pennsylvania differed in hearing officer requirements (OH: attorneys only, PA: federal), rights presented to parents (OH: federal plus access to educational records and appeal process, PA: federal plus access to educational records), allowable time lines for hearings (OH: 45 days - extensions

Table 46
Procedural Safeguards by Paired States

State	Number of Tiers	Mediation Available?	Hearing Officer Qualifications	Reasons allowed for Initiation of Due Process	Rights Presented to Parents	Allowable Time lines for Hearing	Consideration for Time & Place of Hearing
California (Low)	1	Voluntary	...knowledgeable in the laws governing special education and administrative hearings....	Add: when parents refuse to consent to initial evaluation	Federal	Federal; Add: any extension shall extend the time for rendering the final administrative decision for a period only equal to the length of the extension (56505(l))	Reasonably convenient to parent and pupil (56502)
New York (High)	2	Voluntary	Certification required by the Commissioner of Education - must complete State sponsored training course	Federal; Add: Mandatory when consent for initial evaluation refused; when parents request an independent educational evaluation & the school believes their evaluation is correct; when parent refused consent for initial placement	Federal; Add: hearing officer may appoint a guardian ad litem;	School aged: 45 days from receipt of request; Preschool: 30 days from receipt of request; extension available	Convenient to parents and student
Florida (Low)	1	voluntary	Division of Administrative Hearings	Federal	Federal	45 Days - no extensions indicated	Reasonably convenient to the parent and student involved
Illinois (High)	2	Voluntary	Federal; Add: Acquire training provided through the State Board of Education	Mandatory when parents refuse to consent to initial evaluation	Federal	15 days - conduct hearing after appointment of hearing officer; decision within 10 days of hearing; process no longer than 45 days; extension available	Convenient to both parties
Ohio (Low)	2	Recommended	Attorneys; must complete training prescribed by Ohio Department of Ed.	Federal	Federal; Add: have access to educational records; be informed on how to appeal decisions	45 days; extensions available	Reasonably convenient to parent and child involved
Pennsylvania (High)	2 (appeal to panel of 3 appellate hearing officers)	"Pre-hearing conference" conducted unless parent waives right; voluntary mediation	Federal	Federal	Federal; Add: have access to educational records	30 - hearing held; 45 days - decision; No extensions indicated	Reasonably convenient to parents- specify may be held in evening

available, PA: hearing in 30 days, decision in 45 days, no extension indicated), and in consideration for time and place of hearing (OH: federal, PA: federal plus specifies may be held in the evening). This pair of states displayed commonalities in the number of tiers (2), the availability of mediation, and in reasons allowed for the initiation of a hearing (federal).

Procedural Safeguards: State Practice

An examination of practices involved in procedural safeguards was limited to the use of mediation. All other areas were considered as aspects of implemented state policies. In the actual use of mediation, California conducted 781 more mediations than New York. The number of hearings requested was substantially less for both states (240), and the number of hearings conducted totally reversed the findings in the use of mediation, California with a lower frequency of 58 while New York reported 609. Florida conducted a minimal number of mediations (4) while Illinois was actively involved in the process (132). Illinois also dominated Florida in the number of hearings requested (393 to 31) and in the number of hearings conducted (105 to 17).

Finally, Ohio and Pennsylvania demonstrated minimal variation in the actual number of mediations conducted (26 & 55). However, they varied in the number of hearings requested (51 & 213) and the actual number of hearings conducted (10 & 78) (See Table 47).

Table 47
Mediations, Hearings, and Requests by Paired States

Paired States	Mediations Conducted	Hearings Requested	Hearings Conducted
California (Low)	793	849	58
New York (High)	12	609	609
Difference	***781***	***240***	***551***
Florida (Low)	4	31	17
Illinois (High)	132	393	105
Difference	***128***	***362***	***88***
Ohio (Low)	26	51	10
Pennsylvania (High)	55	213	78
Difference	***29***	***162***	***68***

Cultural Factors

The cultural factors examined were population, socio-economic, educational attainment, and litigiousness. The factors were examined within the context of paired states. Numerous variations between states contained within the pairs were discovered. However, only those elements of the culture which exhibited differences in excess of 5.00% were considered worthy of discussion.

Population

The population category was subdivided into several groupings, including residential area inhabited, gender, ethnicity, primary language spoken, and family type. These elements were not intended to be exhaustive, but were considered to comprise a reasonable starting point in examining the potential cultural influences on the frequency of due process litigation within the states.

Residential Area

The majority of residents in each of the six states studied lived in the urban areas of the state. In analyzing paired states, the data were examined to determine whether a substantially higher percentage of the population of high or low due process states resided in urban or rural areas. Table 48 shows that in each pair, larger percentages of the residents of lower due process states resided in urban areas. However, the percentage of urban/rural differences between paired states varied from as little as .20% (Florida/Illinois) to 8.36% (California/New York). Ohio and Pennsylvania demonstrated a contrast of 5.17%. Among the pairs, California documented the largest percentage of persons inhabiting urban areas while Pennsylvania exhibited the lowest percentage of urbanites.

Gender

In considering paired states, gender differences were again examined as to whether consistent differences existed between states assigned to the pairs.

Table 48
Residential Preferences by Paired States (Percentage)

Paired States	Urban	Rural	Difference
California (Low)	92.65	7.35	
New York (High)	84.29	15.71	**8.36**
Florida (Low)	84.79	15.21	
Illinois (High)	84.59	15.41	**0.20**
Ohio (Low)	74.11	25.89	
Pennsylvania (High)	68.94	31.06	**5.17**

As seen in Table 49, larger percentages of males and/or females were not consistently found in either the high or low due process state included in the pair. The greatest difference was found between California and New York (2.12%). Other paired states varied less than 1.00%.

Ethnicity

Table 50 depicts the differences in diversity which ranged from a low of 0.76% (Ohio / Pennsylvania) to 5.40% (California / New York). The difference between Florida and Illinois was slightly below California/New York at 4.76%.

Table 49
Gender Differences by Paired States (Percentage)

Paired States	Male	Female	Difference
California (Low)	50.01	49.99	
New York (High)	47.89	52.11	**2.12**
Florida (Low)	48.35	51.65	
Illinois (High)	48.53	51.47	**0.18**
Ohio (Low)	48.18	51.82	
Pennsylvania (High)	47.92	52.08	**0.26**

Table 50
Ethnicity by Paired States (Percentage)

Paired States	Caucasian	Other Ethnic Groups	Difference
California (Low)	69.07	30.93	
New York (High)	74.47	25.53	**5.40**
Florida (Low)	83.13	16.87	
Illinois (High)	78.37	21.63	**4.76**
Ohio (Low)	87.81	12.19	
Pennsylvania (High)	88.57	11.43	**0.76**

The pairs did not consistently exhibit higher percentages of diverse ethnicity in the high or low due process states.

Language Preferences: Paired States

In comparing language preferences, no pattern was found between paired states in regard to the higher percentage of "English only" / Other language families. The greatest difference was found between CA/NY (8.29%). Other paired states varied less than 2.50% : FL/IL (2.23%) and OH/PA (1.23%)(See Table 51).

Family Types

Table 52 indicates that the greatest difference in family types was found in the percentage of female householders in the California/New York pair (4.52%). The married couple status within this pair varied 3.15%. Three other groupings varied between 2.00% and 3.00% (FL/IL: married, OH/PA: married, & OH/PA: female) and three fell between 1.00% and 2.00 % (CA/NY: male; FL/IL: male & female); A final group exhibited a difference of 0.07% (PA/OH: male).

Table 51
Language Preferences by Paired States (Percentage)

Paired States	"English Only"	Other Languages	Difference
California (Low)	63.05	36.95	
New York (High)	71.34	28.66	**8.29**
Florida (Low)	77.27	22.73	
Illinois (High)	79.50	20.50	**2.23**
Ohio (Low)	87.74	12.26	
Pennsylvania (High)	86.51	13.49	**1.23**

Table 52
Family Types by Paired States (Percentage)

Paired States	Married Couple	Male Householder	Female Householder
California (Low)	78.04	4.77	17.19
New York (High)	74.89	3.40	21.71
Difference	***3.15***	***1.37***	***4.52***
Florida (Low)	75.49	4.25	20.26
Illinois (High)	78.24	3.11	18.65
Difference	***2.75***	***1.14***	***1.61***
Ohio (Low)	78.65	3.02	18.34
Pennsylvania (High)	80.71	3.09	16.20
Difference	***2.06***	***0.07***	***2.14***

The high degree of similarity among family types indicates minimal differences between states comprising the pairs.

Socio-Economic Variables

Socio-economic factors were examined between paired states in order to determine whether these variables were in some manner related to the frequency of due process litigation. The categories explored included family income frequencies (also divided into sub-categories), median family income, disposable family income, poverty status of school aged children, rate of unemployment, social security recipients, and public aid recipients.

Family Income Frequencies

Family income frequencies were subdivided into six categories ranging from less than $10,000 annually to greater than $100,000 (See Table 53). The

Table 53
Income Categories by Paired States (Percentage)

Paired States	<$10,000	<$25,000	<$50,000	<$75,000	<$100,000	≥$100,000
California (Low)	7.69	20.41	33.45	21.03	8.99	8.43
New York (High)	9.67	19.54	33.53	20.30	8.61	8.36
Difference	***1.98***	***0.87***	***0.08***	***0.73***	***0.38***	***0.07***
Florida (Low)	9.00	27.33	37.93	15.78	5.10	4.85
Illinois (High)	8.54	20.01	37.40	20.75	7.13	6.16
Difference	***0.46***	***7.32***	***0.53***	***4.97***	***2.03***	***1.31***
Ohio (Low)	9.68	23.59	40.05	17.87	5.07	3.74
Pennsylvania (High)	8.22	24.05	39.92	17.70	5.52	4.58
Difference	***1.46***	***0.46***	***0.13***	***0.17***	***0.45***	***0.84***

paired states were analyzed for differences in the frequencies of state residents falling into the various categories. Between New York and California, the differences were minimal ranging from 0.07% (≥$100,000) to 1.98% (<$10,000). In the Florida / Illinois grouping, variations ranged from 0.46% (<$10,000) to 7.32% (<$25,000). This particular pair demonstrated the largest overall differences in income categories including variations of 4.97% (<$75,000) and 2.03% (<$100,000). Differences in the Ohio/ Pennsylvania pair ranged from 0.13 (<$50,000) to 1.46% (<$10,000).

Among paired states, higher levels of variation were dispersed throughout the income categories, i.e., Ca/NY: <$10,000; Fl/Ill: <$25,000; <$75,000; <$100,000; and Oh/Pa: <$10,000. The only income category with more than one pair exhibiting a notable difference was <$10,000. Even in this case, the difference was considerably lower than 5.00%. The only category of the entire

table exhibiting greater than 5.00% was <$75,000 and that difference existed only in one pair. Due to the lack of consistency between states within the pairs, income patterns could not be verified as impacting the frequency of litigation.

Median Family Income

The median family income varied in excess of $6,000 between Florida and Illinois ($6,452). California/New York varied by $818 and Ohio/Pennsylvania differed by $505. The differences calculated in both of these pairs were less than $1000. The higher income level was not consistently found in either the high or low due process states comprising the pairs (See Table 54).

Disposable Personal Income

Disposable personal income refers to earnings available after fixed expenses have been paid. Within the pairs, the high due process states consistently exhibited higher levels of disposable personal income. Specifically, differences between the states that comprised the pairs were as follows: NY/CA:

Table 54
Median Family Income by Paired States

Paired States	Median Family Income	Difference
California (Low)	$40,559	
New York (High)	$39,741	**$818**
Florida (Low)	$32,212	
Illinois (High)	$38,664	**$6,452**
Ohio (Low)	$34,351	
Pennsylvania (High)	$34,856	**$505**

$1,951; FL/IL: $1,117; and OH/PA: $1,452. As can be seen in Table 55, the differences in the amounts of disposable personal income among all paired states were consistently under $2,000.

Poverty Status of Children

Between the paired states, the greatest degree of poverty among children under eighteen years of age was not consistently found in either the high or low due process states (See Table 56). The differences among the percentages of children in poverty ranged from a high of 2.14% (OH/PA) to a low of 0.87% (CA./NY). FL/IL yielded a difference of 1.65%.

Table 55
Disposable Personal Income by Paired States

Paired States	Disposable Personal Income	Difference
California (Low)	$18,997	
New York (High)	$20,948	**$1,951**
Florida (Low)	$18,531	
Illinois (High)	$19,648	**$1,117**
Ohio (Low)	$17,180	
Pennsylvania (High)	$18,632	**$1,452**

Table 56
Poverty Status of Children by Paired States (Percentage)

Paired States	Below Poverty Status	Difference
California (Low)	18.25	
New York (High)	19.12	**0.87**
Florida (Low)	18.69	
Illinois (High)	17.04	**1.65**
Ohio (Low)	17.83	
Pennsylvania (High)	15.69	**2.14**

Unemployment Rates

The unemployment rates between paired states varied from a high of 1.50% (California/New York) to a low of 0.40%(Florida/Illinois). Ohio/Pennsylvania exhibited a difference in the unemployment rate of 0.50%. Unemployment rates were not consistently higher or lower in either of the high/low states assigned to the pair (See Table 57).

Social Security Recipients

The percent of the state populations receiving Social Security benefits ranged from a high of 7.06% (Florida/Illinois) to a low of 3.13% (California/New York)(See Table 58). Ohio and Pennsylvania yielded a difference of 6.43%. The higher percentage of social security recipients was again not consistently found in either the high or low due process states contained in the pair.

Table 57
Unemployment Rates by Paired States (Percentage)

Paired States	Unemployment Rate	Difference
California (Low)	9.20	
New York (High)	7.70	**1.50**
Florida (Low)	7.00	
Illinois (High)	7.40	**0.40**
Ohio (Low)	6.50	
Pennsylvania (High)	7.00	**0.50**

Table 58
Social Security Recipients by Paired States (Percentage)

Paired States	Social Security Recipients	Difference
California (Low)	13.39	
New York (High)	16.52	**3.13**
Florida (Low)	23.06	
Illinois (High)	16.00	**7.06**
Ohio (Low)	17.64	
Pennsylvania (High)	11.21	**6.43**

Public Aid Recipients

The state percentages of public aid recipients comprised the final element of socio-economic factors examined. Within the paired states, the percentage of the state populations that received public assistance exhibited minimal differences. All paired states varied less than 2.00% as can be seen in Table 59: California/New York: 1.70%; Florida/Illinois: 1.10%; and Ohio/Pennsylvania: 1.80%. The difference between the highest and lowest levels of variation

Table 59
Public Aid Recipients by Paired States (Percentage)

Paired States	Public Aid Recipients	Difference
California (Low)	10.70	
New York (High)	9.00	**1.70**
Florida (Low)	6.80	
Illinois (High)	7.90	**1.10**
Ohio (Low)	8.70	
Pennsylvania (High)	6.90	**1.80**

between paired states was 0.70%. The higher levels of public aid recipients were not consistently found in either the high or low due process state contained within the pair.

Educational Variables

Educational variables were examined within two contexts. The first area involved the educational attainment of the adult population (25 years and older), i.e. the most likely group to initiate due process proceedings. Educational attainment frequencies were subdivided into seven levels of achievement: less than 9th grade; 9th - 12th grade - no diploma; high school graduate (or equivalent); some college (no degree); associate's degree; bachelor's degree; and graduate/professional degree. The second area involved student populations as to the number of students involved in special education. These variables were first examined between states assigned to pairs. This analysis was followed by an evaluation of high and low due process groups.

Adult Educational Attainment

Educational attainment was examined within seven categories which resulted in distribution ranges seen in Table 60. An analysis of paired states rendered only one difference in excess of 5.00%. That difference was found in the California/New York pairing in the category of some college (no degree) with a variation of 6.94%. Interestingly, a difference of 4.10% (Ohio/Pennsylvania)

Table 60
Educational Attainment by Paired States

Paired States	<9th grade	9th - 12th (no diploma)	High School Graduate	Some College (no degree)	Associate's Degree	Bachelor's Degree	Graduate/ Professional Degree
California (Low)	11.1	12.65	22.29	22.60	7.94	15.29	8.07
New York (High)	10.1	15.03	24.49	15.66	6.52	13.21	9.92
Difference	***1.00***	***2.38***	***2.20***	***6.94***	***1.42***	***2.08***	***1.85***
Florida (Low)	9.48	16.07	30.15	19.39	6.63	11.96	6.32
Illinois (High)	10.3	13.50	29.99	19.39	5.78	13.57	7.47
Difference	***0.82***	***2.57***	***0.16***	***0.00***	***0.85***	***1.61***	***1.15***
Ohio (Low)	7.90	16.43	36.33	17.03	5.33	11.09	5.88
Pennsylvania (High)	9.41	15.92	38.55	12.93	5.24	11.31	6.63
Difference	***1.51***	***0.51***	***2.22***	***4.10***	***0.07***	***0.22***	***0.75***

was found in the same category. This difference ranked second in magnitude on the table. All other differences were less than 3.00%.

In analyzing paired states, no consistent patterns of educational attainment were found between high and low components of the pairs. Only in the category of associate's degree were the low due process frequency states consistently higher than their counterparts. Again, in this instance, the range was less than 2%. A determination of which state exhibited higher levels of education proved to be very difficult because of the range of educational achievement. For example, California was approximately 2% higher than New York in the attainment of bachelor's degrees. However, New York was approximately 2% higher than California in the attainment of graduate and/or professional credentials.

Student Populations

In examining paired states, New York, Illinois, and Pennsylvania (high due process states) exceeded the identification rates of their counterparts. However, Illinois surpassed Florida by less than 1.00% (.53%) and Pennsylvania surpassed Ohio by only .03%. New York surpassed California by the greatest margin of 2.71%. These differences between high and low due process states appeared to be negligible (See Table 61).

Litigiousness

The following sections will examine paired states within the context of "litigiousness." This concept will examine four factors related to conflict resolution involving the legal system: practicing attorneys, civil cases, social security appeals and due process litigation.

Table 61
Special Education Enrollment by Paired States (Percentage)

Paired States	Special Education Enrollment	Difference
California (Low)	9.88	
New York (High)	12.59	**2.71**
Florida (Low)	13.30	
Illinois (High)	13.83	**0.53**
Ohio (Low)	12.18	
Pennsylvania (High)	12.21	**0.03**

Practicing Attorneys

Paired states were examined in terms of the accessibility of attorneys to the state population. Between pairs, the low due process frequency states consistently retained fewer attorneys licensed to practice than their counterparts, with the greatest difference displayed between California (.0042) and New York (.0061), yielding a difference of .0019 (See Table 62). Other pairs demonstrated variances of .0013 (Florida/Illinois) and .0011 (Ohio/ Pennsylvania). Although the high due process states consistently demonstrated higher levels of accessibility to attorneys, the differences appeared to be minimal.

Civil Cases

In examining paired states, the percentage of residents initiating civil action in low due process states was consistently lower than their high due process counterparts. However, the differences were minute, ranging from .013% (Florida / Illinois) to .052% (Ohio/Pennsylvania). The variance

Table 62
Practicing Attorneys by Paired States

Paired States	Population	Licensed Attorneys	Ratio (Attorney: Pop.)	Difference
California (Low)	29,760,021	123,714	0.0042	
New York (High)	17,990,455	109,589	0.0061	**0.0019**
Florida (Low)	12,937,926	63,563	0.0049	
Illinois (High)	11,430,602	71,186	0.0062	**0.0013**
Ohio (Low)	10,847,115	37,062	0.0034	
Pennsylvania (High)	11,881,185	53,064	0.0045	**0.0011**

between California and New York was in the median range at .037%. Interestingly, the actual number of civil cases terminated in the two states were nearly identical (Ca: 15,431 & NY: 15,973) in spite of a difference of nearly twelve million people in the state populations. Florida and Illinois demonstrated similar numbers of civil cases, however, the population differed by only 1.5 million (See Table 63).

Social Security Appeals

The number of social security appeals was divided by the number of social security recipients to yield a percentage of the number of social security recipients involved in the appeal process. Between paired states, California/New York demonstrated the smallest difference of social security recipients initiating appeals (.02%). Ohio/Pennsylvania demonstrated the largest difference (.30%), while Florida and Illinois demonstrated a variance of .10%. The high due process states in the pairs consistently exhibited greater percentages of social security

Table 63
Civil Cases by Paired States

Paired States	State Population	Private Civil Cases Terminated	Percent of Population Involved	Difference (Percent)
California (Low)	29,760,021	15,431	0.052	
New York (High)	17,990,455	15,973	0.089	**0.037**
Florida (Low)	12,937,926	8,377	0.065	
Illinois (High)	11,430,602	8,903	0.078	**0.013**
Ohio (Low)	10,847,115	4,994	0.046	
Pennsylvania (High)	11,881,185	11,654	0.098	**0.052**

recipients initiating appeals, although the difference between the high due process state and counterpart was relatively small (See Table 64).

Due Process Litigation

The number of due process hearings were compared to the number of students enrolled in special education to determine the percentage of the special education population involved in due process litigation. The differences between paired states regarding the percentage of the special education population initiating due process litigation varied from 0.036% (Ohio / Pennsylvania) to .170% (California / New York)(See Table 65). Similar to Ohio/Pennsylvania, the percentage of the special education initiating due process in Florida/Illinois was within the lower range at .036%. Logically, the high due process states manifested larger percentages involved in litigation than their counterparts. However, an examination of these percentages was important to enable research to be conducted in comparison to other groups such as the percentage

Table 64
Social Security Appeals by Paired States

Paired States	Social Security Recipients	Social Security Appeals Filed (1995)	Percent of Recipients Involved	Difference (Percent)
California (Low)	3,984,000	55,733	1.40	
New York (High)	2,972,000	42,055	1.42	**0.02**
Florida (Low)	2,984,000	35,315	1.18	
Illinois (High)	1,829,000	23,408	1.28	**0.10**
Ohio (Low)	1,913,000	18,233	0.95	
Pennsylvania (High)	2,332,000	29,185	1.25	**0.30**

Table 65
% Special Ed. Population Involved in Due Process Hearings by Paired States

Paired States	Special Education Enrollment	Due Process Hearings Terminated (1993)	Percent of Special Education Population Involved	Difference
California (Low)	513,757	58	0.011	
New York (High)	336,051	609	0.181	0.170
Florida (Low)	263,592	17	0.006	
Illinois (High)	250,955	105	0.042	0.036
Ohio (Low)	176,861	19	0.011	
Pennsylvania (High)	209,578	78	0.037	0.026

of the population involved in social security appeals or the percentage of the population involved in private civil cases. Due to large populations and comparatively small numbers of due process hearings, the differences between states appeared to be small, but may proportionately be noteworthy.

RESEARCH QUESTION 4: WHAT FACTORS EMERGE IN TERMS OF COMPREHENSIVE STATE PLANS AND IN TERMS OF CULTURAL ELEMENTS WHICH DIFFERENTIATE BETWEEN HIGH AND LOW DUE PROCESS FREQUENCY STATES?

Three factors emerged which consistently distinguished the high due process states of New York, Illinois, and Pennsylvania, from the low due process states of California, Florida, and Ohio: 1) comprehensive state plans and state practices regarding least restrictive environment; 2) identification policies concerning students with learning disabilities; and 3) factors comprising the "litigiousness" of the state (ratio of attorneys licensed to practice, private civil cases terminated, and percentage of social security appeals).

Least Restrictive Environment: Comprehensive State Plans

Generally speaking, state policies of the high due process states were more comprehensive and specific than the low due process states. For example, high due process states elaborated on curriculum and program options, specified maximum class sizes, and two of the three states based programing on the "levels of intervention required," or the "management needs" of the student. The high due process states provided high levels of detail and specific requirements in the clarification and interpretation of I.D.E.A. as evidenced in the comprehensive state plans.

The plans of the low due process states were less comprehensive in their approach to service provision. Ohio, alone, specified precise requirements in the provision of service options, including permissible age ranges and pupil-teacher ratios. California joined Ohio in outlining teacher requirements and qualifications and presented maximum caseload limits, but provided little detail in the area of curriculum or options of service. Outside of the specifications of the federal law, Florida's plan lacked further detail or clarification in student programming, teacher requirements, or maximum class sizes. As a group, the low due process states allowed a greater portion of the particulars of the operation of special education programs to be determined at the local level.

Least Restrictive Environment: State Practices

In order to appropriately analyze state practices in the interpretation of least restrictive environment, it is important to consider the full range of

placement options to establish a state's pattern of restrictiveness. Considering the use of a given placement option in isolation would provide an incomplete picture and lead to inaccurate generalizations.

In the previous examination of paired states, four placement options varied in excess of 5%. In order of restrictiveness, those placement options were: regular classroom, resource room, separate class, and public separate facility. However, only in the separate classroom option did the entire group display percentages higher or lower than their counterparts. In this particular instance, the low due process states consistently used the separate classroom option less frequently than the high due process states. Remarkably, two of the three pairs demonstrated differences in excess of 13%. However, the essence of the differences between the high and low due process groups in placement practices extends beyond this particular option.

The regular education classroom and the resource option are the two least restrictive placements in which a student may receive special education services. Table 66 demonstrates the distinct preference of the low due process states for providing special education services in less restrictive options than the high due process states. In fact, the average placement of the low due process states in less restrictive environments differed in excess of 11% of the high due process states (High: 71.2%, Low: 59.3%). This preference may very likely be related to the variations in the frequency of due process litigation among the states.

Table 66
Placement Preferences by High/Low Due Process States

	Regular Education & Resource Placements	More Restrictive Placements
High Due Process		
New York	50.97	49.03
Illinois	61.73	38.27
Pennsylvania	65.22	34.88
Average	***59.31***	***40.73***
Low Due Process		
California	73.64	26.36
Florida	67.96	32.04
Ohio	72.05	27.95
Average	***71.22***	***28.78***

Specific Learning Disabilities: State Policies

High and low due process groups differed in eligibility requirements for specific learning disabilities. The high due process states afforded the IEP-Teams considerable control in the determination of specific learning disabilities. New York alone established an expectancy formula, based on IQ and years in school, while the policies of the remaining two states established that eligibility for learning disabilities would be determined solely by the M-Team. All low due process states utilized a regression formula based on IQ and achievement. In fact, with the exception of young children in Florida, all three states required a discrepancy of greater than one standard deviation (the majority of states utilizing a regression formula require only one standard deviation). Although the

number of students identified with specific learning disabilities were not factors that distinguished high and low due process states, the procedures used in making those determinations clearly differed.

Litigiousness

Practicing Attorneys

New York, Illinois and Pennsylvania consistently demonstrated higher ratios of licensed attorneys / population than their low due process counterparts (See Table 67). Due to the large numbers involved in state populations, the ratios were relatively small numbers, but consistently demonstrated differences. The ranges between the ratios of the high and low due process groups (.0045 - .0062 & .0034 -.0049) displayed strong variation, but were not totally exclusive. Within the context of the figures, the averages of the high and low due process groups displayed a distinct difference of .0014. In considering all of the elements examined pertaining to the proportion of practicing attorneys per state, the ratio of licensed attorneys was consistently larger in high due process states and may be related to variations in the frequency of due process hearings.

Civil Cases

An analysis of the data consistently demonstrated that the states participating in high levels of due process litigation also participated in higher levels of private civil cases than did the low due process states (See Table 68).

Table 67
Ratio of Practicing Attorneys by High/Low Due Process States

State	Population	Licensed Attorneys	Ratio (Attorney/Pop)
High Due Process			
New York	17,990,455	109,589	0.0061
Illinois	11,430,602	71,186	0.0062
Pennsylvania	11,881,185	53,604	0.0045
Average			***0.0056***
Low Due Process			
California	29,760,021	123,714	0.0042
Florida	12,937,926	63,563	0.0049
Ohio	10,847,115	37,062	0.0034
Average			***0.0042***
Ranges			
High D.P. Disposable Income:	.0045 - .0062		
Low D.P. Disposable Income	.0034 - .0049		

Table 68
Private Civil Cases by High/Low Due Process States

State	State Population	Private Civil Cases Terminated	Percent of Population Involved
High Due Process			
New York	17,990,455	15,973	0.088
Illinois	11,430,602	8,903	0.077
Pennsylvania	11,881,185	11,654	0.098
Average			***0.087***
Low Due Process			
California	29,760,021	15,431	0.051
Florida	12,937,926	8,377	0.065
Ohio	10,847,115	4,994	0.046
Average			***0.054***
Ranges			
High Due Process:	.077- .098		
Low Due Process:	.046- .065		

The high due process group varied from 0.077% to 0.098%, while the low due process states ranged from 0.046% to 0.065%. These ranges demonstrated no overlap and exhibited a consistent and noteworthy relationship between civil cases and the frequency of due process litigation. The average percentage of the population involved in civil cases was considerably higher in the high due process group than in the low group (.087% & .054%).The statistics of each individual state also supported a possible relationship between private civil cases terminated and due process litigation.

Social Security Appeals

The percentage of social security recipients filing an appeal was consistently higher in high due process states than in low due process states. The numbers were again minute due to the massive state populations, but consistently demonstrated a distinguishable difference between the groups (See Table 69). Although overlap was seen in the range of percentages between the groups, only the larger states of New York and California demonstrated similar percentages. Consistently, all high due process states displayed a higher percentage of social security appeals than their counterparts. This finding further supports the existence of a relationship between the litigiousness of a state and the frequency of due process hearings.

Table 69
Social Security Appeals by High/Low Due Process States

	Social Security Recipients	Social Security Appeals Filed (1995)	Percent of Recipients Involved
High Due Process			
New York	2,972,000	42,055	1.42
Illinois	1,829,000	23,408	1.28
Pennsylvania	2,332,000	29,185	1.25
Average			***1.32***
Low Due Process			
California	3,984,000	55,733	1.40
Florida	1,913,000	18,233	0.95
Ohio	2,984,000	35,315	1.18
Average			***1.17***
Ranges			
High Due Process:	**1.25% - 1.42%**		
Low Due Process:	**0.95% - 1.40%**		

Chapter 5

Summary, Conclusions, and Recommendations

The intent of the Individuals with Disabilities Education Act of 1975 was to expand educational opportunities for students with disabilities in the public schools through providing financial support to the states in exchange for legislative compliance. Each state was required to develop a comprehensive state plan detailing policies and procedures to ensure compliance with federal mandates, including the provision of due process hearings as a part of required procedural safeguards available to parents of students with disabilities and the schools. Due process hearings are costly, both in financial terms and in terms of parent/school relationships, and the frequency of these hearings varies unexplainably among states. The purpose of this study was to determine whether various components of the comprehensive state plans and/or cultural factors are related to the frequency of due process hearings.

Using a descriptive, exploratory research design to enhance the likelihood of identifying factors potentially related to the frequency of due process hearings, the study examined the comprehensive state plans and associated practices, and selected cultural elements of six carefully paired states. Four research questions guided the study:

1. What are the differences/similarities among state interpretations of I.D.E.A. as evidenced in the comprehensive state plans?

2. What are the differences among the state cultures of the selected states?

3. What are the differences/similarities between comprehensive state plans and state cultures and the frequency of due process hearings between paired states?

4. What factors emerge in terms of comprehensive state plans and in terms of cultural elements which differentiate between high and low due process frequency groupings?

Analysis of the data was performed on three levels: intra-spectively in terms of the individual states; inter-spectively in terms of paired state comparisons; and within state groupings of high and low due process frequencies. As neither the probability nor chi square analysis could effectively differentiate significance among factors, a numerical analysis was based on marked deviations among percentages.

SUMMARY OF FINDINGS

Three factors emerged which appeared to distinguish high due process states from low due process states. These factors included: 1) state plans and practices related to the least restrictive environment; 2) comprehensive state plans in the identification of specific learning disabilities; and 3) the "litigiousness" of the states.

Comprehensive state plans of high and low due process states were distinguishable by their approaches to determining the least restrictive environment. The state plans of high due process states were characterized by extensive detail and elaborate clarifications of federal law. The low due process states generally mirrored the federal law in special education policies and added a minimum of additional requirements to the state plans. In practice, high due process states utilized more restrictive placements than low due process states, varying in excess of 10% in specified options.

Each of the low due process states ascertained the presence of a specific learning disability through the use of a discrepancy formula based on standard deviations, IQ scores, and student achievement. Among high due process states, New York utilized a formula, but in contrast to low due process states, used an expectancy procedure. The remaining high due process states afforded tremendous latitude to the local education agencies in the identification of specific learning disabilities, i.e., did not specify procedures to be used throughout the state, but allowed eligibility to be determined by the IEP-Teams at the local level.

The high due process states consistently averaged higher proportions of attorneys licensed to practice in the state, private civil cases terminated, and social security appeals than did their low due process counterparts.

CONCLUSIONS

The design of this study was exploratory and descriptive to allow for the emergence of variables which may impact the frequency of due process hearings. The examination of six paired states raised questions concerning the impact of various factors on due process litigation, but findings were not considered to be representative of all states. Thus, conclusions are tentative and more suggestive than definitive.

1. Based on the findings of this study, it appears that states bound by comprehensive plans with excessive elaboration of the federal law are likely to experience higher frequencies of due process litigation.
2. The differences in state practices regarding the least restrictive environment were staggering. The low due process states did not remove students from the regular classroom nearly as often or for as large a portion of the day as the high due process states. It is reasonable to hypothesize that the higher the level of segregation of students with disabilities, the higher the frequency of due process hearings.
3. States use different methodologies for identifying specific learning disabilities. The high due process states generally afforded the local education agencies considerable latitude in determining eligibility, while low due process states based eligibility on established formulas. The greater the latitude afforded the local education agencies in determining eligibility, the higher the incidence of due process hearings.

4. The presence of large numbers of licensed attorneys coupled with the disposition to resolve conflicts through the court system, as evidenced in the private civil cases terminated and social security appeals (high "litigiousness"), was associated with high numbers of due process hearings.

DISCUSSION

The minimization of due process hearings is a goal worthy of pursuit. Several factors identified as being related to the frequency of due process litigation are within the control of the individual states and could be modified to minimize the occurrence of due process litigation. Other factors, especially those falling within the cultural domain, cannot be easily altered, but accurate projections for a given number of due process hearings would be valuable for administrative and financial planning purposes. The following sections discuss various factors examined throughout the study and explore the implications of those factors on the frequency of due process litigation.

Least Restrictive Environment

This study provided insights into the vast latitude afforded the states in policies, procedures and practices. The current findings support an earlier study by Bienenstock (1992), concluding that states inconsistently comply with federal mandates regarding the least restrictive environment. To a great extent, similarities were found among the states in the degree to which the state policies

mirrored the federal law. In fact, some states transcribed sections of I.D.E.A. directly into state statutes. It was determined that the more a state elaborated on the federal law, the greater the risk of due process litigation. With this finding in mind, states may be tempted to mirror the federal law as closely as possible with a minimum of additional procedures.

However, vast differences were found in the state procedures which interpreted federal law into rules of practice. For example, in the provision of an education within the least restrictive environment, California and New York basically adopted the federal wording of I.D.E.A. in their state policies. When these regulations were then interpreted into procedures, New York detailed the management needs of students as the basis for placement while California emphasized the roles and responsibilities of regular educators. Florida presented the continuum of placements and the concept of varying exceptionalities while Illinois focused on curriculum. Ohio and Pennsylvania both elaborated on placement options, but Pennsylvania far exceeded both the federal law and those procedures outlined in Ohio's plan.

The crux of the issue is the total lack of federal procedures for determining when the use of a given option would be appropriate. The federal law states that a child should be educated for the maximum amount of time appropriate with non-disabled peers. Beyond this statement, placement determinations are left entirely to the states - and more often - to the IEP-Teams at each individual school of the local education agencies.

As a result of this latitude, the actual placement practices among the states yielded startling differences. Variations among states in five of the eight federal options exceeded 5%. Even more commonly, the use of a given option varied in excess of 10%. For example, the percentage of students provided special education services within the regular classroom ranged from 24.23% (NY) to 50.85% (CA) and the use of separate classes varied from 15.86% (OH) to 37.67% (NY).

Without question, the greater the use of less restrictive environments, the lower the rate of due process. Robinett (1993) has reported that placement was the most frequently litigated issue in due process hearings. Thus, it is not surprising that states placing greater numbers of students in more restrictive settings experience higher frequencies of due process litigation. These findings strongly suggest that parents of students with disabilities generally do not want their child removed from the regular education classroom. When the child is removed from the regular education classroom to receive special education instruction, the families are more likely to initiate due process procedures.

If these findings hold true across other states, the implications for the field of education are enormous. If a greater number of students with disabilities are to be educated in the regular education classroom, specialized training must be provided to address a wide range of diverse needs. Regular education teachers will require instruction as to the nature and educational impact of various disabilities and in the development and modification of curriculum. Special

education teachers must also increase their skills in working collaboratively with regular educators and in their knowledge of the general curriculum in order to effectively provide appropriate instruction within the regular education environment. The mind set of removing students from the classroom who do not perform within the norm must be challenged to minimize hearings in this area.

Identification

The federal law mandates that children identified as disabled in any of twelve categories are eligible for special education services. California and New York virtually mirror those categories, while the remaining states differ considerably from the federal statute. The most common additions to I.D.E.A. are the categories of developmental delay and mentally gifted. The extension of special education services to students in these additional categories greatly increases the number of students enrolled in special education, thereby increasing the number of students protected by the procedural safeguards provided through I.D.E.A., including the right to a due process hearing.

The impact of the inconsistency among states in the content of comprehensive state plans could be minimized by disallowing the right of due process litigation for those categories which exceed federal mandates, similar to the current exclusionary clause for service provision to eligible students enrolled in private schools. For example, when a state chooses to award special education eligibility to students identified as gifted, the student would receive

special education services. However, conflicts between these students and the schools would not be resolved through due process. The same would be true for students identified as developmentally delayed.

Without the benefit of research establishing a causal relationship between given factors and the decision to initiate due process procedures, the impact of exceeding the federal categories of identification is unclear. According to several administrators in the field of special education, the addition of these categories of eligibility directly increase the amount of conflict between the schools and the parents. However, within this study, the effect of the additional categories was neutral: developmental delay was added to two high due process states and two low due process states, and the category of mentally gifted was added to one high due process state and one low due process state.

The actual identification practices of the states posed additional concerns. The federal law specifically establishes twelve categories of disabilities to be served in special education. However, the determination of the existence of these disabilities is left largely to the states, as evidenced in the previous discussion of eligibility requirements for the determination of specific learning disabilities.

If we assume that disabilities occur at similar rates among the states, the breadth of the differences in state practices is evidenced in a close examination of identification rates. For example, New York and California identified 1,648 & 1,605 students, respectively, as having autism. However, the student population

in California nearly doubles that of New York. Ohio identified 43,509 students as mentally retarded while California, serving a special education population more than twice that of Ohio, identified only 25,757 students.

These differences in state practices lead to frustration on the part of families moving between states where their child is eligible for services in one state and not another, and this frustration may result in the initiation of due process litigation. Identifying diverse populations of students under the same label also hinders legislative and public awareness as to the nature and impact of disabilities. This lack of information negatively impacts the perceptions of the public toward students with special needs and fuels conflict, insensitivity and intolerance to the needs of special learners. Due process litigation may be the avenue chosen to relieve this frustration. Greater direction from the federal government in the determination of the presence of given disabilities would assist the states in establishing higher levels of consistency and minimizing litigation based on misunderstandings and unfulfilled expectations.

Cultural Factors

Several cultural elements varied among the states. However, the single category which consistently impacted the frequency of due process hearings among the states was "litigiousness." The concept involved the number of attorneys licensed to practice in the state, the number of private civil cases terminated, and the number of recipients appealing social security

determinations. In each of these categories, the high due process frequency states surpassed the numbers of their low due process counterparts.

The impact of the number of attorneys licensed to practice in a state is not clear. Without question, higher numbers of attorneys yield higher numbers of court filings. However, have the attorneys been attracted to the state due to an unmet need for legal representation or does the presence of high numbers of attorneys generate a bias toward using the legal system as opposed to other means of conflict resolution? In the late 1980s, I.D.E.A. was amended to allow for the awarding of attorney fees to prevailing families. Since that time, the number of due process hearings has risen steadily. Clearly, this amendment opened the prospect of due process litigation to families financially unwilling or unable to compensate an attorney, thus encouraging the use of due process hearings. However, the amendment does not allow for the awarding of attorney fees to the schools should the school system prevail. Research has demonstrated that in the great majority of cases, the school system is not found to be at fault. Perhaps unnecessary due process hearings could be minimized if the law were again amended to penalize frivolous filings or if some form of compensation for school system expenses was awarded.

Other areas of litigiousness involving the number of private civil cases terminated and social security appeals cannot be controlled, but should be used as indicators as to the expected use of the courts in resolving disputes. This awareness would assist the states in financially planning for a given level of

litigation and would also emphasize the need to prepare teachers and other school personnel in due process procedures. Considering the ultimate costs of due process hearings, the states may also use this information to provide the impetus for exploring alternatives to conflict resolution outside of the due process domain.

Finally, the impact of the latitude afforded the local education agencies on the frequency of due process litigation cannot be ignored. Each individual system, in fact, each individual IEP-Team, has the prerogative to either "stretch" or "constrict" the intention and practice of I.D.E.A. to great proportions. The LEA can exceed the federal and state laws in service provision, justifying the action with federal terms such as "appropriate" and "satisfactory." Conversely, a neighboring LEA may provide minimal services justified with similar terminology. The philosophy and practices of the local education agency may in fact impact the frequency of due process litigation to a greater degree than other factors examined within this study.

POLICY RECOMMENDATIONS

The identification of variances among the state plans which may be impacting the frequency of hearings might lead to needed policy changes at the state level. Two areas of state policy are particularly troublesome: 1) determination of the least restrictive environment; and 2) criterion for the identification of students eligible for special education services.

The decision regarding the least restrictive environment in which a student may receive an appropriate education is individually determined by the IEP-Team at the local education agency level. The factors to be considered when making this decision are limited only by the imagination of the team members. Federal and state policies should specifically address the factors to be considered in determining the least restrictive environment for a student. These guidelines would minimize variations in practices between states, local education agencies, and individual schools. As placement issues have been identified as the most contested issue presented in due process litigation, consistency in the decision-making process in determining the least restrictive environment may minimize due process hearings in this area.

Criteria for the identification of students eligible for special education services are nearly as varied as the factors considered for placement. Federal policy should specifically address the required criteria for the identification of students and this policy should be mirrored in state plans. This consistency would enhance communication as the terminology used in the identification of students acquires a specific meaning. The frustrations of mobile families could be reduced as special education requirements among states parallel the federal law. Finally, consistency in the area of identification could reduce litigation as the intent of Congress is clarified through detail at the federal level. These adjustments could produce a higher level of continuity among states and could lead to valuable partnerships involving the sharing of information and services.

RECOMMENDATIONS FOR FURTHER RESEARCH

Further research is needed to determine the significance of the relationship between elements of comprehensive state plans, practices, and/or cultural factors with the frequency of due process hearings. The current study should be replicated using a greater number of states and different pairings. The replication of this study would provide further indications as to the scope and breadth of the patterns which emerged in the current investigation of factors. A similar study would also be suggested comparing various geographic regions and judicial circuits.

Further, the relationship between the issues contested at due process hearings and state practices regarding the least restrictive environment and identification should be tested. The focus on this relationship would contribute to the knowledge of factors leading to the initiation of due process litigation.

Minimal information is available regarding the philosophy and process of decision-making by the local education agencies. Case studies as well as comparative case studies exploring the basis of the LEA's decision to engage in due process litigation rather than agreeing to the wishes of the parents may provide valuable data as to factors leading to the initiation of due process procedures. An examination of state/local per pupil expenditures in comparison to due process frequencies would also contribute to the knowledge base.

Finally, the effectiveness of mediation as an alternative to of due process litigation is unknown. Research involving case studies, the number of hearings

circumvented due to successful mediation, and state practices regarding mediation may broaden the perception of legitimate options for conflict resolution and lead to a reduction in the frequency of due process hearings.

Current studies indicate that relationships between the parents and the schools significantly deteriorate as a result of due process procedures - regardless of whom "wins." Minimizing the occurrence of these hearings could avoid the resultant hostilities between the parties. Research which contributes to decreasing negative relationships between school systems and the families of students with special needs is in and of itself significant.

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APPENDIX

PEARSON CHI-SQUARE ANALYSES

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Table A-1
Pearson Chi-Square Analysis
Placement Practices

Placement		Low Due Process	High Due Process	Total
Regular Class	Count	392,734	196,648	589,382
	% Within Level	45.40%	27.90%	37.50%
	Residual	67,945.6	-67,945.6	
	Adjusted Residual	225.1	-225.1	
Resource Room	Count	230,054	212,827	442,881
	% Within Level	26.60%	30.20%	28.20%
	Residual	-14,002.7	14,002.7	
	Adjusted Residual	-49.9	49.9	
Separate Class	Count	194,283	235,492	429,775
	% Within Level	22.50%	33.40%	27.40%
	Residual	-42,551.4	42,551.4	
	Adjusted Residual	-153.1	153.1	
Public Separate Facility	Count	20,430	36,115	56,545
	% Within Level	2.40%	5.10%	3.60%
	Residual	-10,730.0	10,730.0	
	Adjusted Residual	-92.4	92.4	
Private Separate Facility	Count	18,307	14,410	32,717
	% Within Level	2.10%	2.00%	2.10%
	Residual	277.8	-277.8	
	Adjusted Residual	3.1	-3.1	
Public Residential Facility	Count	2,574	3,796	6,370
	% Within Level	0.30%	0.50%	0.40%
	Residual	-936.3	936	
	Adjusted Residual	-23.6	23.6	
Private Residential Facility	Count	1,334	2,624	3,958
	% Within Level	0.20%	0.40%	0.30%
	Residual	-847.1	847.1	
	Adjusted Residual	-27.1	27.1	
Homebound/Hospital	Count	5,596	3,027	8,623
Environment	% Within Level	0.60%	0.40%	0.50%
	Residual	844.2	-844.2	
	Adjusted Residual	18.3	-18.3	
Total	Count	865,312	704,939	1,570,251
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	60,344.255*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 1,776.88.

Table A-2
Pearson Chi-Square Analysis
High Frequency Placement Practices

Placement		Low	High	Total
		Due Process	Due Process	
Regular Class	Count	392,734	196,648	589,382
	% Within Level	48.10%	30.50%	40.30%
	Residual	63,353.4	-63,353.4	
	Adjusted Residual	215.1	-215.1	
Resource Room	Count	230,054	212,827	442,881
	% Within Level	28.20%	33.00%	30.30%
	Residual	-17,453.4	17,453.4	
	Adjusted Residual	-63.3	63.3	
Separate Class	Count	194,283	235,492	429,775
	% Within Level	23.80%	36.50%	29.40%
	Residual	-45,900.0	45,900.0	
	Adjusted Residual	-167.8	167.8	
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	50,296.470*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 189,592.0.

Table A-3
Pearson Chi-Square Analysis
Low Frequency Placement Practices

Placement		Low Due Process	High Due Process	Total
Public Separate Facility	Count	20,430	36,115	56,545
	% Within Level	42.30%	60.20%	52.30%
	Residual	-4,777.6	4,777.6	
	Adjusted Residual	-58.5	58.5	
Private Separate Facility	Count	18,307	14,410	32,717
	% Within Level	37.90%	24.00%	30.20%
	Residual	3,721.9	-3,721.9	
	Adjusted Residual	49.6	-49.6	
Public Residential Facility	Count	2,574	3,796	6,370
	% Within Level	5.30%	6.30%	5.90%
	Residual	-265.7	266	
	Adjusted Residual	-6.9	6.9	
Private Residential Facility	Count	1,334	2,624	3,958
	% Within Level	2.80%	4.40%	3.70%
	Residual	-430.5	430.5	
	Adjusted Residual	-14.0	14.0	
Homebound/Hospital Environment	Count	5,596	3,027	8,623
	% Within Level	11.60%	5.00%	8.00%
	Residual	1,751.9	-1,751.9	
	Adjusted Residual	39.6	-39.6	
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	5,022.577*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 1,764.46.

Table A-4
Pearson Chi-Square Analysis
Identification of Disabilities

Identification		Low Due Process	High Due Process	Total
Autism	Count	2,209	1,999	4,208
	% Within Level	0.20%	0.30%	0.30%
	Residual	-253.2	253.2	
	Adjusted Residual	-7.9	7.9	
Deaf/Blindness	Count	138	46	184
	% Within Level	0.00%	0.00%	0.00%
	Residual	30.3	-30.3	
	Adjusted Residual	4.5	-4.5	
Hearing Impairment	Count	9,795	5,834	15,629
	% Within Level	1.10%	0.90%	1.00%
	Residual	649.9	-649.9	
	Adjusted Residual	10.6	-10.6	
Mental Retardation	Count	93,703	52,504	146,207
	% Within Level	10.50%	8.30%	9.50%
	Residual	8,152.2	-8,152.2	
	Adjusted Residual	45.5	-45.5	
Multiple Disabilities	Count	11,483	10,951	22,434
	% Within Level	1.30%	1.70%	1.50%
	Residual	-1,643.9	1,643.9	
	Adjusted Residual	-22.4	22.4	
Orthopedic Impairment	Count	13,882	3,799	17,681
	% Within Level	1.50%	0.60%	1.20%
	Residual	3,536.2	-3,536.2	
	Adjusted Residual	54.3	-54.3	
Other Health Impaired	Count	14,585	4,727	19,312
	% Within Level	1.60%	0.70%	1.30%
	Residual	3,284.9	-3,284.9	
	Adjusted Residual	48.3	-48.3	
Serious Emotional Disturbance	Count	51,248	67,987	119,235
	% Within Level	5.70%	10.70%	7.80%
	Residual	-18,520.6	18,520.6	
	Adjusted Residual	-113.4	113.4	
Specific Learning Disability	Count	472,603	360,075	832,678
	% Within Level	52.70%	56.70%	54.40%
	Residual	-14,626.0	14,626.0	
	Adjusted Residual	-48.2	48.2	
Speech / Language Impairment	Count	221,518	124,238	345,756
	% Within Level	24.70%	19.60%	22.60%
	Residual	19,204.1	-19,204.1	
	Adjusted Residual	75.3	-75.3	
Traumatic Brain Injury	Count	236	402	638
	% Within Level	0.00%	0.10%	0.00%
	Residual	-137.3	137.3	
	Adjusted Residual	-11.0	11.0	
Visual Impairment	Count	4,620	2,723	7,343
	% Within Level	0.50%	0.40%	0.50%
	Residual	323.4	-323.4	
	Adjusted Residual	7.7	-7.7	
Total	Count	896,020	635,285	1,531,305
	% Within Level	100.00%	100.00%	100.00%

Pearson Chi-Square	Value	df	Asymptote Sig. (2-sided)	
	25,261.894*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 76.34.

Table A-5
Pearson Chi-Square Analysis
Identification of Disabilities
(High Incidence Disabilities)

Identification		Low Due Process	High Due Process	Total
Serious Emotional Disturbance	Count	51,248	67,987	119,235
	% Within Level	6.90%	12.30%	9.20%
	Residual	-17,239.5	17,239.5	
	Adjusted Residual	-106.0	106.0	
Specific Learning Disability	Count	472,603	360,075	832,678
	% Within Level	63.40%	65.20%	64.20%
	Residual	-5,679.5	5,679.5	
	Adjusted Residual	-21.0	21.0	
Speech / Language Impairment	Count	221,518	124,238	345,756
	% Within Level	29.70%	22.50%	26.60%
	Residual	22,919.0	-22,919.0	
	Adjusted Residual	92.0	-92.0	
Total	Count	745,369	552,300	1,297,669
	% Within Level	100.00%	100.00%	100.00%

Pearson Chi-Square	Value	df	Asymptote Sig. (2-sided)	
	16,568.806*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 50,747.53.

Table A-6
Pearson Chi-Square Analysis
Identification of Disabilities
(Low Incidence Disabilities)

Identification		Low	High	Total
		Due Process	Due Process	
Autism	Count	2,209	1,999	4,208
	% Within Level	1.50%	2.40%	1.80%
	Residual	-504.4	504.4	
	Adjusted Residual	-16.4	16.4	
Deaf / Blindness	Count	138	46	184
	% Within Level	0.10%	0.10%	0.10%
	Residual	19.4	-19.4	
	Adjusted Residual	3.0	-3.0	
Hearing Impairment	Count	9,795	5,834	15,629
	% Within Level	6.50%	7.00%	6.70%
	Residual	-282.7	282.7	
	Adjusted Residual	-4.9	4.9	
Mental Retardation	Count	93,703	52,504	146,207
	% Within Level	62.20%	63.30%	62.60%
	Residual	-572.8	572.8	
	Adjusted Residual	-5.1	5.1	
Multiple Disabilities	Count	11,483	10,951	22,434
	% Within Level	7.60%	13.20%	9.60%
	Residual	-2,982.7	2,982.7	
	Adjusted Residual	-43.8	43.8	
Orthopedic Impairment	Count	13,882	3,799	17,681
	% Within Level	9.20%	4.60%	7.60%
	Residual	2,481.1	-2,481.1	
	Adjusted Residual	40.6	-40.6	
Other Health Impaired	Count	14,585	4,727	19,312
	% Within Level	9.70%	5.70%	8.30%
	Residual	2,132.4	-2,132.4	
	Adjusted Residual	33.5	-33.5	
Traumatic Brain Injury	Count	236	402	638
	% Within Level	0.20%	0.50%	0.30%
	Residual	-175.4	175.4	
	Adjusted Residual	-14.5	14.5	
Visual Impairment	Count	4,620	2,723	7,343
	% Within Level	3.10%	3.30%	3.10%
	Residual	-114.8	114.8	
	Adjusted Residual	-2.8	2.8	
Total	Count	150,651	82,985	233,636
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	4,803.044*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 76.34.

Table A-7
Pearson Chi-Square Analysis
Residential Area

Residential Area			Low Due Process	High Due Process	Total
	Urban	Count	46,581,360	33,024,387	79,605,747
		% Within Level	87.00%	78.50%	83.30%
		Residual	1,989,032	-1,989,032	
		Adjusted Residual	1098.4	-1098.4	
	Rural	Count	6,963,702	9,018,623	15,982,325
		% Within Level	13.00%	21.50%	16.70%
		Residual	-1,989,032	1,989,032	
		Adjusted Residual	-1098.4	1098.4	
Total		Count	53,545,062	42,043,010	95,588,072
		% Within Level	100.00%	100.00%	100.00%
				Asymp. Sig.	
Pearson Chi-Square		Value	df	(2-sided)	
		1,026,415.90	1	0.000	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 7,029,591.

Table A-8
Pearson Chi-Square Analysis
Gender

Gender		Low	High	Total
		Due Process	Due Process	
Male	Count	26,362,436	19,855,479	46,217,915
	% Within Level	49.20%	48.10%	48.70%
	Residual	270,717.3	-270,717.3	
	Adjusted Residual	112.2	-112.2	
Female	Count	27,182,626	21,447,221	48,629,847
	% Within Level	50.80%	51.90%	51.30%
	Residual	-270,717.3	270,717.3	
	Adjusted Residual	-112.2	112.2	
Total	Count	53,545,062	41,302,700	94,847,762
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	12,580.625	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 20,126,196.

Table A-9
Pearson Chi-Square Analysis
Ethnicity

Ethnicity		Low Due Process	High Due Process	Total
Caucasian	Count	40,836,367	32,879,106	73,715,473
	% Within Level	76.30%	79.60%	77.70%
	Residual	-778,738	778,738	
	Adjusted Residual	-387.6	387.6	
Other	Count	12,708,695	8,423,594	21,132,289
	% Within Level	23.70%	20.40%	22.30%
	Residual	778,738	-778,738	
	Adjusted Residual	387.6	-387.6	
Total	Count	53,545,062	41,302,700	94,847,762
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	150,196.877*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 9,202,332.

Table A-10
Pearson Chi-Square Analysis
Primary Language

			Low	High	
Language			**Due Process**	**Due Process**	**Total**
	English Only	**Count**	38,278,246	32,199,348	70,477,594
		% Within Level	71.50%	78.00%	74.30%
		Residual	-1,508,892.1	1,508,892.1	
		Adjusted Residual	-715.1	715.1	
	Other	**Count**	15,266,616	9,103,352	24,369,968
		% Within Level	28.50%	22.00%	25.70%
		Residual	1,508,892	-1,508,892.1	
		Adjusted Residual	715.1	-715.1	
Total		**Count**	53,544,862	41,302,700	94,847,562
		% Within Level	100.00%	100.00%	100.00%
				Asymp. Sig.	
Pearson Chi-Square		**Value**	**df**	**(2-sided)**	
		511,437.529*	1	0.000	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 10,612,244.

Table A-11
Pearson Chi-Square Analysis
Family Type

			Low	High	
Family Type			Due Process	Due Process	Total
	Married Couple	Count	9,283,653	7,015,741	16,299,394
		% Within Level	77.60%	77.50%	77.60%
		Residual	5,202.8	-5,202.8	
		Adjusted Residual	5.5	-5.5	
	Male Householder	Count	512,076	291,923	803,999
		% Within Level	4.30%	3.20%	3.80%
		Residual	54,398.6	-54,398.6	
		Adjusted Residual	124.9	-124.9	
	Female Householder	Count	2,163,212	1,741,590	3,904,802
		% Within Level	18.10%	19.20%	18.60%
		Residual	-59,601.4	59,601.4	
		Adjusted Residual	-67.5	67.5	
Total		Count	11,958,941	9,049,254	21,008,195
		% Within Level	100.00%	100.00%	100.00%
				Asymp. Sig.	
Pearson Chi-Square		Value	df	(2-sided)	
		18,727.245*	1	0.000	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 346,321.6.

Table A-12
Pearson Chi-Square Analysis
Income Levels

Income Levels		Low	High	Total
		Due Process	Due Process	
Under $10,000	Count	9,283,653	7,015,741	16,299,394
	% Within Level	77.60%	77.50%	77.60%
	Residual	5,202.8	-5,202.8	
	Adjusted Residual	5.5	-5.5	
$10,000 - $25,000	Count	512,076	291,923	803,999
	% Within Level	4.30%	3.20%	3.80%
	Residual	54,398.6	-54,398.6	
	Adjusted Residual	124.9	-124.9	
$25,001 - $50,000	Count	2,163,212	1,741,590	3,904,802
	% Within Level	18.10%	19.20%	18.60%
	Residual	-59,601.4	59,601.4	
	Adjusted Residual	-67.5	67.5	
$50,001 - $75,000	Count	9,283,653	7,015,741	16,299,394
	% Within Level	77.60%	77.50%	77.60%
	Residual	5,202.8	-5,202.8	
	Adjusted Residual	5.5	-5.5	
$75,001 - $100,000	Count	512,076	291,923	803,999
	% Within Level	4.30%	3.20%	3.80%
	Residual	54,398.6	-54,398.6	
	Adjusted Residual	124.9	-124.9	
$100,001 - $125,000	Count	2,163,212	1,741,590	3,904,802
	% Within Level	18.10%	19.20%	18.60%
	Residual	-59,601.4	59,601.4	
	Adjusted Residual	-67.5	67.5	
$125,001 - $150,000	Count	2,163,212	1,741,590	3,904,802
	% Within Level	18.10%	19.20%	18.60%
	Residual	-59,601.4	59,601.4	
	Adjusted Residual	-67.5	67.5	
Greater than $150,000	Count	2,163,212	1,741,590	3,904,802
	% Within Level	18.10%	19.20%	18.60%
	Residual	-59,601.4	59,601.4	
	Adjusted Residual	-67.5	67.5	
Total	Count	11,958,941	9,049,254	21,008,195
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	18,727.245*	1	0.001	

Table A-13
Pearson Chi-Square Analysis
Poverty Status

Poverty Status		Low	High	Total
		Due Process	Due Process	
Above Poverty Level	Count	10,742,024	8,116,589	18,858,613
	% Within Level	81.70%	82.50%	82.00%
	Residual	-39,887.4	39,887.4	
	Adjusted Residual	-43.8	43.8	
Below Poverty Level	Count	2,398,927	1,727,263	4,126,190
	% Within Level	18.30%	17.50%	18.00%
	Residual	39,887.4	-39,887.4	
	Adjusted Residual	43.8	-43.8	
Total	Count	13,140,951	9,843,852	22,984,803
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	1,919.300*	1	0.001	

* 0 cells (.0%) have expected count less than 5. The minimum expected count is 17,671.50.

Table A-14
Pearson Chi-Square Analysis
Educational Attainment

Education		Low Due Process	High Due Process	Total
Less than 9th grade	Count	3,475,670	2,692,926	6,168,596
	% Within Level	10.10%	10.00%	10.00%
	Adjusted Residual	12.1	-12.1	
9th - 12th (no diploma)	Count	4,930,820	4,014,745	8,945,565
	% Within Level	14.30%	14.90%	14.50%
	Adjusted Residual	-64.9	64.9	
High School Graduate	Count	9,363,169	8,708,108	18,071,277
(includes equivalency)	% Within Level	27.10%	32.30%	29.40%
	Adjusted Residual	-438.7	438.7	
Some College	Count	7,128,705	4,283,634	11,412,339
(no degree)	% Within Level	20.70%	15.90%	18.60%
	Adjusted Residual	478.9	-478.9	
Associate's Degree	Count	2,442,652	1,604,447	4,047,099
	% Within Level	7.10%	5.90%	6.60%
	Adjusted Residual	177.8	-177.8	
Bachelor's Degree	Count	4,688,601	3,442,187	8,130,788
	% Within Level	13.60%	12.80%	13.20%
	Adjusted Residual	95.5	-95.5	
Graduate / Prof. Degree	Count	2,477,814	2,239,384	4,717,198
	% Within Level	7.20%	8.30%	7.70%
	Adjusted Residual	-163.5	163.5	
Total	Count	34,507,431	26,985,431	61,492,862
	% Within Level	100.00%	100.00%	100.00%
			Asymptote Sig.	
Pearson Chi-Square	Value	df	(2-sided)	
	388,573.453*	1	0.001	

VITA

Sandra Earnest was born in Greensburg, Pennsylvania on January 10, 1954. She attended schools in the public system and graduated from Greensburg-Salem Senior High School in June, 1971. She entered Milligan College in Johnson City, Tennessee, in August, 1971, and received a Bachelor of Arts degree in Education in May, 1975, with teaching certifications in elementary and special education. After teaching at the elementary level for several years, she entered the Master's program in Educational Psychology at the University of Tennessee, Knoxville and received the Master of Science degree in August, 1982. Shortly thereafter, she began counseling special education students with emotional and behavioral difficulties in the public school system. In August, 1989, she returned to the University of Tennessee and began coursework in Educational Leadership. In August, 1992, she joined the Dansforth cohort group to pursue a Doctorate of Education in Educational Leadership while continuing her work in the public school system as the Assistant Coordinator of Special Education. The doctoral degree was received in May, 1999.

She is presently working as in Maryville City Schools, Maryville, Tennessee, as the Coordinator of Special Education.