Challenging Objectives:
A Legal and Empirical Analysis
of the Substantive FAPE Standard After Endrew F.

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy
in Education

by

Leah Meriah Bueso

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ABSTRACT OF THE DISSERTATION

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Leah Meriah Bueso
Doctor of Philosophy in Education
University of California, Los Angeles, 2019
Professor John S. Rogers, Chair

In 2017, the Supreme Court in Endrew F. v. Douglas County School District RE-I clarified the substantive FAPE standard for the first time in 35 years. This dissertation used interdisciplinary legal research methods to understand how federal courts and district representatives in a large, urban school district have interpreted the recent changes in special education law. Part 1 is a doctrinal legal analysis of case law applying the substantive FAPE standard from 2015-2018. Part 2 is a qualitative legal analysis of the socially constructed realities of law experienced by special education professionals. Part 3 is a critical policy analysis of the social practices of power in IEP meetings by local actors in the school district.

This dissertation provided a critical reflection on the interpretations of the substantive FAPE standard by internal (e.g. judges and lawyers) and external (e.g. educators and families)
actors. Thus far, federal courts have interpreted the changes in *Endrew F.* narrowly. While they acknowledged that *Endrew F.* raised the minimum threshold for progress, they have not read the decision as requiring a higher maximum threshold for progress. Moreover, federal courts found 88.4% of plaintiffs’ IEPs to be substantively appropriate, which reflects an 8:1 pro-district outcome ratio and suggests courts strongly defer to the educational expertise of school authorities when determining whether a substantive FAPE was provided. However, district representatives reported significant gaps in their understanding of special education law and did not articulate a clear standard for determining appropriate progress. Furthermore, district data disaggregated by geographic region revealed an inequitable distribution of related services and legal remedies for students with disabilities based on racial/ethnic demographics, socioeconomic status, and disability classification.
The dissertation of Leah Meriah Bueso is approved.

Megan Franke
Teresa McCarty
Kevin G. Welner

John S. Rogers, Committee Chair

University of California, Los Angeles

2019
To RU, CC, UP, and BC,

Keep asking the tough questions.

Keep proving the doubters wrong.
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<td>AYP</td>
<td>adequate yearly progress</td>
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<tr>
<td>BIP</td>
<td>behavior intervention plan</td>
</tr>
<tr>
<td>DD</td>
<td>developmental delay</td>
</tr>
<tr>
<td>EAHCA</td>
<td>Education for All Handicapped Children Act</td>
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<tr>
<td>ED</td>
<td>emotional disturbance</td>
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<tr>
<td>EHA</td>
<td>Education of the Handicapped Act</td>
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<td>ESY</td>
<td>extended school year</td>
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<tr>
<td>FAPE</td>
<td>free appropriate public education</td>
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<tr>
<td>FPRL</td>
<td>free and reduced price lunch</td>
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<tr>
<td>GE</td>
<td>general education</td>
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<tr>
<td>ID</td>
<td>intellectual disability</td>
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<tr>
<td>IDEA</td>
<td>Individuals with Disabilities Education Act</td>
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<td>IDR</td>
<td>informal dispute resolution</td>
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<tr>
<td>IEP</td>
<td>individualized education program</td>
</tr>
<tr>
<td>JUSD</td>
<td>Jaral Unified School District</td>
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<tr>
<td>LRE</td>
<td>least restrictive environment</td>
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<tr>
<td>NCLB</td>
<td>No Child Left Behind Act</td>
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<tr>
<td>OHI</td>
<td>other health impairment</td>
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<tr>
<td>PARC</td>
<td>Pennsylvania Association for Retarded Children</td>
</tr>
<tr>
<td>SC</td>
<td>self-contained</td>
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<tr>
<td>SELPA</td>
<td>special education local plan area</td>
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<td>SLD</td>
<td>specific learning disability</td>
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This dissertation marks the culmination of 31 years of continuous schooling – from my early days at the Child Care Center to my final defense at UCLA. During this time, I was privileged to learn from life-changing teachers and professors who pushed me to think critically and question the status quo. I am forever indebted to each of you for your support and encouragement to be better and do better in this world. Thank you.

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hug me when everything felt so overwhelming. Through thick and thin, you’ve always helped me find my “true north.”
Curriculum Vitae
Leah Bueso

Education

- M.S.Ed. in Special Education (2014), Hunter College, Graduate School of Education.
- J.D. (2012), University of Michigan Law School.
- B.A. in English (2009), Duke University, Trinity College.

Professional Experience

- **Graduate Student Researcher**, Civic Engagement Research Group, UCR Graduate School of Education, Riverside, CA, May 2018 – Present
  - Coordinated research protocols, meetings, and logistics for a qualitative research study with the Civic Learning Initiative and two school districts in Washington State. Led focus groups of middle and high school teachers and students about civic learning opportunities in Sunnyside and Franklin Pierce school districts. Wrote reports summarizing the key findings from the focus group and survey data. Drafted annual report for MacArthur Foundation grant. Produced monthly CERG newsletter and daily CERG tweets on the latest research and resources for civic education.

- **Graduate Student Researcher**, Coordination and Evaluation Center, UCLA Graduate School of Education & Information Studies, Los Angeles, CA, April 2017 – April 2018
  - Completed qualitative data coding and analysis in Dedoose for NIH Diversity Program Consortium evaluation of BUILD programs at five universities. Drafted case study narratives analyzing how BUILD programs are building the capacity and infrastructure for primary and partner institutions to advance the training of underrepresented groups in bio-medical research.

- **Graduate Student Researcher**, Center X, UCLA Graduate School of Education & Information Studies, Los Angeles, CA, September 2016 – Present
  - Produced weekly education news blast entitled “Just News from Center X.” Selected timely and thought-provoking news articles that explored issues of racial inequality, social justice, social and emotional learning, school choice, language, and culture in education.

  - Completed quantitative and qualitative data coding and analysis in SPSS for research looking at how young children construct racial and gender identities. Created interactive online learning module for UW that synthesized psychology and education research regarding the importance of talking about race to children. Designed and implemented survey for research evaluating the social and emotional effects of Youth Development programs at two local high schools.

- **Graduate Student Researcher**, Institute for Democracy, Education, and Access, UCLA Graduate School of Education & Information Studies, Los Angeles, CA, September 2014 – September 2016
  - Conducted research examining high school students’ perceptions of meaningful time in and out of the classroom across varying levels of socioeconomic status. Led in-depth interviews with high school administrators, counselors, and teachers, as well as daylong observations of high school students and teachers. Wrote analytic memos synthesizing findings from interviews and observations. Managed survey distribution and completion for high school participants through
Qualtrics. Completed quantitative and qualitative data coding and analysis in Excel and drafted narratives of results for each of the four participating high schools.

- **Middle School English and Special Education Teacher**, Achievement First Crown Heights, Brooklyn, NY, July 2012 – July 2014
  - Co-taught 7th and 8th grade English Language Arts classes. Integrated New York State Standards, Common Core Standards, and special education accommodations into lesson planning and instructional delivery. Lead-taught 7th and 8th grade Guided Reading groups composed of the school’s 20% lowest level readers. Lead-taught 7th and 8th grade reading intervention classes for the school’s 5% lowest level readers using the Wilson Reading System. Wrote and edited IEPs for all 7th and 8th grade students with disabilities. Lead-taught contemporary dance; choreographed winter and spring show performances.

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- **Law Clerk**, Kasowitz, Benson, Torres & Friedman, Miami, FL, June 2010 – August 2010
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- Elkes Foundation Scholarship (University of Michigan Law School)
- Public Service Fellow (University of Michigan Law School)
- AmeriCorps JD Program (University of Michigan Law School)
- Vertical Integration Research Grant (Duke University)
- Duke University Scholarship (Duke University)

**Contributions**


**Professional Certifications**

- Washington State Teacher Certification – Special Education
- Wilson Reading System Level I Certification – Dyslexia Practitioner
- New York State Teacher Certification – Students with Disabilities, Grades 7-12
CHAPTER ONE: Introduction

The concept of a “free appropriate public education” (FAPE) was first introduced into federal legislation through the Education for All Handicapped Children Act of 1975. The law was passed in the wake of the civil rights movement to address the historic exclusion of students with disabilities from public schools. Over time, the focus of the law changed from ensuring access to educational programs to improving student performance (Yell, Katsiyannis, & Bradley, 2017) and it was renamed the Individuals with Disabilities Education Act (IDEA) in 1990.

As the goals of the IDEA and education reform evolved, the federal courts were tasked with determining what constituted a substantive FAPE for students with disabilities. Originally, the Supreme Court held in Board of Education v. Rowley (1982) that a substantive FAPE must be “reasonably calculated to enable the child to receive educational benefits” (pp. 206-207), but they refused to establish a test for determining the adequacy of such benefit. The resulting ambiguity led to significant disagreement among the federal courts and Congress declined to address the issue in subsequent amendments of the IDEA. It wasn’t until 2017 that the Supreme Court reexamined the standard in Endrew F. v. Douglas County School District RE-1 and held that a substantive FAPE must be “reasonably calculated to enable the child to receive progress appropriate in light of the child’s circumstances” (p. 999). Although special education advocates initially touted Endrew F. as a monumental decision, federal courts have interpreted the new language narrowly and there is still no clear standard for determining an “appropriate” degree of progress.

The Supreme Court in Endrew F. also reaffirmed deference to the expertise of school authorities on questions of educational policy. While educators are certainly better positioned than judges to make decisions about the needs of students with disabilities, research shows
administrators and teachers frequently misunderstand special education law and policy (Garrison-Wade, Sobel, & Fulmer, 2007; Lashley, 2007; McHatton, Boyer, Shaunessy, & Terry, 2010; Militello & Schimmel, 2008). Moreover, the disproportionate representation of students of color and low-income students in judgmental disability categories and more restrictive educational settings (Hehir, Schifter, Ng, & Eidelman, 2014; Lipscomb et al., 2017; O’Connor & Fernandez, 2006; U.S. Department of Education, 2016a) demonstrates how the social construction of a FAPE may perpetuate inequities for subgroups of students with disabilities.

While Congress’ legislative commitment to students with disabilities is commendable, it has not been enough to produce equitable outcomes for students of color and low-income students in special education. This contradiction seems to lie at the intersection of policy and practice, begging scholars to consider why well-intentioned policies are exacerbating inequities in schools. My dissertation attempts to answer this question by examining how federal courts and district representatives understand the mandates of special education law and how these understandings impact implementation efforts in schools.

**Recent Changes to Special Education Law**

In 2017, the Supreme Court in *Endrew F.* reexamined its interpretation of a FAPE for the first time in 35 years. In its decision, the Court refined the substantive FAPE standard it originally established in *Rowley* (1982). This timely change is significant to my dissertation because federal courts and school districts must review and adjust their interpretations of the substantive FAPE standard in accordance with the new law.

The Supreme Court originally held in *Rowley* (1982) that schools met the obligations of a FAPE if a child’s individualized education program (IEP) was developed following all procedural requirements and if the IEP was “reasonably calculated to enable the child to receive
educational benefits” (pp. 206-207). In the years that followed, federal courts developed different interpretations about the adequacy of educational benefits required by Rowley’s substantive FAPE standard. While a majority group of courts interpreted Rowley as requiring “merely more than de minimis” or “some” educational benefits (p. 200), a minority group of courts interpreted Rowley as requiring “meaningful” educational benefits (p. 192). This split among federal courts led to inconsistent enforcement of the substantive FAPE standard across the country.

In Endrew F. (2017), the Supreme Court rejected interpretations of Rowley that required “merely more than de minimis” educational benefits. The Court also refined the substantive FAPE standard to require schools to offer “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (p. 999) and acknowledged that “every child should have the chance to meet challenging objectives” (p. 1000) in their IEP regardless of their educational setting or ability to achieve on grade level. The new language employed by the Court clarifies that schools should aim to enable progress individualized to the student’s needs rather than a specific outcome in order to meet the substantive requirements of a FAPE. That being said, the use of ambiguous terms like “appropriate” progress and “challenging objectives” leave room for variable interpretations of the standard by lower courts and school authorities. While this flexibility allows for the individualized provision of services and progress monitoring based on the unique needs of each student, it also allows for FAPE determinations to be socially constructed around different interpretations of what may be appropriate or challenging for students in different local contexts. Current issues of inequality in special education demonstrate that decisions about eligibility, disability classification, placement, and discipline are already highly subjective. As such, how federal courts and school authorities construct their own understandings around this change in the law may perpetuate inequities for
students of color and low-income students in special education. For this reason, it is necessary to examine how a FAPE gets conceptualized and implemented in different local contexts.

**Current Issues of Inequality in Special Education**

Close to seven million students receive special education services in public schools across the country (National Center for Education Statistics, 2018b). The racial/ethnic demographics of these students were reported as follows: White (49.0%), Latino (25.2%), Black (17.7%), Multi-ethnic (3.9%), Asian (2.6%), Native American (1.3%), and Pacific Islander (0.3%). The majority of these students (67.5%) were classified into one of three disability categories: specific learning disability (33.6%), speech or language impairment (19.5%), and other health impairment (14.4%) (National Center for Education Statistics, 2018c). When the demographic data is disaggregated by disability and racial/ethnic identity, the disproportionate representation of students of color is more readily apparent. For example, Black students are classified with intellectual disability and emotional disturbance at significantly higher rates than any other ethnic group. Similarly, Native American students are disproportionately classified with developmental delay, and Black, Latino, and Native American students are disproportionately classified with specific learning disability. On the other hand, White and Asian students are the most likely to be classified with autism (National Center for Education Statistics, 2018a). Although federal law does not require schools to report socioeconomic data for students with disabilities, the National Longitudinal Transition Study conducted in 2012 found that 58% of students eligible for special education were low-income compared to 46% of students not eligible for special education. Additionally, students classified with intellectual disability, emotional disturbance, and specific learning disability were the most likely to live in socioeconomically disadvantaged households and attend the lowest performing schools, whereas
students classified with autism were the least likely to do so (Lipscomb et al., 2017). As the demographic data shows, disability classification is strongly associated with racial/ethnic identity and socioeconomic status and these relationships have persisted for many years (Hosp & Reschly, 2004; Sullivan, 2011; Zhang, Katsiyannis, Ju, & Roberts, 2014). It is important to note that a handful of recent studies suggest students of color are less likely to be identified for special education when compared to otherwise similar White students (Morgan, Farkas, Cook, et al., 2016; Morgan, Farkas, Hillemeier, et al., 2015). But studies looking more closely at the local context of the school found students of color in Wisconsin and Florida were disproportionately represented in judgmental disability categories when they attended predominantly White schools (Fish, 2019; National Bureau of Economic Research, 2019).

The disproportionate representation of students of color and low-income students in special education is concerning because identification is linked to increased segregation, lower academic expectations, and harsher discipline (Sullivan & Bal, 2013). According to the Special Education Elementary Longitudinal Study, placement decisions directly impact student achievement because students with disabilities are less likely to be absent and perform closer to grade level when included in the general education classroom (Blackorby et al., 2005). On the contrary, students placed in segregated classrooms are frequently assigned to less experienced teachers and less rigorous courses (Kozol, 2005). Research documenting the disproportionate rates of suspension and expulsion of students of color in special education recognize that these punishments serve as another form of segregation (National Council on Disability, 2015). For example, in 2012, 20% of Native American and 32% of Black students with disabilities were suspended across the country (Losen, Ee, Hodson, & Martinez, 2014). Even worse, 49.9% of students with disabilities in correctional facilities were Black, even though they made up just
18.7% of the population (National Council on Disability, 2015). Donovan and Cross (2002) aptly attributed harsher disciplinary actions against students of color in special education to “perceptions of behavioral appropriateness” (p. 197) based on cultural biases. More recent research reaffirms the impact of educators’ assumptions and beliefs in placement and disciplinary decisions (Ahram, Fergus, & Noguera, 2011; McDermott, Goldman, & Varenne, 2006). Thus, the social construction of eligibility, disability classification, placement, and discipline demonstrate how special education policies can be inequitably enacted across school contexts.

**Purpose of the Study**

In 2017, the Supreme Court in *Endrew F.* unanimously rejected the “merely more than *de minimis*” interpretation of the substantive FAPE standard previously applied by a number of federal courts in the U.S. The Court also refined the substantive FAPE standard to require schools to offer “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” and acknowledged that “every child should have the chance to meet challenging objectives” in their IEP regardless of their educational setting or ability to achieve on grade level (2017). This ruling marked the first reexamination of the substantive FAPE standard since the Court’s initial interpretation in *Rowley* (1982). Part 1 of this study assesses the extent to which federal judges have modified the way they apply the substantive FAPE standard in light of the *Endrew F.* decision.

The Supreme Court’s refusal to define a “bright-line rule” explaining how a school would satisfy its obligations under the substantive FAPE standard recognizes the expertise of school authorities to “implement policies, procedures, and practices” in education (U.S. Department of Education, 2017, p. 9). Yet, little is known about how school authorities understand the
substantive FAPE standard (Timberlake, 2014). Most research concerning its interpretation comes from legal professionals (e.g. lawyers and legal researchers) that analyze how the law is applied by judges, not education professionals (Zirkel, 2013). Given the varied capacities of schools in the U.S., research is necessary to determine how school authorities interpret the substantive FAPE standard, and whether differences in interpretation negatively impact subgroups of students with disabilities. To address this gap, part 2 of this study examines how district representatives from the Jaral Unified School District (JUSD)\(^1\) make sense of the substantive FAPE standard before and after *Endrew F.* (2017).

**Research Questions**

This study examined the following research questions:

1) How have federal courts interpreted the substantive FAPE standard in the period directly preceding and following the U.S. Supreme Court’s *Endrew F.* decision?

2) How do district representatives in a large, urban school district make sense of the substantive FAPE standard articulated in the U.S. Supreme Court’s *Rowley* and *Endrew F.* decisions?

3) How, and in what ways, is the FAPE provided to subgroups of students with disabilities shaped by factors beyond the interpretations of federal courts or district representatives?

**Methods**

This study used an interdisciplinary approach to understand how legal and education professionals interpret recent changes in federal special education law. Interdisciplinary legal research is appropriate when the research questions concern the internal effectiveness of a legal rule, as well as the external effectiveness of the rule in action (Schrama, 2011). As Banakar (2000) explains, legal research can benefit from the auxiliary use of non-doctrinal methods when

\(^{1}\) Pseudonym
the problem defined in the research questions cannot be answered “solely on the concrete body of legal rules” (pp. 282-283). In this case, part 1 of the study employed traditional legal methods, otherwise known as doctrinal legal research, to provide a systematic description of the present state of positive law (Taekema, 2011). Part 2, on the other hand, used empirical non-legal data to assess “the difference between legal reality and real reality” (Schrama, 2011, p. 149). By applying a variety of complementary techniques, interdisciplinary legal research can provide insight into problems with the law that may not have been considered using a single method (Russo, 2006).

Data was collected individually for each part of this study. In part 1, I compiled federal case law interpreting the substantive FAPE standard from 2015-2018, and in part 2, I conducted in-depth interviews with 18 district representatives about their experiences interpreting and implementing the substantive FAPE standard in JUSD.

The primary information collected from each case concerns the measures used by federal judges to determine whether or not the substantive FAPE standard was satisfied. This included, but was not limited to, the degree of benefits/progress the court considered necessary to achieve a FAPE, as well as the factors the court referenced to establish that the requisite degree of benefits/progress was achieved. By looking at these measures I was able to analyze the extent to which federal courts were aligned with one another and how (or if) these measures have changed since the Supreme Court’s decision in Endrew F. In addition, the following descriptive information about the parties was collected: 1) disability category of the child, 2) educational placement/LRE setting, and 3) demographics for the school (enrollment by race/ethnicity, enrollment by free and reduced price lunch, locale, and size). All demographic information was
pulled from the Search for Schools locator provided by the National Center for Education Statistics.

I conducted 18 interviews with district representatives working at four levels within the JUSD SELPA administrative unit. The interviews followed Seidman’s three-part approach, which focuses on the participant’s life history, the phenomenon being studied, and the meaning made from this phenomenon, in that order (2013). The questions focused on determining who is the legitimate authority interpreting the substantive FAPE standard for the JUSD SELPA, what mediating factors help district representatives make sense of these interpretations, and how these interpretations are communicated to other educators.

Data was analyzed using different procedures for each part of this study. In part 1, a systematic legal analysis was applied to the federal case law, and in part 2, a traditional qualitative analysis was applied to the interviews with district representatives. Finally, I used Levinson, Sutton, and Winstead’s (2009) critical practice approach to policy as a framework to interpret both sources of the data. A critical practice approach begins from the premise that policy is a social practice of power (Sutton & Levinson, 2001). It shares this belief with other critical approaches that examine how policy privileges the interests of those already in power. Unlike its theoretical cousins, however, a critical practice approach believes an “anthropological understanding of policy as sociocultural practice can further critical analysis for social transformation” (Levinson et al., 2009, p. 769). In other words, Levinson et al. call for a deeper analysis of policy that considers how meaning is negotiated within specific cultural and political contexts. The result, they argue, will uncover “cultural logic of power that normally remains hidden” (Levinson et al., 2009, p. 769).
Significance

Although Rowley and Endrew F. grant deference to the expertise and professional judgment of school authorities enacting federal special education law, research shows teachers and administrators have limited legal knowledge (Militello & Schimmel, 2008). Moreover, little is known about how school authorities interpret the FAPE standard under Rowley, and even less so under the new articulation in Endrew F., because most scholarly analysis focuses on court decisions rather than education professionals (Timberlake, 2014; Zirkel, 2013). This represents a significant oversight in education research because school authorities interpret and implement the FAPE standard on a daily basis. If we do not know how district and school level educators conceptualize a FAPE, how can we determine whether judicial deference granted to school authorities is justified? Or worse, without insight into how school authorities make decisions about providing a FAPE, how can we confirm their interpretations are well informed and equitable? Given the disproportionate representation of students of color and low-income students in special education and the recent changes to special education law handed down by the Supreme Court, this is a presumption education researchers can no longer afford to make.

Organization of the Study

Chapter 2 provides a detailed review of the literature that informs this study including the legislative and judicial history of special education law in the United States, research examining how school authorities, federal courts, and legal scholars have interpreted the substantive FAPE standard before and after Endrew F., and the current context of racial/ethnic and socioeconomic inequality in special education.

Chapter 3 describes the methodology used to complete this study. In particular, it explains why an interdisciplinary approach that combines doctrinal legal research and empirical
legal research were the most appropriate methods to address my research questions. It also presents the procedures I followed to collect, analyze, and interpret the data.

Chapter 4 presents the findings from my doctrinal legal analysis of federal case law applying the substantive FAPE standard from 2015-2018. It addresses research question #1: How have federal courts interpreted the substantive FAPE standard in the period directly preceding and following the U.S. Supreme Court’s Endrew F. decision?

Chapter 5 presents the findings from my empirical legal analysis examining how district representatives interpret the substantive FAPE standard. It addresses research question #2: How do district representatives in a large, urban school district make sense of the substantive FAPE standard articulated in the U.S. Supreme Court’s Rowley and Endrew F. decisions?

Chapter 6 uses a critical practice approach to policy to examine the factors that influence how a FAPE gets implemented in schools and how these factors contribute to the inequitable access of legal remedies and related services for subgroups of students with disabilities.

Chapter 7 provides a summary of the key findings from the entire study and presents the implications of these findings for the future research in the field and professional practice.
CHAPTER TWO: Literature Review

In this chapter, I review the literature that informs my dissertation study. I begin by detailing the legislative and judicial history of special education law in the United States. Next, I examine how school authorities, federal courts, and legal scholars have interpreted the substantive FAPE standard before and after *Endrew F*. Finally, I describe the current context of racial/ethnic and socioeconomic inequality in special education.

History of Special Education Law

Federal legislation protecting the rights of students with disabilities emerged from the civil rights movement. In fact, the Supreme Court’s decision in *Brown v. Board of Education* (1954) outlawing racial segregation in public schools paved the way for special education advocates to argue that the exclusion of students with disabilities also violated the equal protection clause of the 14th amendment (Minnow, 2010). But the initial legislative response was limited in scope. In 1966, Congress amended the Elementary and Secondary Education Act to provide federal grants to states to “initiate, expand, or improve programs to meet the special educational and related needs of handicapped children” (Martin, Martin, & Terman, 1996, p. 27). When this program was repealed by subsequent amendments four years later, the Education of the Handicapped Act (EHA) of 1970 replaced and expanded the program, adding funds for regional resource centers and institutions of higher education to provide training and assistance to special education personnel.

It wasn’t until 1972 that two federal district courts in *Pennsylvania Ass’n for Retarded Children (PARC) v. Pennsylvania* and *Mills v. Board of Education* agreed that students with disabilities were historically denied equal educational opportunity in public schools. More specifically, the court in *PARC* raised “serious doubts . . . as to the existence of a rational basis
for such exclusions” (p. 295) and the resulting consent decree between parties required schools to grant students with disabilities “access to a free public program of education and training appropriate to the child’s capacity” (p. 285). Similarly, the court in Mills ordered schools to provide “a publicly supported education suited to [the students’] needs” (p. 871). Following PARC and Mills, 28 states rendered similar rulings requiring schools to provide educational services to students with disabilities. However, the inconsistent quality of these programs prompted special education advocates to pursue more stringent legislation (Katsiyannis, Yell, & Bradley, 2001). In 1974, the EHA was amended to require states to provide “full educational opportunities” to all students with disabilities (Pub. L. No. 93-380, § 611(a)), but just a year later Congress enacted the Education for All Handicapped Children Act (EAHCA) of 1975 to better “assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law” (Pub. L. No. 94-142, § 3(b)(9)).

The EAHCA (1975) became the first federal law to mandate equal access to public education for all students with disabilities. In doing so, it provided specific requirements for school districts to identify and serve eligible students with disabilities. Chief amongst these requirements was the promise of a “free appropriate public education” (FAPE) tailored to the unique needs of each student via an “individualized education program” (IEP) (Pub. L. No. 94-142, § 3(c) and § 4(a)(18)). In an effort to incentivize compliance, the federal government offered grants to states that educated students with disabilities in accordance with the goals of the law (Huefner, 2000).

Almost as soon as the EAHCA was passed, litigation questioning the interpretation of its provisions commenced. In fact, the Supreme Court granted certiorari to review a case challenging the FAPE clause in 1982 – just seven years after its introduction into special
education law. In its landmark decision, *Board of Education v. Rowley* (1982), the Court held that schools have provided a FAPE if the IEP was developed following all procedural requirements and if the IEP was “reasonably calculated to enable the child to receive educational benefits” (pp. 206-207).

Over the years, the EAHCA has been amended numerous times to provide additional rights and protections to students with disabilities. For example, in 1990, Congress changed the name of the law to the Individuals with Disabilities Education Act (IDEA) to reflect more inclusive language practices that recognize the individual before the condition (Cheadle, 1991). At the same time, the IDEA added the requirement that IEPs document transition services for students with disabilities aged 16 and older to help guide them toward their post-secondary goals (1990). In 1997, the IDEA was amended to require measurable annual IEP goals and progress monitoring, as well as procedural safeguards regarding discipline. Furthermore, in 2004, the IDEA was significantly amended to align with the accountability goals of the No Child Left Behind Act (NCLB) of 2001, to require related services based on peer-reviewed research, and to provide early intervention services, to name a few.

Notwithstanding opportunities for legislative amendment, *Rowley* remained the benchmark for determining whether or not a FAPE was provided to students with disabilities. Yet circuit courts disagreed about how to interpret the substantive FAPE standard established by *Rowley*. While a majority group of circuits (i.e. 1st, 4th, 7th, 8th, 10th, 11th, and DC) interpreted *Rowley* as requiring “merely more than de minimis” or “some” educational benefits, one circuit (3rd circuit) interpreted *Rowley* as requiring “meaningful” educational benefits, and a minority group of circuits (i.e. 2nd, 5th, 6th, and 9th) inconsistently used both terms (Wenkart, 2009). Within this confusion, individual courts questioned whether there was any real difference between the
interpretations beyond semantics. For example, in *JSK ex rel. JK v. Hendry Cnty. Sch. Bd.* (1991) the court stated: “We disagree to the extent that ‘meaningful’ means anything more than ‘some’ or ‘adequate’ educational benefit” (p. 1572). Similarly, the court in *J.L. v. Mercer Island Sch. Dist.* (2009) noted, “As we read the Supreme Court’s decision in *Rowley*, all three phrases refer to the same standard” (p. 1038 n.10). Regardless of the interpretation applied, the substantive FAPE standard required courts to consider two questions: 1) What degree of benefits must be provided? 2) What factors should be considered to prove that the requisite degree of benefits has been achieved?

As a result of the circuit court split, courts inconsistently applied the substantive FAPE standard across the country. To address this problem, the Supreme Court recently reviewed *Rowley’s* interpretation. In *Endrew F. v. Douglas County School District RE-1* (2017), the Court overturned the “merely more than de minimis” test used by the Tenth Circuit and refined *Rowley* by holding that “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (p. 999) (italics added to identify the new language). Here, the Court maintained the requirement for a “reasonably calculated” IEP as originally espoused in *Rowley*, but the phrase “educational benefits” was replaced with “progress appropriate in light of the child’s circumstances.” While this reinterpretation establishes a minimum threshold for the provision of a substantive FAPE, it does not establish a maximum threshold and it is purposefully vague. Indeed, the new standard demands that courts base their FAPE determinations on the individualized circumstances of each plaintiff. Similar to its predecessor, the substantive FAPE standard in *Endrew F.* will require courts to make subjective decisions about what is appropriate progress and how such progress should be measured.
Although the substantive FAPE standard changed under *Endrew F.*, this dissertation focuses on the standards set by both *Rowley* and *Endrew F.* for two reasons. First, despite the Supreme Court’s recent decision, the substantive FAPE standard remains ambiguous and open to interpretation by courts and school authorities. Second, *Rowley*’s history will likely be used as a guide for future decisions because *Rowley* was not overturned, just refined. In this sense, understanding how federal courts and school authorities interpret both standards provides insight into how changes in the law are being interpreted and applied.

**Interpretation of the Substantive FAPE Standard**

The judiciary is responsible for interpreting special education law when disputes arise between school districts and families. On a day-to-day basis, however, school authorities interpret and implement the IDEA in classrooms across the country. According to the Supreme Court in *Rowley* and *Endrew F.*, this division of labor recognizes school authorities as education professionals whose decisions deserve deference. In fact, the Court purposefully refused to define a “bright-line rule” satisfying the substantive FAPE standard because doing so might be mistaken as “an invitation to the [lower] courts to substitute their own notions of sound educational policy for those of the school authorities which they review” (*Rowley*, 1982, p. 206). Instead, the Court held that judges must defer to the “expertise and the exercise of judgment by school authorities” when determining whether a FAPE was provided (*Endrew F.*, 2017, p. 1001). But what do we know about this expertise as it applies to interpretation and implementation of the substantive FAPE standard? The dearth of literature examining this phenomenon is cause for concern in and of itself, but the overall finding that educators frequently misunderstand special education law and implement its policies according to their own agendas (Lashley, 2007; McHatton et al., 2010), raises questions about the appropriateness of such deference.
School Authorities

Given the considerable latitude granted to school authorities, research examining how educators understand the substantive FAPE standard is necessary to evaluate whether the law is being applied equitably. Variability in how school authorities conceptualize a FAPE can significantly impact the instruction and services provided to students in their IEPs (Yell, 2012). The disproportionate representation of low-income students of color in special education (Albrecht, Skiba, Losen, Chung, & Middelberg, 2012) means wide-scale variability could result in innumerable consequences for subgroups of students with disabilities. In the sections that follow, I review the literature examining how school authorities learn about, make sense of, and implement special education law.

Knowledge and Training. Little is known about educators’ knowledge of school law generally, much less special education law specifically. The National Council for Accreditation of Teacher Education requires that all teachers be able to apply knowledge related to law in the context of schools, families, and communities (2008). However, an overwhelming majority of teachers have never taken a course in education law (Schimmel & Militello, 2007) and only one state (Nevada) required teachers to take such a course (Gajda, 2008). In the absence of systemic legal training, 52% of teachers reported receiving information or advice about school law from other teachers (Schimmel & Militello, 2007), yet a follow-up study revealed teachers have a uniformly low level of knowledge about school law (Militello & Schimmel, 2008). Research conducted on the implementation of education reforms has shown that teachers formulate their interpretations based on training opportunities about policy (Cohen & Hill, 2001). But the nuanced nature of the substantive FAPE standard is unlikely to be covered in the “crammed curriculum of teacher education in special education” (Zirkel, 2015, p. 273).
Once teachers graduate from their preparation programs, more than 60% depend on their special education administrator as the sole source of information to communicate legal updates (Timberlake, 2016). Administrators, however, were also unreliable sources of information because they communicated school law in an “unconscious, informal, and uninformed fashion” and they reported feeling inadequately prepared to serve as legal instructors for their teachers (Militello & Schimmel, 2008, p. 103). This aligns with earlier findings that administrators receive minimal legal training in their leadership preparation programs (Garrison-Wade, 2005; Pazey & Cole, 2013) and they are “generally not knowledgeable about the operational dictates of Supreme Court decisions affecting education” (Zirkel, 1978, p. 522). Although Ogletree (1985) also concluded there was considerable unawareness about school law among administrators and teachers, he found that those respondents who had taken a course in school law were more knowledgeable about legal matters.

Unsurprisingly, administrators reported misunderstanding many issues related to special education (Garrison-Wade et al., 2007). For example, one study found principals viewed inclusion as a placement rather than a set of values (Doyle, 2002) and another study found principals struggled to offer feedback to teachers on differentiating instruction and discipline (Salisbury, 2006). Administrators also lacked the knowledge to handle the demands of accountability mandates like documenting progress and hiring highly qualified special education teachers (Crockett, Myers, Griffin, & Hollandsworth, 2007). In relation to the substantive FAPE standard, administrators felt the ambiguous language of the IDEA made implementation confusing (Lashley, 2007; McHatton et al., 2010).

**Sensemaking and Implementation.** Even without sufficient knowledge or training in special education law, school authorities are still held responsible for providing a FAPE to
students with disabilities. In order to do so, they must make sense of the substantive FAPE standard in their capacity as educators. According to Coburn (2001), sensemaking is a process whereby individuals and groups actively construct meaning from information or events. This process involves the interplay of internal forces within the participant (e.g. existing paradigms, values, and beliefs) and external forces from the environment (e.g. policy, training, and student demographics) (Sumbera, Pazley, & Lashley, 2014). In this respect, sensemaking recognizes that interpretations of special education law and policy will be shaped by the personal views educators hold and the local contexts in which they work.

From the sensemaking perspective, studies examining the implementation process found that how teachers and administrators interpret a policy will determine “whether they engage in significant change, incremental change, or resistance” (Seashore Louis, Febey, & Schroeder, 2005, p. 178). Ultimately, educators’ interpretations of policy shape practice in schools and classrooms (Burch, Theoharis, & Rauscher, 2010; Coburn, 2005; Spillane, 2004). For example, Spillane (2004) compared a group of Michigan teachers’ science policy implementation to a game of telephone because reinterpretations changed significantly throughout the study, and many teachers’ interpretations did not align with what state policy makers intended. Similarly, Coburn (2005) described how differing interactions between principals and teachers at two schools resulted in unique implementations of the same reading policy. On a related note, the tension between internal and external forces during sensemaking reveals how policy is a practice of power that can change form from one context to another (McCarty, 2011; Newcomer & Collier, 2015). A number of studies show that school officials attend to or ignore equity-minded reforms according to their personal interests or agendas (Firestone, 1989; McLaughlin, 1987),
and other powerful groups like male teachers and wealthy, White parents used their influence to block de-tracking efforts in their schools (Datnow, 1997; Welner, 1999).

In the context of special education, policy implementation studies demonstrate that educators’ perceptions of the purpose of a FAPE can have a direct influence on how they deliver services to students with disabilities (Praisner, 2003; Riehl, 2000). When principals embraced inclusive philosophies addressing the needs of all students, for instance, they reconfigured the culture of their schools to enact deeper change (Salisbury, 2006; Smith & Leonard, 2005). These principals worked with others to find strategies and supports that would improve campus-level inclusion efforts (Provost, Boscardin, & Wells, 2010) and recognized the importance of communication with parents and teachers (Crockett et al., 2007). On the other hand, when principals viewed inclusive practices as constraining, they focused their efforts on surface-level changes designed to ensure compliance (Doyle, 2002). This resulted in more restrictive placements for students with disabilities who didn’t “really fit in” with the school (Salisbury, 2006, p. 78) or counseling out when a student failed to meet the school’s expectation of success, particularly in private and charter schools (Estes 2003, 2009; Taylor, 2005).

Of course, the perceptions of school authorities were not the only factors at play. Principals lacking knowledge about special education law missed cues signaling problems in their schools. For example, one principal claimed his school achieved 100% inclusion because students with disabilities participated in extracurricular activities (Salisbury, 2006), while another principal thought sending student volunteers to assist in the special education class was an “aspect of inclusion” (Doyle, 2002, p. 46). Both teachers and principals were also more likely to “construct interpretations that strayed from explicit policy intent” when dealing with ambiguous mandates (Russell & Bray, 2013, p. 16). Additionally, educators identified systematic
factors that impacted their ability to fulfill their responsibilities such as time constraints, school size, student demographics, the cost of special education services, and the fear of lawsuits (Bays & Crockett, 2007; Brotherson, Sheriff, Milburn, & Schertz, 2001; Taylor, 2005).

The available research examining how school authorities understand special education law is limited in quantity and scope. Nevertheless, it highlights several areas of concern: First, despite professional standards requiring legal literacy, research suggests administrators and teachers are not properly trained to implement the IDEA. Second, policy implementation studies reveal that the personal values and beliefs of school authorities play a significant role in their interpretation and implementation of IDEA policies. Third, the literature does not focus on the substantive FAPE standard, but rather on general special education policies like inclusion. For these reasons, it is crucial to gain a better understanding of how school authorities make sense of the substantive FAPE standard, and whether their interpretations vary across schools and districts. Otherwise, the deference allotted by the Supreme Court may exacerbate issues of inequity in special education.

**Judiciary**

Though research on school authorities’ interpretations of the substantive FAPE standard is minimal, thousands of decisions by the judiciary shed light on potential issues of variability. It is important to note that litigated disputes only represent a fraction of the dispute resolution complaints filed; less than 20% resulted in a fully adjudicated hearing (Center for Appropriate Dispute Resolution in Special Education, 2017) and most decisions by hearing officers are unpublished (Zirkel & Machin, 2012). Even still, the volume of published cases is beyond the scope of this review. As such, the following section focuses on circuit court cases that illustrate the important trends in judicial interpretation of the substantive FAPE standard as set by *Rowley*
and *Endrew F*. Circuit court decisions are the controlling authority over district courts and represent a consensus of opinion within each of the 12 regions.

**Rowley.** After the Supreme Court’s decision in *Rowley*, circuit courts split over interpretations of the substantive FAPE standard. The majority of circuit courts applying the “merely more than *de minimis*” or “some” (p. 200) educational benefits interpretation heavily relied on *Rowley*’s dicta that schools are not required to “maximize the potential of handicapped children” (p. 200) and only need to provide a “basic floor of opportunity” (p. 201). As a result, these courts required minimal proof of educational benefits and accepted evidence of passing grades (as opposed to average or above-average grades) as sufficient indicators of progress. Some courts considered other factors such as progress on IEP goals or standardized assessments, but still maintained a low bar to prove “some” benefits were achieved (See, e.g., *James D. v. Bd. of Educ.*., 2009; *Thompson R2-J Sch. Dist. v. Luke P.*, 2008).

On the other hand, circuit courts using the “meaningful” (*Rowley*, p. 192) educational benefits interpretation reasoned that significant benefits were necessary to prepare students with disabilities for “further education, employment, and independent living” as stated in the purpose of the IDEA (2015). These courts utilized a more holistic, “student-by-student analysis that carefully consider[ed] the student’s individual abilities” (*Ridgewood Bd. of Educ. v. N.E.*, 1999, p. 248; See also, *T.R. v. Kingwood Twp. Bd. of Educ.*, 2000). In this respect, passing grades or grade advancement weren’t always sufficient factors to prove that educational benefits were provided because each student has different capabilities. For example, if access to grade level standards was not a reasonable prospect, courts evaluated whether educational benefits were provided in relation to the child’s potential, and they considered indicators of progress in the specific areas where services were provided (*Wenkart*, 2009; See, e.g., *D.S. v. Bayonne Bd. of*
At the same time, however, a number of circuit courts applied both the “some” and “meaningful” educational benefits interpretation. This intra-circuit inconsistency led judges to question whether there was any difference between the two interpretations or whether it was just a matter of semantics. (See, e.g., Blake C. v. Dep’t of Educ., 2009). In fact, the Ninth Circuit acknowledged in J.L. (2009) that the “some” and “meaningful” educational benefits interpretations were essentially the same thing, and on remand the district court focused its analysis on the plaintiff’s passing grades as a sufficient indicator of appropriate progress (J.L., 2010). Complicating the issue even further, some courts argued that actual student progress was irrelevant since “the appropriateness of [an] IEP ultimately turns on whether it was reasonably calculated to provide an educational benefit” (S.H. v. Plano Indep. Sch. Dist., 2012, p. 13).

Following this logic, the question is not whether the student achieved “some” or “meaningful” educational benefits, but whether the IEP was calibrated to enable the student to make progress. Courts that adopted this reasoning reduced the threshold for Rowley’s substantive FAPE standard to its lowest level by effectively eliminating the requirement for school districts to demonstrate any educational benefit (Zirkel, 2015). As a result, only one thing was certain after Rowley: access to special education services varied based on the presiding jurisdiction (Johnson, 2012).

Endrew F. The plaintiff in Endrew F. was a child diagnosed with autism and attention deficit/hyperactivity disorder whose increasing behavior problems began to interfere with his learning. Before starting fifth grade, Endrew’s parents notified the school district they were enrolling him at a private school that specializes in educating children with autism. In 2012, they filed a due process complaint seeking reimbursement for tuition, alleging “the stated plan for addressing Endrew’s behavior did not differ meaningfully from the plan in his fourth grade IEP”
and thus “the final IEP proposed by the school district was not ‘reasonably calculated to enable [Endrew] to receive educational benefits’” (Endrew F., 2017, p. 997). The administrative law judge reviewing the complaint disagreed with Endrew’s parents and denied relief. On appeal, the district court concluded that Endrew’s previous IEP had enabled him to make “a pattern of, at the least, minimal progress” and this progress was sufficient to satisfy Rowley (Endrew F., 2014, p. 9). The Tenth Circuit affirmed on the grounds that Rowley’s requirement for “some educational benefit” has been “long interpreted . . . to mean that a child’s IEP is adequate as long as it is calculated to confer an “educational benefit [that is] merely . . . more than de minimis”’ (Endrew F., 2015, p. 1338). Endrew’s parents appealed to the Supreme Court and certiorari was granted.

In Endrew F. (2017), the Supreme Court invalidated any interpretations of the substantive FAPE standard that allowed for “merely more than de minimis” progress. However, the Court declined to address the circuit court split between the “some” and “meaningful” educational benefits interpretations of Rowley. In fact, the Court avoided interpreting this language altogether because Rowley (1982) explicitly refused “to establish any one test for determining the adequacy of educational benefits” (p. 997). Instead, the Court reasoned that the IDEA and Rowley call for “a general approach” to meet the substantive obligation of a FAPE, which requires “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (Endrew F., 2017, p. 999). Because the IDEA covers a wide spectrum of disabilities, “the progress contemplated by the IEP” must focus on the needs of “the particular child” (p. 999). The Court further explained that a child’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” For students not educated in the regular classroom, the Court stated, “every child should have the chance to meet challenging
objectives” (Endrew F., 2017, p. 1000).

Thus far, the lower courts have interpreted Endrew F. narrowly. Although circuits that relied on the “merely more than de minimis” dictum of Rowley have acknowledged the “higher standard of Endrew F. that must now be applied” (Paris Sch. Dist. v. A.H., 2017, p. 28), they also plan to continue “using existing . . . case law where it is still relevant” (p. 15). In J.R. v. Smith (2017), for example, a district court in the region of the Fourth Circuit argued that even though the administrative law judge rendered her decision before Endrew F., the analysis was still valid because it went “beyond the more than de minimis standard” (p. 11). Following this logic, circuits that adopted the higher “some” and “meaningful” educational benefits interpretations from Rowley have expressly rejected the argument that Endrew F. represents a significant change in the law. The Fifth Circuit, which previously applied its own four-factor test akin to the “some” educational benefits interpretation, concluded that Endrew F. does not present a conflict with their precedent because the Supreme Court overturned “another circuit’s precedent that provided a far lower threshold for an IEP than required by our court” (E.R. v. Spring Branch Independent School District, 2018, p. 765). Similarly, the Third Circuit ruled that “Endrew F.’s language parallels that of our precedents” when it upheld the use of its “meaningful” educational benefits interpretation (Dunn v. Downingtown Area School District (In re K.D.), 2018, p. 254). In this sense, the lower courts are less concerned with the educational benefits standard to which their jurisdictions previously subscribed and more concerned with the analysis employed in the decisions. So long as courts required more than de minimis progress, their precedent stands.

Just like its predecessor, Endrew F.’s new substantive FAPE standard does not provide lower courts with a bright-line rule explaining how to determine what appropriate progress looks like. This, of course, was the Supreme Court’s goal because Rowley did not “articulate an
overarching standard to evaluate the adequacy of the education” provided by the IDEA (Endrew F., 2017, pp. 998-999). While this guidance allows for the construction of highly individualized IEPs for students, it also leaves room for issues of inequality. These issues will be discussed in depth in Chapter 6. For the purposes of this review, however, suffice it to say that the ambiguous new language in Endrew F. has since been interpreted to require a surprisingly low level of progress. For example, the Third Circuit (known for upholding the highest substantive bar before Endrew F.) found that “slow progress” does not necessarily constitute a denial of FAPE because “there is no reason to presume that [the plaintiff] should advance at the same pace as her grade-level peers” since she received “supplemental learning support for much of the day” (Dunn, 2018, p. 255). Similarly, a district court in the same regional circuit held that incremental progress is sufficiently meaningful (T.M. v. Quakertown Cmty. Sch. Dist., 2017). And in Parker C. v. West Chester Area Sch. Dist. (2017), another district court in the jurisdiction argued that since “modifications to Parker’s [passing] grades were not any different than any other student” (p. 30), they constituted appropriate progress in light of the plaintiff’s executive functioning deficiencies. Furthermore, the Fourth Circuit asserted that “the IDEA does not require a public school to account for every deficiency a disabled student might possess” (M.L. v. Smith, 2017, p. 499).

In addition to the low progress threshold being enforced by the lower courts is their continued reliance on the reasonableness qualification preserved from Rowley. As noted earlier in this chapter, even before Endrew F., courts used the reasonably calculated language in the substantive FAPE standard to circumvent the required demonstration of progress (Zirkel, 2015). This legal argument has also survived the changes made to Endrew F. In J.R. (2017), the district court upheld the finding of a FAPE despite the plaintiff’s “complete” lack of academic progress.
As the administrative law judge explained, the previous IEP was not appropriate because the academic program was overly rigorous for a student with “low extreme” cognitive deficits, but the new IEP offered services through an alternative curriculum that was reasonably calculated to provide an appropriate opportunity for educational progress (pp. 20-27). In Montuori v. District of Columbia (2018), the district court determined the IEP was reasonably calculated because it was based on a comprehensive psychological evaluation that stated the plaintiff was “not in imminent danger of failing” his classes, despite an academic record showing D’s in four classes (p. 27). Ultimately, the plaintiff prevailed on a procedural error, but the substance of his IEP was deemed adequate when created. Both of these cases demonstrate how overemphasis on the prospective reasonableness of the IEP allows courts to avoid addressing what “appropriate” progress would actually mean under the new standard. It’s unclear whether these courts are opting for the easier legal argument that is supported by precedent or if they are simply hesitant to issue a prescriptive interpretation under such a broad substantive obligation.

As it stands, then, Endrew F. raised the substantive FAPE standard above “merely more than de minimis” but not much higher than that. The lower courts have accepted findings of minimal progress, barely passing grades, and even a complete lack of progress as substantively adequate. The only difference between Rowley and Endrew F. is that the low bar now must be justified by the child’s circumstances.

Legal Scholars

Unlike the judiciary, legal scholars are not bound by precedent or susceptible to political pushback when interpreting the IDEA in their work. As a result, they can propose more liberal interpretations of the substantive FAPE standard that may not be available to courts. Of course, scholarly interpretations are not legally binding in any way; rather they serve to inform, question,
and shape future policy.

Before *Endrew F.*, legal scholars focused on *Rowley’s* competing interpretations of the substantive FAPE standard. In particular, they argued that the “some” educational benefits interpretation of *Rowley* was supplanted by amendments to the IDEA that called for standards-based progress for students with disabilities (e.g. Yell, Katsiyannis, & Hazelkorn, 2007; Zirkel, 2013). Beginning in 1997, Congress reauthorized the IDEA “to assess, and ensure the effectiveness of, efforts to educate children with disabilities” (Pub. L. No. 105-17, § 601(d)(4)). According to Huefner (2008), this amendment shifted the goals of special education law toward academic results, as opposed to basic access, for the first time. In 2001, the NCLB further accelerated education reform toward accountability measures when it required schools to make adequate yearly progress (AYP) on standards-based assessments. The AYP provision included students with disabilities because the NCLB was intended to work “in conjunction with the requirements of [the] IDEA” (Kaufman & Blewett, 2012, p. 17). Finally, the reauthorization of the IDEA in 2004 adopted the NCLB’s results-oriented approach by requiring standards-based improvement for students with disabilities. As several legal scholars have argued, the IDEA’s increased emphasis on performance indicators requiring AYP directly contradicted the “some” educational benefits interpretation of *Rowley* that only required minimal progress (e.g. Huefner, 2008; Kauffman & Blewett, 2012).

However, courts disagreed that amendments to the IDEA impacted *Rowley’s* interpretation of the substantive FAPE standard. In *Brennan v. Regional School District No. 1* (2008), the district court found that the IDEA only requires a “baseline level of adequacy” even after the NCLB was passed (p. 45). Similarly, another district court held that *Rowley* remains good law because “Congress has not explicitly articulated disagreement with it or amended the

Furthermore, the Seventh Circuit ruled that the IDEA takes precedence over the NCLB in cases where the two laws cannot be reconciled (*Bd. of Educ. v. Spellings*, 2008). While the arguments of legal scholars did not raise the threshold of *Rowley*’s substantive FAPE standard in these cases, plaintiffs’ attorneys forced courts to consider how complementary legislation impacts the IDEA, and thus its interpretation of a FAPE. However, these cases show that district and circuit courts require explicit changes in the law to overturn *Rowley*.

Today, a “merely more than *de minimis*” educational benefits interpretation of *Rowley* is invalid, and the “some” and “meaningful” educational benefits interpretations are being phased out of judicial opinions thanks to the Supreme Court. Although comprehensive conclusions about the effects of *Endrew F.* are premature at this time, legal scholars are already documenting trends as they evolve in the lower courts. As Zirkel argues, from its inception, *Endrew F.* was “not likely to be a game changer” because its “fact-intensive nature” and “ample latitude for the overall trend of judicial deference” would continue the pro-district balance of outcomes in FAPE cases (2017c, pp. 12-13). Indeed, a follow-up study one year later found that the “overwhelming majority” of outcomes were unchanged before and after *Endrew F.* Moreover, this result was true for all regional circuits, regardless of whether they subscribed to the “some” or “meaningful” educational benefits interpretation of *Rowley* (Zirkel, 2018, p. 4). These findings align with a pre-*Endrew F.* study from Karanxha and Zirkel (2014) that showed conclusive outcomes by the courts favor school districts almost 3:1. The researchers attributed this pattern to the broad deference granted to school authorities by *Rowley*, as well as the IDEA’s stringent standard for prevailing on procedural violations.² While procedural violations are beyond the

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² The 2004 amendments to the IDEA provided that procedural violations can only result in a denial of a FAPE when the error “impeded the child’s right” to a FAPE, “significantly impeded the parent’s opportunity to participate in the
The Supreme Court in *Endrew F.* reaffirmed *Rowley*’s deference to the judgment of school authorities on the question of appropriate progress. However, this time the Court clarified that lower courts could require school districts to provide a “cogent and responsive explanation for their decisions” (*Endrew F.*, 2017, p. 1002). According to Seligmann (2017), this requirement could hold school districts accountable for their selection of services and methodologies in ways they haven’t been in the past. Under *Rowley*, for example, the Seventh Circuit once acknowledged that administrators were mistaken, but still ruled in favor of the district because the IEP was not unreasonable (*Alex R. v. Forrestville Valley Comty. Unit Sch. Dist.*, 2004). Considering other Supreme Court precedent that places the burden of proof on the appellant (usually the parent or guardian) (*Schaffer ex rel. Schaffer v. Weast*, 2005) and prevents prevailing parties from recovering the costs of hiring experts (*Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 2006), *Endrew F.* may offer a “welcome corrective” in the level of deference previously granted to school authorities (Seligmann, 2017, p. 493). Alternatively, as Cowin (2018) warns, the ambiguity of this qualified review and whether or not lower courts will choose to enforce it “may ultimately cause courts to differ on the level of deference they provide to school administrators” (p. 607). Although legal scholars cannot answer this question today, it is certainly ripe fruit for future FAPE litigation.

Beyond judicial deference, the disparity in outcomes favoring school districts may be explained by other factors as well. For example, the number of due process complaints adjudicated (2,571) is drastically lower than the number of due process complaints withdrawn or
dismissed (11,119) (U.S. Department of Education, 2016b). Karanxha and Zirkel attributed this discrepancy to the strength of the case against the district, whereby cases that showed clear error were withdrawn and settled before reaching the courts (2014). Absent in this analysis, however, is the possibility that families who lacked the resources or know-how to navigate the judicial system withdrew valid complaints. Pollock (2010) found that families from poorer backgrounds were less likely to pursue legitimate claims against school districts to enforce equitable delivery of services. Interestingly, when the data was disaggregated by region, two circuits (6th and DC) had more balanced outcomes between districts and families, but this finding was less pronounced for the most recent interval of analysis, and Karanxha and Zirkel were unable to establish a causal connection for the trend (2014). Nevertheless, the majority of circuits still maintained a disproportionate pro-district slant individually and collectively (Karanxha & Zirkel, 2014). Given Endrew F.’s continued endorsement of judicial deference to school authorities, additional research evaluating its impact, particularly on low-income families and families of color, is necessary to ensure equal enforcement of the IDEA.

**Inequality in Special Education**

Despite borrowing the legal argument used by civil rights advocates, many of the IDEA’s policies have actually impeded students of color and low-income students from accessing equal rights and protections under the law. For decades research has shown that students of color are disproportionately represented in special education (Dunn, 1968; Mercer, 1973; Parrish, 2002; Skiba, Poloni-Staudinger, Simmons, Fennings-Azziz, & Choong-Geun, 2005; Sullivan, 2011). But recent studies suggest students of color are actually less likely to be identified for special education when compared to otherwise similar White students (Morgan, Farkas, Cook, et al., 2016; Morgan, Farkas, Hillemeier, et al., 2015), while others demonstrate that the relationship
between race/ethnicity and special education identification depends on the specific demographic context of the school (Fish, 2019; National Bureau of Economic Research, 2019). There is no debate, however, that students of color in special education are more likely to experience increased segregation, harsher discipline, and lower academic expectations (Sullivan & Bal, 2013). Similarly, low-income students in special education are disproportionately enrolled in underfunded schools with undertrained teachers (Hughes & Avoke, 2010) and low-income families have the fewest resources – financial, social, and educational – to navigate the complex intricacies of the IDEA that could provide their children with better educational opportunities (Hyman, Rivkin, & Rosenbaum, 2011). Indeed, well-intentioned policies sometimes reify inequities for the very groups they were designed to serve (Castro-Villarreal & Nichols, 2016; Tefera, Gonzalez, & Artiles, 2017). In the section that follows, I describe pressing issues of racial/ethnic and socioeconomic inequality in special education that prevent subgroups of students with disabilities from realizing their full rights under the IDEA.

**Disproportionality**

The disproportionate representation of students of color in special education remains a persistent, deep-rooted problem (Albrecht et al., 2012; Zhang et al., 2014). In 2014, Native American, Black, and Pacific Islander students were more likely to be represented in special education than all other racial/ethnic groups (U.S. Department of Education, 2016a). Remarkably, Native American and Pacific Islander students were 4.09 and 2.35 times more likely to be labeled with developmental delay, and Black students were 2.08 and 2.22 times more likely to be labeled with emotional disturbance and intellectual disability than all other racial/ethnic groups, respectively (U.S. Department of Education, 2016a). Latino students classified as English language learners were underrepresented in the category of specific learning
disability, but overrepresented in intellectual disability (Sullivan, 2011).

These disability categories are often referred to as “judgmental categories” because they do not have an organic cause and require professionals to infer a diagnosis (O’Connor & Fernandez, 2006, p. 6). As Fish (2019) explains, judgmental categories like intellectual disability and emotional disturbance are associated with greater social stigma relative to other disability categories like autism and speech/language impairment. Over the years, researchers have consistently found disproportionate representation of students of color in judgmental categories (Hosp & Reschly, 2004; Sullivan, 2011; Zhang et al., 2014). A pair of recent studies by Fish highlights the salience of a student’s racial/ethnic background in special education representation, especially as it relates to classification in judgmental versus nonjudgmental disability categories. In the first study, Fish (2017) found disproportionate representation of students of color when they exhibited behavior challenges, but disproportionate representation of White students when they exhibited academic challenges. In the second study, Fish (2019) found students of color in Wisconsin were much more likely to be classified with intellectual disability or emotional disturbance when they attended a predominantly White school and White students were more likely to be classified with autism or speech/language impairment when they attended a predominantly non-White school. Similarly, a study conducted by the National Bureau of Economic Research (2019) found overrepresentation of Black and Latino students in special education in Florida when they attended predominantly White schools and underrepresentation when they attended predominantly non-White schools.

One school of thought attributes such disparity to the impact of poverty. These scholars argue that students of color are more likely to be poor, which increases their exposure to various social risks that compromise early development and lead to higher rates of disability (e.g. Blair
For example, a report from the National Research Council concluded that poor households are “less than optimal” places for early development because parent-child interactions among poor families are “negative” (2002, p. 121). This assessment, however, used middle class parenting practices as the normative standard to evaluate early development in poor families. While this type of analysis is common practice in traditional special education literature (O’Connor & Fernandez, 2006), human development researchers believe “culture-specific standards or ideals for development . . . should not be applied or generalized to other populations” (Shweder, 1999, p. 143). A new school of thought in special education endorses this idea by questioning the normative frames used to diagnose disabilities. These scholars problematize the use of middle class Whites as the single referent against which the development of students of color are evaluated in special education referrals (e.g. Hosp & Reschly, 2004; Lee, 2003). As Lee (2003) explained, when schools privilege middle class White culture as the standard for achievement and behavior, those who perform markedly different will be classified as disabled. Given the judgmental nature of specific disability categories, any analysis of disproportionate representation must consider how normative frames increase the likelihood that students of color were socially determined to be in need of those special education services.

The disproportionate representation of students of color in judgmental disability categories is also concerning given the correlation between classification and academic outcomes (Fryer & Katz, 2013). For example, only 16.9% of students classified with intellectual disability were educated inside the regular classroom for 80% or more of the day (U.S. Department of Education, 2016a). Students classified with emotional disturbance were the most likely to be suspended, expelled, and arrested in comparison with all other disability categories (Lipscomb et
al. 2017). What’s more, students classified with emotional disturbance had substantially higher dropout rates from high school compared to any other disability category from 2004-2014. That is to say that every year, for a period of ten years, the dropout rate for students classified with emotional disturbance was never less than 35% (U.S. Department of Education, 2016a). Compounding the problem even further, students classified with intellectual disability and emotional disturbance live in the most socioeconomically disadvantaged households and attend the lowest performing schools (Lipscomb et al., 2017).

Regardless of disability classification, all students of color in special education are more likely to be placed in segregated classrooms, attend underfunded schools, and receive harsher discipline outcomes (e.g. Donovan & Cross, 2002; Lipscomb et al., 2017; Losen et al., 2014; Sullivan, 2011). For example, research has shown that Black and Latino students are overrepresented in restrictive, segregated classroom settings (Blanchett, 2009; Sullivan, 2011). Similarly, students of color attending predominantly White schools are resegregated into remedial courses with less rigorous instruction (Oakes, 2005). These findings are not surprising when ethnographic research repeatedly demonstrates special education placement decisions are based on the assumptions and beliefs of individual school authorities that socially construct notions of ability (Ahram et al., 2011; McDermott et al., 2006). As another example, students of color disproportionately attend schools with less experienced teachers and less rigorous courses (Kozol, 2005). They also have access to lower quality and fewer services in special education than their wealthier and White counterparts (Donovan & Cross, 2002) and are less likely to utilize the IDEA to address these issues (Pollock, 2010). Finally, students of color are also overrepresented in disciplinary outcomes. According to Losen et al. (2014), 20% of Native American and 32% of Black students with disabilities were suspended in 2012. To make matters
worse, these national averages mask even greater disciplinary disparities happening at the local level. In 2010, for instance, more than 200 schools in the U.S. suspended Black male students with disabilities at rates over 50% (Losen et al., 2014). Research has attributed these gross disparities to highly subjective perceptions of Black students as more threatening (Lewis, 2003) and aggressive (Neal, McCray, Webb-Johnson, & Bridgest, 2003) compared to White students.

Much less is known about disproportionality for low-income students in special education because the IDEA does not require states to report data based on students’ socioeconomic status. However, a number of studies suggest the special education system similarly disadvantages poor students and families (Caruso, 2005). Like students of color, low-income students in special education often receive inadequate services in more isolated settings due to their concentration in already struggling schools (Wakelin, 2008). These schools tend to have less experienced teachers, fewer resources for students, and lower quality curriculum (Hughes & Avoke, 2010). Moreover, a recent study looking at student-level data from three states confirmed that low-income students are identified in high incidence disability categories at higher rates and then placed in substantially separate classrooms at higher rates too (Schifter, Grindal, Schwartz, & Hehir, 2019). Although past research assumed a correlation between poverty and disability because of the correlation between race and poverty (Garda Jr., 2005), Schifter et al. (2019) problematizes this assumption for ignoring potential systemic biases that may explain higher rates of identification of low-income students for special education. Additional research in this area is necessary to pinpoint the mechanisms driving the disproportionate identification and segregation of low-income students in special education.
Access to Benefits and Remedies

The IDEA was designed to address existing issues of inequality for students with disabilities (2015). This included the express intent of Congress to protect vulnerable subgroups without financial resources:

Congress finds that there is an urgent and substantial need . . . to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care (20 U.S.C. § 1431(a)(5)).

But research shows the benefits of the IDEA are not evenly distributed and the current system overwhelmingly advantages wealthier families who have the resources and know-how to fight for more and better services (Caruso, 2005; Chambers, Parrish, Esra, & Shkolnik, 2002).

According to Raj and Suski (2017), the recent changes to the substantive FAPE standard in *Endrew F.* further exacerbates these disparities between low-income and high-income families because a more individualized standard effectively requires expert witnesses to prove why a specific FAPE offer is inappropriate. In this regard, families pursuing dispute resolution need significant financial resources to successfully dispute a problematic IEP.

**IEP Process.** The inequitable distribution of special education supports and services begins with the development of the IEP, which requires substantial parental involvement and consent. These requirements were initially instituted as procedural safeguards to ensure parental participation in the IEP process (20 U.S.C. § 1414(d)), but effective or meaningful participation requires specialized knowledge or the resources to pay for an advocate with such knowledge (Koseki, 2017). For example, for parents to advocate effectively in the IEP process, they must understand the needs and effects of their child’s disability, the procedural and substantive
requirements of the IDEA, and the services available in their school system. Wealthier families tend to have more social and financial resources that grant them access to this information and “the ability to deploy it” (Pasachoff, 2011, p. 1439). On the other hand, low-income families without access to these resources have limited involvement in their children’s IEPs and more difficulty obtaining appropriate services (Wakelin, 2008).

Even if low-income families know their child’s IEP is inappropriate, the inability to pursue (or even threaten) litigation weakens their bargaining position (Raj & Suski, 2017). As Caruso (2005) points out, the IEP is a bilateral exchange for higher income families who can bargain for better services by implicitly or explicitly agreeing not to sue the school district. This is not true for lower income families who typically cannot afford a lawyer and therefore must accept the school’s unilateral offer of services. In this sense, the IEP is more a “statement of what the educational agency feels legally obliged to do” (Caruso, 2005, p. 178). Furthermore, even the most generous administrators are working under budgetary constraints when making decisions about special education services. Because financial and personnel resources are limited, the additional benefits a wealthy family negotiates for their child results in fewer benefits for other children (Chambers et al., 2002). And the promise of confidentiality in the IEP process means lower income families may not even be aware of the disparity in services provided (Caruso, 2005).

**Due Process.** When families decide to challenge an IEP offered by their school, the costs are significant. Just the initial hearing can cost tens of thousands of dollars in legal fees and families that choose to represent themselves are still responsible for expert witness fees (Chopp, 2012). In addition to the financial costs of the litigation itself, the time required to prepare for and attend a hearing could amount to a substantial loss in wages from missed work. This is a
substantially heavier burden to bear for low-income families (Koseki, 2017). What’s more, since prevailing parties do not receive compensatory or punitive damages under the IDEA, it can be difficult for low-income families to attain experienced counsel willing to work for attorney’s fees alone (Chopp, 2012). Research confirms these barriers prevent low-income families from pursuing due process remedies (Hyman et al., 2011).

The Supreme Court’s decision in Endrew F. may further compound the challenges low-income families face if they pursue litigation. According to Raj and Suski (2017), Endrew F. created such an individualized standard that families are effectively required to provide expert witnesses to explain how an IEP is inappropriate in light of their child’s unique circumstances. If families do not have the means to pay for experts, an expense for which they cannot receive reimbursement even if they prevail (Arlington, 2006), it is unlikely they will meet the burden of proof established by Schaffer (2005) as the appealing party. To make matters worse, the Court justified continued deference to school authorities determining the appropriateness of an IEP because the availability of due process “ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue” (Endrew F., 2017, p. 1001). However, this argument assumes all parents are equal partners in the IEP process, despite consistent research suggesting otherwise (Caruso, 2005; Pasachoff, 2011). When the Court relies on litigation to “serve as adequate checks on schools” and significantly raises the costs for pursuing these remedies, it makes it much harder for low-income families to challenge inadequate IEPs (Raj & Suski, 2017, p. 514).

In sum, implementation of the IDEA’s policies has led to serious issues of inequality for students of color and low-income students with disabilities. The disproportionate representation of both subgroups in identification and isolated placements remains a persistent problem. In
addition, significant social and financial barriers prevent low-income students and families from obtaining special education services and remedies as robust as their wealthier peers.

**Conclusion**

Little is known about how school authorities interpret the FAPE standard under *Rowley*, and even less so under the new articulation in *Endrew F.*, because most scholarly analysis focuses on court decisions rather than education professionals (Timberlake, 2014; Zirkel, 2013). This represents a significant oversight in education research because school authorities interpret and implement the FAPE standard on a daily basis. If we do not know how district and school level educators conceptualize a FAPE, how can we determine whether judicial deference granted to school authorities is justified? Or worse, without insight into how school authorities make decisions about providing a FAPE, how can we confirm their interpretations are well informed and equitable? Given the disproportionate representation of students of color and low-income students in special education and the recent changes to special education law handed down by the Supreme Court, this is a presumption education researchers can no longer afford to make.
CHAPTER THREE: Methodology

In this chapter, I provide a detailed description of the methodology I used to complete my dissertation study. First, I review the purpose of the study and the research questions that inform its methodology. Second, I describe why an interdisciplinary approach that combines doctrinal legal research and empirical legal research were appropriate methods for this study. Third, I detail how I selected the case law evaluated in part 1 of the study, and I introduce the population of district representatives interviewed for part 2 of the study. Finally, I explain the process I used to analyze the data.

Purpose of the Study

On March 22, 2017, the Supreme Court issued a unanimous opinion in Endrew F. that refined the substantive FAPE standard of the IDEA. In its ruling, the Court held that “a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (p. 999). This decision is significant for two reasons: First, the Court has not examined the substantive FAPE standard since its initial interpretation in Rowley (1982), 35 years prior. Second, by clarifying the substantive FAPE standard, the Court rejected the “merely more than de minimis” interpretation previously applied by several federal courts in the U.S. Part 1 of this study assesses the extent to which federal judges have modified the way they apply the substantive FAPE standard in light of the Endrew F. decision.

Although Endrew F. (2017) established new law in the field of special education, the Court refused to define a “bright-line rule” explaining how a school would satisfy its obligations under the substantive FAPE standard (p. 1001). Instead, the Court upheld its deference to the expertise of school authorities to “implement policies, procedures, and practices” (U.S. Department of Education, 2017, p. 9). Yet, little is known about how school authorities interpret
the substantive FAPE standard (Timberlake, 2014). Most research concerning its interpretation comes from legal professionals (e.g. lawyers and legal researchers) that analyze how the law is applied by judges, not education professionals (Zirkel, 2013). Given the varied context of local school governance in the U.S., research is necessary to determine how school authorities interpret the substantive FAPE standard, and whether differences in interpretation negatively impact subgroups of students with disabilities. To address this gap, part 2 of this study examines how district representatives from the Jaral Unified School District (JUSD) make sense of the substantive FAPE standard before and after Endrew F. (2017).

**Research Questions**

This study examined the following research questions:

1) How have federal courts interpreted the substantive FAPE standard in the period directly preceding and following the U.S. Supreme Court’s *Endrew F.* decision?

2) How do district representatives in a large, urban school district make sense of the substantive FAPE standard articulated in the U.S. Supreme Court’s *Rowley* and *Endrew F.* decisions?

3) How, and in what ways, is the FAPE provided to subgroups of students with disabilities shaped by factors beyond the interpretations of federal courts or district representatives?

**Methods**

This study used an interdisciplinary approach to understand how legal and education professionals interpret recent changes in federal special education law. Interdisciplinary legal research is appropriate when the research questions concern the *internal* effectiveness of a legal rule, as well as the *external* effectiveness of the rule in action (Schrama, 2011). As Banakar (2000) explains, legal research can benefit from the auxiliary use of non-doctrinal methods when
the problem defined in the research questions cannot be answered “solely on the concrete body of legal rules” (pp. 282-283). In this case, part 1 of the study employed traditional legal methods, otherwise known as doctrinal legal research, to provide a systematic description of the present state of positive law (Taekema, 2011). Part 2, on the other hand, used empirical non-legal data to assess “the difference between legal reality and real reality” (Schrama, 2011, p. 149). By applying a variety of complementary techniques, interdisciplinary legal research can provide insight into problems with the law that may not have been considered using a single method (Russo, 2006).

**Doctrinal Legal Research**

The primary source of information in doctrinal legal research is the law itself (e.g. statutes, regulations, and case law). Using these legal materials as a starting point for research, scholars aim to accurately describe the status of the law in question and to evaluate the normative legal doctrines constructed by legislation and adjudication (Taekema, 2011). In other words, doctrinal legal research systematizes legal arguments so that the conduct they prescribe can be judged in accordance with these principles. Because courts and legislators socially construct the law, knowledge of why and how society created specific laws is crucial to those assigned to carry them out (Lee & Adler, 2006).

Doctrinal legal research is rooted in the historical nature of law and the concept of precedent, which requires scholars to consider how past authoritative decisions have addressed the legal rule in question (Russo, 2006). This approach acknowledges that the meaning of statutes and regulations may be refined as the courts interpret them. Indeed, as judge-made or common law develops, legal norms about how the law should be applied take hold. For this

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3 Legal precedent is the principle that a ruling of the highest court in a given jurisdiction is binding on all lower courts within that jurisdiction.
reason, doctrinal legal research focuses on the internal perspective of law that comes from judges, lawyers, legislators, and other legal practitioners. In this pursuit, scholars evaluate the internal effectiveness of the law, which measures the consistency and coherency of legal norms as they are applied within the legal system (Schrama, 2011).

Ideally, legal norms are clear and compatible. If the legal norms contradict the goals of the law in question because they do not promote equality, for example, then its internal effectiveness is low. Since determining the internal effectiveness of the substantive FAPE standard can only be made on the basis of legal data, doctrinal legal research was the appropriate perspective to apply to part 1 of this study.

**Empirical Legal Research**

Empirical methods in legal research help to explain how the law works outside of the legal system. Using techniques that stem from the social sciences, scholars capture “real-life evidence” of the law in practice (Banakar, 2015, p. 97). In this respect, non-doctrinal legal research evaluates the external effectiveness of the law, which measures whether a legal norm is applied consistently in real life. Such an approach recognizes that the external consistency of the legal system may depend on the context and culture in which it functions (Schrama, 2011).

Qualitative empirical legal research examines the socially constructed realities of law (Webley, 2010). Simply put, how does the reality expressed in official legal documents differ from the reality experienced by actual people? Underpinned by the philosophical assumptions of social constructivism (also described as interpretivism), this type of qualitative research relies on participants’ subjective experiences to inductively develop a pattern of meaning (Creswell, 2003). Because these meanings are negotiated socially and historically through interactions with other people, the research focuses on the specific contexts in which participants live and work.
According to Moustakas (1994), the constructivist worldview is well demonstrated in phenomenological studies where individuals describe their experiences first-hand. Unlike the positivist who believes valid knowledge is independent of experience (Durkheim, 1938), the phenomenologist believes reality is what people perceive it to be (Douglas, 1970). In an effort to understand people from their own frame of reference, phenomenologists study the internal forces that move people – their feelings, beliefs, and motives about particular ideas or situations (Corbin & Strauss, 2008; Hennink, Hutter, & Bailey, 2011). Ultimately, phenomenological studies seek to understand the meaning people make of an experience, as well as how reflection on that experience yields new meaning (Lee & Adler, 2006).

Although qualitative research is traditionally associated with anthropology, its approaches can be used in a broad range of disciplines (e.g. Bogdan & Biklen, 2006; Lichtman, 2010). In a qualitative study, researchers use methods that yield rich, descriptive data (Taylor, Bogdan, & DeVault, 2016). For example, in-depth interviews provide insight into the lived experiences of people and the meaning they make from reflecting on those experiences (Seidman, 2013). Moreover, qualitative studies typically follow a flexible design that evolves as researchers learn more about how participants view their experiences (Marshall & Rossman, 2011). Finally, while quantitative researchers test their data against preconceived hypotheses, qualitative researchers look for patterns in their data to develop understandings about participants’ experiences (Taylor et al., 2016). Because qualitative research is inductive, generalizations can be made from the data, but specific conclusions are not ensured.

In the context of this study, semi-structured, in-depth interviews allowed me to investigate an educational process – providing a substantive FAPE to students with disabilities –
through the experience of the professionals who carry out the process. This is particularly
important for studies looking at socially abstract concepts that are best understood from the
varied perspectives of the individuals whose work builds them (Ferrarotti, 1981). Furthermore, a
phenomenological perspective shed light on how district representatives in JUSD constructed
meaning around their experiences interpreting the substantive FAPE standard. The resulting data
provided insight about how the law works in practice and whether the developing legal norms
are consistent within the district. Because the patterns that emerge from the data address the
external effectiveness of the law, a qualitative empirical legal approach was appropriate for part
2 of this study.

**Axiological Assumptions**

In order to understand reality as participants experience it, phenomenology requires
researchers to suspend their own views. Only then can they truly empathize with the people they
study (Taylor et al., 2016). According to Blumer, trying to remain an objective observer risks
“the worst kind of subjectivism” whereby researchers develop conclusions based on their own
interpretations (1969, p. 86). Instead, researchers need to recognize and set aside their
assumptions so they can better examine the assumptions that structure participant experiences. In
doing so, researchers will discover new ways of understanding social phenomena.

As a qualitative researcher using a phenomenological perspective to conduct part 2 of this
study, I must acknowledge my axiological assumptions. In fact, recognizing and setting aside my
own viewpoints is necessary to experience reality as other people see it (Corbin & Strauss,
2008). Before attending UCLA’s Graduate School of Education and Information Studies, I was a
special education teacher at a middle school in New York City. When I first started teaching, I
knew very little about the special education system. I had never written an IEP or attended an
IEP meeting. Differentiating instruction was still a new concept to me and managing behavior remained a day-to-day struggle. Nevertheless, I was tasked with drafting and implementing the IEPs of every 7th and 8th grade student with disabilities in my school.

Fortunately, I was a quick learner. I attended every professional development opportunity that covered special education issues outside of my school, although these were rarely offered. Within months I knew just as much or more about special education than most of my colleagues, including my principal. That is not to say, of course, that I knew everything about special education – quite the opposite. I am still learning new things each day. But if a few months of training put me ahead of the curve, my experience revealed serious problems with the system. If I was so quick to learn as much as the leading school authorities in my building, how much did any of us really know? And if I exhausted the local professional development opportunities available to me, what other sources were out there to guide educators?

It would be remiss of me not to mention that I graduated from law school before becoming a teacher. Although I did not specifically study education law or special education law, the skills I acquired certainly gave me a leg up when it came to understanding and analyzing legislation. But the day-to-day job of a special education teacher wasn’t about interpreting the law and the professional development seminars I attended never discussed legal standards. Instead, I was handed an example IEP and told to follow the model. So I filled the gaps in my knowledge with my own ideas about how to write IEP goals, alter testing accommodations, or modify lesson plans. And these ideas were informed by my personal experiences in and out of the classroom. With little to no feedback or oversight from my colleagues, the decisions I made on behalf of my students were paramount. And though I was not a perfect teacher by any means, I was cognizant of the power my decisions held and I tried to acquaint myself with current
research to inform my practice. Today, I am all too aware of the fact that support for teachers varies greatly across districts and schools and that teachers placed in the most disadvantaged schools receive the least support (Darling Hammond, 2001).

Looking back on the IEP meetings themselves, the experience never felt contentious. None of our families were accompanied by lawyers or education advocates, and families always signed the IEP at the end of the meeting or shortly thereafter. At the time, I thought this meant we were doing a good job. In hindsight, I recognize that many of our families may not have understood what was going on in the meetings. They rarely asked questions or made requests for additional services, but rather accepted our recommendations in deference to our expertise as educators. Although the families were physically present in the room or on the phone, I can’t honestly say they participated in the IEP meeting in a meaningful way. Unfortunately, this experience aligns with research demonstrating that families with fewer financial and educational resources, much like the families at my school, face greater obstacles navigating the technical nature of the IDEA (Hyman et al., 2011).

By acknowledging the value-laden nature of my teaching experience, I can recognize and set aside my own assumptions. As a result, I am better positioned to understand and represent reality as my participants experience it, not as I see it.

**Research Context**

In 1977, school districts in California were mandated to form Special Education Local Plan Areas (SELPAs) that provide comprehensive special education services to students within certain geographical regions (Cal. Educ. Code § 56195; California Department of Education, 2018a). There are currently 122 SELPAs across the state with organizational structures that vary in size and scope. For example, a multi-district SELPA is composed of several small school
districts that operate together, while a single-district SELPA is composed of one sufficiently large school district that operates alone. As one of the larger school districts in the state (California Department of Education, 2018b), JUSD is a single-district SELPA. Although each SELPA is responsible for creating and implementing special education policies, procedures, and programs consistent with state and federal law (Cal. Educ. Code § 56205), IEP teams at individual school sites are responsible for the development of the actual IEP (Cal. Educ. Code § 56341.1).

The JUSD SELPA is divided into six administrative regions also known as areas. Within each area, a senior manager oversees a team of managers and specialists that support school level educators with the provision of special education services. This study focuses on the experiences of these senior managers, managers, and specialists, but it also includes the perspectives of two senior directors who serve in an administrative capacity within the SELPA and are not assigned to a specific area.

During the 2018-2019 school year, JUSD provided special education services to 13% of its K-12 student population (California Department of Education, 2019). The racial/ethnic demographics of students with disabilities within JUSD were reported as follows: Latino (75.2%), Black (10.8%), White (9.8%), Asian (2.0%), Filipino (1.2%), Two or more (0.2%), Native American (0.2%), and Pacific Islander (0.2%) (California Department of Education, 2019). The racial/ethnic demographics for students with disabilities within JUSD align closely with the racial/ethnic demographics for the overall student population. The vast majority of students with disabilities (88%) were classified into one of four disability categories: specific learning disability (42.4%), autism (18.2%), speech or language impairment (14.8%), and other health impairment (12.4%) (California Department of Education, 2018c).
Research Design

Data Collection

Data was collected individually for each part of this study. In part 1, I compiled federal case law interpreting the substantive FAPE standard from 2015-2018, and in part 2, I conducted in-depth interviews with JUSD district representatives about their experiences interpreting and implementing the substantive FAPE standard.

**Case Law.** I used the Nexis Uni database (formerly known as LexisNexis Academic) to access relevant case law with the following search terms and Boolean operators: “free and appropriate public education” AND “grade to grade” OR “passing marks.” These parameters produced every case that considered FAPE claims, but narrowed the results to those cases making use of the guiding dictum from *Rowley* and *Endrew F.* on how to satisfy the substantive FAPE standard. It was important to include this distinctive language in the search because FAPE claims can be brought for procedural or substantive violations, but simply using the search term “substantive” was not specific enough to eliminate the procedural claims. The results were further limited to federal court cases issued between January 1, 2015 and December 31, 2018. This timeline covers the two years immediately before and after *Endrew F.* and provides the most recent insight into judicial interpretations.

The primary information collected from each case concerns the measures used by federal judges to determine whether or not the substantive FAPE standard was satisfied. This included, but was not limited to, the degree of benefits/progress the court considered necessary to achieve a FAPE, as well as the factors the court referenced to establish that the requisite degree of

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4 A child integrated into the regular classroom is making appropriate progress to satisfy the FAPE requirements if the IEP is “reasonably calculated to enable the child to achieve *passing marks* and advance from *grade to grade*” (*Rowley*, 1982, p. 204; *Endrew F.*, 2017, pp. 999-1000) (emphasis added to identify search terms).
benefits/progress was achieved. By looking at these measures I was able to analyze the extent to which federal courts were aligned with one another and how (or if) these measures have changed since the Supreme Court’s decision in *Endrew F*. In addition, the following descriptive information about the parties was collected: 1) disability category of the child, 2) educational placement/LRE setting, and 3) demographics for the school (enrollment by race/ethnicity, enrollment by free and reduced price lunch, locale, and size). All demographic information was pulled from the Search for Schools locator provided by the National Center for Education Statistics.

**Interviews.** According to Seidman (2013), interviewing is a powerful way to investigate an educational process because it provides insight into the experiences of the individuals who put it into effect. In other words, when people reconstruct and reflect on the internal forces that influence their behavior, they make meaning of their subjective experience. Through meaning-making researchers learn how individuals impact the implementation of an educational process.

I conducted 18 interviews with district representatives working at four levels within the JUSD SELPA administrative unit. At the highest level, I interviewed two senior directors who report to the executive director of special education. Next, I interviewed four senior managers who oversee Area 1, Area 2, Area 3, and Area 4. Finally, I interviewed one manager and one specialist from each of the participating areas, except for Area 4 where I interviewed three managers and three specialists. Area 4 was overrepresented for two reasons: 1) it receives a higher number of dispute resolution proceedings compared to the other participating areas, and 2) it has a lower percentage of students that qualify for free and reduced price lunch compared to the other participating areas (Division of Special Education, 2019a, 2019b). While this sample does not include district representatives from Area 5 or Area 6 (who opted not to participate), it
does allow for a comparison between four administrative regions of the JUSD SELPA.

District representatives were selected for participation based on their role within the administrative unit and their corresponding geographic area of assignment. Although participants worked in different capacities, they were all responsible for supporting local school sites to develop and implement IEPs for its students. Ultimately, the goal was to include district representatives serving as many areas as possible and at multiple levels within the administrative unit. Participation was voluntary, which is why two areas were not included in the sample.

The interviews followed Seidman’s three-part approach, which focuses on the participant’s life history, the phenomenon being studied, and the meaning made from this phenomenon, in that order (2013). However, all three parts of the interview were conducted in one sitting due to the strict schedules and limited availability of my participants. The protocol was semi-structured and evolved as necessary with the responses of each participant. The questions focused on determining who is the legitimate authority interpreting the substantive FAPE standard for the JUSD SELPA, what mediating factors help district representatives make sense of these interpretations, and how these interpretations are communicated to other educators. All interviews were conducted over the phone and recorded with the consent of the participants. Most of the interviews (13) ranged from 54 and 72 minutes long, but a small group (5) ranged from 31 and 46 minutes long.

**Data Analysis**

Data was analyzed using different procedures for each part of this study. In part 1, a systematic legal analysis was applied to the federal case law, and in part 2, a traditional qualitative analysis was applied to the interviews with district representatives. Finally, I used Levinson et al.’s (2009) critical practice approach to policy as a framework to interpret both
Legal Analysis. Doctrinal legal analysis is concerned with the systematic exposition of the law. In this sense, scholars break down and organize the legal reasoning used to interpret the law as it applies to a particular factual situation, and evaluate the trends in this reasoning (Taekema, 2011). The result is a formulation of legal doctrines that help clarify ambiguities within the law itself and in relation to other laws (Chynoweth 2008).

For the purposes of this study, I began the legal analysis by thoroughly reading each of the 87 federal court cases. This gave me a broad sense of the facts of the case and the holding by the court. Then I read each case again and pulled out the specific legal reasoning used by the judge. In particular, I looked at how the judge operationalized the substantive FAPE standard. Did the judge consider grades, IEP goals, standardized testing, or movement to the next grade level? Maybe the judge considered all of these factors or some unique combination? Ultimately, I identified the components each judge used to determine what was enough (or not enough) to satisfy the requirements of a FAPE. I also noted pertinent descriptive information about the child (e.g. disability category) and the school (e.g. enrollment by race/ethnicity). When this information was not provided in the federal court decision, I searched for it in previous decisions made by the hearing officer or administrative law judge.

I compiled all of this data in an Excel spreadsheet with each case receiving its own row. This formatting allowed me to easily compare the legal reasoning used by year, case, judge, and federal court. In doing so, I looked for trends and outliers to determine the internal consistency of the substantive FAPE standard before and after Endrew F. Additionally, I used the descriptive information about each child and school to look at patterns in the types of cases reaching the federal courts. These factors are important to consider because racial/ethnic and socioeconomic
demographics of a school correlate with differential access to teachers, services, and curriculum (Donovan & Cross, 2002).

**Qualitative Analysis.** According to Creswell, qualitative data analysis is best represented in a spiral image because the process involves “moving in analytic circles rather than a fixed linear approach” (2013, p. 182). This imagery is apt – analytic strategies like jottings and coding inform ongoing data collection and help reshape instrumentation (Miles, Huberman, & Saldaña, 2014), while iterative cycles of inductive reasoning derive patterns from the data as the research progresses (Webley, 2010).

Following Creswell’s spiral approach, I began my analysis of the interview data by transcribing and organizing the recordings. After I completed each transcription, I detailed my initial thoughts about the interview on the last page by hand. Some of these jottings included personal reactions to participants’ responses, second thoughts about interview questions, and notes on emerging issues. Then, I manually coded each transcript using first and second cycle coding methods to systematically classify the interview data.

For the first cycle of coding, I used elemental coding methods – descriptive and in vivo – to build a foundation for future coding cycles (Saldaña, 2013). In the left margin, I wrote descriptive codes that identified the topic of a passage in a short word or phrase. In the right margin, I wrote in vivo codes that referred to the actual language used by the participant in the interview. Using both of these methods allowed me to analyze how my participants’ understood their own realities as a district representative. For the second cycle of coding, I used pattern coding to reorganize all of the codes that emerged from the first cycle into broader categories called meta-codes (Saldaña, 2013). This process involved eliminating redundant codes, merging conceptually similar codes, and considering the utility of infrequent codes. In doing so, I was
able to identify emerging themes and explanations in the data. Finally, I synthesized related meta-codes into even broader parent-codes and assigned each to the research question they addressed. This last step reduced the codes into the most important themes that I address in the chapters that follow.

**Data Interpretation**

Once the codes and themes have been extracted from the data, qualitative researchers interpret the larger meaning of the findings. Although this process can take many abstract forms, interpretation can also be guided by a social science construct or idea (Creswell, 2013). Indeed, Madison (2005) recognizes a need for researchers to acknowledge the interpretative point of view used in critical, theoretically oriented qualitative studies. Here, I used the constructs of a critical practice approach to policy as a framework for interpretation of the data.

A critical practice approach begins from the premise that policy is a social practice of power (Sutton & Levinson, 2001). It shares this belief with other critical approaches that examine how policy privileges the interests of those already in power. Unlike its theoretical cousins, however, a critical practice approach believes an “anthropological understanding of policy as sociocultural practice can further critical analysis for social transformation” (Levinson et al., 2009, p. 769). In other words, Levinson et al. call for a deeper analysis of policy that considers how meaning is negotiated within specific cultural and political contexts. The result, they argue, will uncover “cultural logic of power that normally remains hidden” (Levinson et al., 2009, p. 769).

Using the constructs of a critical practice approach to interpret my data, I focused on the effects of power. In this pursuit, I asked myself: Where (in what spaces) is policy being negotiated? Whose voices are privileged in these spaces? Whose voices are silenced? What are
the social and cultural contexts of these spaces? How are these negotiations impacting specific subgroups of students with disabilities? This framework helped me make sense of the data at the local level by examining contextualized communities of practice rather than limiting my analysis to the negotiating of dominant definitions in formally authorized spaces of policymaking.
CHAPTER FOUR: Doctrinal Legal Findings

In this chapter, I present the findings from my doctrinal legal analysis of federal case law applying the substantive FAPE standard from 2015-2018. First, I briefly review how I selected and analyzed the body of case law used in the study. Second, I describe the standard of review applied by federal courts for FAPE claims. Third, I summarize the descriptive and legal findings of the case law.

Selection and Analysis

This chapter addresses research question #1: How have federal courts interpreted the substantive FAPE standard in the period directly preceding and following the U.S. Supreme Court’s Endrew F. decision? To answer this question, I conducted a doctrinal legal analysis of the relevant case law from January 1, 2015 to December 31, 2018. This four-year snapshot allowed me to review decisions made by the federal courts immediately before and after Endrew F. was issued in March of 2017. The result was a sample of cases that applied the substantive FAPE standard from both Rowley and Endrew F., as well as a subset that attempted to reconcile the two standards during the transition.

The case law was pulled from the Nexis Uni database using the following search terms and Boolean operators: “free and appropriate public education” AND “grade to grade” OR “passing marks.” As noted in Chapter 3, these parameters were chosen to specifically target cases analyzing substantive FAPE claims. This search resulted in 87 total cases. After an initial reading of each case, 44 cases were eliminated from the analysis because they addressed procedural issues that did not impact the plaintiffs’ substantive rights to a FAPE. For example, in a procedural eligibility determination in Doe v. Cape Elizabeth Sch. Dist. (2016), the court explained that a child who is advancing from grade to grade is not per se ineligible for special
education services. The remaining 43 cases made up the body of case law analyzed in part 1 of the study.

Each case was categorized into one of three groups based on the time period it was decided in relation to Endrew F. – before, during, and after. The first category includes 13 cases that were decided before Endrew F., when Rowley remained the controlling law. The second category includes 16 cases where the due process hearing began before Endrew F. was decided, but whose appeal was heard after Endrew F. was decided. The third category includes 14 cases that were decided after Endrew F. clarified and refined Rowley. The findings detailed in the sections that follow will refer to these categories as a measure for data comparison.

**Standard of Review**

A child eligible for special education and related services under the IDEA acquires a substantive right to this education once a state accepts federal funds (Fry v. Napoleon Cnty. Sch., 2017). States, in turn, hold local school districts responsible for creating an IEP for each student with a disability. The IEP is considered the central mechanism by which a FAPE is provided (20 U.S.C. § 1412(a)(1)(A)). It is a living document that details each child’s academic and functional performance levels, their short-term and long-term goals, the services offered to help the child accomplish said goals, and the criteria that will be used to evaluate the child’s progress (20 U.S.C. §§ 1414(d)(1)(A)(I)-(IV)). A FAPE includes specially designed instruction and support services that address the unique needs of the child (20 U.S.C. § 1401(9)). Such instruction and support are to be chosen by school officials, in collaboration with the child’s parents or guardians, “only after careful consideration of the child's present levels of achievement, disability, and potential for growth” (Endrew F., 2017, p. 999).
Parents and guardians maintain the right to a due process hearing if they object to a school district’s provision of FAPE (20 U.S.C. §1415(b)(6)). In a due process hearing, parties present witnesses, testimony, documents, and arguments to an impartial, trained hearing officer in a formal legal setting. If either party disagrees with the hearing officer’s decision, then that party may petition for judicial review in state or federal court (20 U.S.C. § 1415(i)(2)). When considering an appeal under the IDEA, district courts apply a nontraditional standard of review, referred to as modified de novo (D.S. v. Bayonne Bd. of Educ., 2010). Under this standard, the hearing officer’s factual findings are considered prima facie correct and a district court must give due weight to them. However, the district court is still required to make an independent decision based on a preponderance of the evidence (20 U.S.C. § 1415(i)(2)(C)). Therefore, the hearing officer’s decision is not conclusive and the district court does not have to defer to its findings “when its own review of the evidence indicates that the hearing officer erroneously assessed the facts or erroneously applied the law to the facts” (Teague Indep. Sch. Dist. v. Todd L., 1993, p. 131). When a district court decision is appealed, the circuit court reviews factual findings for clear error and legal conclusions de novo (Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F., 1997).

Both Rowley and Endrew F. note, however, that judicial review at any level is not “an invitation to the courts to substitute their own notion of sound educational policy for those of the school authorities which they review” (1982, p. 206; 2017, p. 1001). Simply put, the methodology used to provide specialized instruction and support services to a child with disabilities is for state and local educational agencies to decide, not the courts.

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5 Under the IDEA, a hearing officer must meet minimum qualifications including, but not limited to, the ability to understand “the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts” (34 C.F.R. § 300.511).
Descriptive Findings

The body of case law reviewed for this doctrinal legal analysis included 43 total cases. The overwhelming majority of these cases (81.4%) were decided at the district court level, while a minority (18.6%) were appealed to the circuit court level. Even though most cases did not reach the circuit courts, the jurisdiction covered by each regional circuit was represented by at least one district court case within its boundaries. The Second (23.3%), Third (18.6%), and D.C. (16.3%) regional circuits had the highest concentration of cases, respectively (see Table 1). It is important to note that the Tenth Circuit includes two cases for the same plaintiff, Endrew F. In

Table 1.

Federal Cases on the Substantive FAPE Standard by Regional Circuit from 2015-2018

<table>
<thead>
<tr>
<th>Regional Circuit</th>
<th>Circuit Case</th>
<th>District Case</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4.7%</td>
</tr>
<tr>
<td>Second</td>
<td>2</td>
<td>8</td>
<td>10</td>
<td>23.3%</td>
</tr>
<tr>
<td>Third</td>
<td>2</td>
<td>6</td>
<td>8</td>
<td>18.6%</td>
</tr>
<tr>
<td>Fourth</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4.7%</td>
</tr>
<tr>
<td>Fifth</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>9.3%</td>
</tr>
<tr>
<td>Sixth</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>4.7%</td>
</tr>
<tr>
<td>Seventh</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>4.7%</td>
</tr>
<tr>
<td>Eighth</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>2.3%</td>
</tr>
<tr>
<td>Ninth</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>2.3%</td>
</tr>
<tr>
<td>Tenth</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>7.0%</td>
</tr>
<tr>
<td>Eleventh</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>2.3%</td>
</tr>
<tr>
<td>District of Colombia</td>
<td>-</td>
<td>7</td>
<td>7</td>
<td>16.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8</strong></td>
<td><strong>35</strong></td>
<td><strong>43</strong></td>
<td><strong>(18.6%)</strong></td>
</tr>
</tbody>
</table>
this analysis, I included both the circuit court decision that was appealed to the Supreme Court
(Endrew F., 2015) as well as the subsequent decision issued by the district court after the case
was remanded (Endrew F., 2018) because they illustrate how the Tenth Circuit attempted to
reconcile the refined substantive FAPE standard. However, every other plaintiff included in this
analysis is represented by one decision as issued by the highest-level court that ruled on the case.

The time period chosen for analysis, 2015-2018, resulted in a relatively equal distribution
of cases across the three categories – before (30.2%), during (37.2%), and after (32.6%) (see
Table 2). During this period, 35 cases (81.4%) returned a verdict in favor of the school district
and eight cases (18.6%) returned a verdict against the school district on the issue of whether a
FAPE was provided. However, three of the eight cases finding against the school district were
the result of procedural errors that led to a substantive denial of FAPE (see Table 2). This
distinction is important because it was implementation of the IEP, not the substance of the IEP
itself, which was deemed inappropriate in these cases. This means the courts found plaintiffs’
IEPs in these cases to be substantively sufficient 88.4% of the time and substantively insufficient

Table 2.

Federal Court Outcomes on the Substantive FAPE Standard from 2015-2018

<table>
<thead>
<tr>
<th></th>
<th>Pro District</th>
<th>Anti District (Substantive)</th>
<th>Anti District (Procedural)*</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before</td>
<td>10</td>
<td>2</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>During</td>
<td>15</td>
<td>1</td>
<td>-</td>
<td>16</td>
</tr>
<tr>
<td>After</td>
<td>10</td>
<td>2</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>35</strong></td>
<td><strong>5</strong></td>
<td><strong>3</strong></td>
<td><strong>43</strong></td>
</tr>
</tbody>
</table>

*(Procedural errors that led to a substantive denial of FAPE)
11.6% of the time. With a pro-district outcome ratio of almost 8:1 for substantive FAPE claims, these findings suggest courts strongly deferred to school authorities on the construction of the IEP, before and after *Endrew F*.

Descriptive information regarding the disability classification\(^6\) and least restrictive environment (LRE) placement\(^7\) for each plaintiff was based on the most recent IEP provided by the school district. Thus, if a student qualified for special education services with a specific learning disability (SLD), but several years later was reclassified under intellectual disability (ID) and other health impairment (OHI), the plaintiff was coded as ID and OHI, not SLD. Similarly, if a student received support in a self-contained (SC) classroom and then moved to a general education (GE) placement by the time of the last IEP, the plaintiff was coded as GE, not SC. Although plaintiffs only receive one code for LRE placement, they can receive one or more codes for disability classification.

Table 3.

*Plaintiffs*’ *Disability Classifications*

<table>
<thead>
<tr>
<th></th>
<th>Autism</th>
<th>SLD</th>
<th>ID</th>
<th>ED</th>
<th>SLI</th>
<th>OI</th>
<th>HI</th>
<th>OHI</th>
<th>TBI</th>
<th>MD</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>17</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>%</td>
<td>16.7%</td>
<td>28.6%</td>
<td>14.3%</td>
<td>9.5%</td>
<td>11.9%</td>
<td>2.4%</td>
<td>2.4%</td>
<td>40.5%</td>
<td>2.4%</td>
<td>7.1%</td>
</tr>
</tbody>
</table>

*Note.* Data based on plaintiffs’ disability classifications according to their most recent IEP. Plaintiffs may be classified under more than one disability category.

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\(^6\) Under the IDEA, students are eligible to receive special education services based on 13 disability classifications: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, other health impairments, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.

\(^7\) The LRE placement continuum includes (from least restrictive to most restrictive): general education, resource room, self-contained class, special education school, homebound instruction, and hospital/private institution.
Table 4.

Plaintiffs’ Least Restrictive Environment Placements

<table>
<thead>
<tr>
<th></th>
<th>General Education</th>
<th>Resource Room</th>
<th>Self-Contained Class</th>
<th>Special Education School</th>
<th>Homebound Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>15</td>
<td>7</td>
<td>13</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>%</td>
<td>35.7%</td>
<td>16.7%</td>
<td>31.0%</td>
<td>9.5%</td>
<td>7.1%</td>
</tr>
</tbody>
</table>

Note. Data based on plaintiffs’ LRE placement according to their most recent IEP.

The two most common disability classifications for plaintiffs included OHI (40.5%) and SLD (28.6%), followed by autism (16.7%) and ID (14.3%) (see Table 3). The majority of plaintiffs (66.7%) received special education services in the general education (35.7%) or self-contained classroom (31.0%) (see Table 4).

Since demographic data about plaintiffs’ racial/ethnic identity and socioeconomic status is not available in published cases, I collected this information based on their last district school enrollment or assignment. When the school’s name was not included in the administrative

Table 5.

Plaintiffs’ School Level Enrollment by Percentage of Students Receiving Free and Reduced Price Lunch

<table>
<thead>
<tr>
<th></th>
<th>Elementary</th>
<th>Middle</th>
<th>High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-30%</td>
<td>16</td>
<td>2</td>
<td>10</td>
<td>28</td>
</tr>
<tr>
<td>30.1-60%</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>60.1-100%</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>6</td>
<td>16</td>
<td>42</td>
</tr>
</tbody>
</table>

(47.6%) (14.3%) (38.1%)

Note. Data based on plaintiffs’ last district school enrollment or assignment.

63
record, I used district data based on the plaintiff’s designated school level (i.e. elementary, middle, high). This only occurred in six cases. Most plaintiffs were enrolled in elementary school (47.6%) or high school (38.1%) when they began the adjudicative process. Two-thirds of these plaintiffs attended a school where less than 30% of the student population was receiving free and reduced price lunch. Less than a quarter (23.8%) of plaintiffs attended a school where more than 60.1% of the student population was receiving free and reduced price lunch (see Table 5). Sixty-two percent of plaintiffs attended schools with a majority White student population (see Table 6).

Table 6.

*Plaintiffs’ School Level Enrollment by Percentage of White Students*

<table>
<thead>
<tr>
<th></th>
<th>Elementary</th>
<th>Middle</th>
<th>High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-25%</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>25.1-50%</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>50.1-75%</td>
<td>9</td>
<td>2</td>
<td>2</td>
<td>13</td>
</tr>
<tr>
<td>75.1-100%</td>
<td>5</td>
<td>1</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>6</td>
<td>16</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>(47.6%)</td>
<td>(14.3%)</td>
<td>(38.1%)</td>
<td></td>
</tr>
</tbody>
</table>

*Note.* Data based on plaintiffs’ last district school enrollment or assignment.

Out of the nine schools with a White student population of less than 25%, six came from the same regional circuit: D.C. In sum, the majority of cases were brought by plaintiffs attending wealthy, White schools and school districts. These findings are not surprising since the significant costs of litigation (e.g. time, money, resources) make pursuing legal remedies a heavier burden for low-income families (Chopp, 2012; Koseki, 2017). This raises important questions about the effectiveness of the IDEA’s private right to enforcement because access to
the courts is inequitably distributed. Additionally, if federal case law is predominantly based on cases brought by wealthier families and White families, how might this trend affect the development of legal precedent and special education policy? For the purposes of this chapter, I will not address these questions about equity here, but I will return to them in Chapter 6.

Finally, plaintiffs were much more likely to attend school in a larger, less remote locale. More than half of all plaintiffs (52.4%) attended school in a large suburban\(^8\) school district. Another 32.8% of plaintiffs attended school within a principal city\(^9\) of various population

Table 7.

*Plaintiffs' School Level Enrollment by Locale and Size*

<table>
<thead>
<tr>
<th></th>
<th>Elementary</th>
<th>Middle</th>
<th>High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suburban</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
<td>13</td>
<td>1</td>
<td>8</td>
<td>22</td>
</tr>
<tr>
<td>City</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Midsize</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Small</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Town</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distant</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Rural</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fringe</td>
<td>1</td>
<td>3</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Distant</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>6</td>
<td>16</td>
<td>42</td>
</tr>
</tbody>
</table>

*Note.* Data based on plaintiffs' last district school enrollment or assignment.

\(^8\) Urbanized area with a population of 250,000 or more.

\(^9\) Urbanized area in a principal city with a population of at least 100,000.
densities: large (16.3%), midsize (9.5%), and small (7.0%). The remaining 14.8% of plaintiffs attended school in a town\textsuperscript{10} or rural\textsuperscript{11} school district (see Table 7). Thus, the locale and size of a school district correlated with the percentage of students pursuing litigation.

**Legal Findings**

In 1982, the Supreme Court in *Rowley* held that the IDEA requires an IEP to be “reasonably calculated to enable the child to receive educational benefits” (p. 207). The vague language and limited guidance interpreting this standard led to confusion amongst federal courts about what level of educational benefits was actually required. For example, in *Urban ex rel. Urban v. Jefferson Cnty. Sch. Dist. R-1* (1996, pp. 726-727) the court held that *Rowley* mandated “more than *de minimis*” educational benefit, whereas in *Shore Reg’l. High Sch. Bd. of Educ. v. P.S.* (2004) the court held that an IEP must enable the child to receive meaningful educational benefits. Thirty-five years later, in *Endrew F.* (2017), the Court clarified that the substantive FAPE standard is “markedly more demanding than the ‘merely more than *de minimis* test’” and refined the language used. (p. 1000). The new standard states that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (p. 999).

Despite this clarification, the language in *Endrew F.* is just as vague as its predecessor. Indeed, the Supreme Court never intended to create a “bright-line rule” on what a FAPE looks like because “the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created” (*Endrew F.*, 2017, p. 1001). However, the Court did reinforce the guidelines from *Rowley* (1982) that a child fully integrated into the general education classroom should receive an IEP “reasonably calculated to enable the child to achieve passing marks and

\textsuperscript{10} Territory in an urban cluster less than 35 miles from an urbanized area.

\textsuperscript{11} Territory less than 25 miles from an urbanized area and more than 2.5 miles from an urban cluster.
advance from grade to grade” (p. 204). And the Court added that a child who is not fully integrated into the general education classroom and not able to achieve on grade level should receive an IEP “appropriately ambitious in light of the child’s circumstances” and “have the chance to meet challenging objectives” (Endrew F., 2017, p. 1000). Still, this dictum is not dispositive of a FAPE and leaves questions about what constitutes sufficient progress and how that progress is measured.

This legal analysis of 43 cases sheds light on the issue. In the sections that follow I describe what factors the federal courts used from 2015-2018 to determine whether a FAPE was provided. I present the findings in three sections: First, I report on the type and frequency of information considered by the courts. Second, I discuss how the information was used to make a FAPE determination. Finally, I detail how (if at all) the courts prescribed the degree of progress required to reach their conclusion. Within each section, the findings are presented based on the three categories used to organize the case law - before, during, and after Endrew F.

**Type and Frequency**

Before Endrew F., seven circuits interpreted Rowley as requiring “merely more than de minimis” or “some” educational benefits, one interpreted Rowley as requiring “meaningful” educational benefits, and four were inconsistent or indefinite (Wenkart, 2009). Without set criteria for determining a FAPE, federal courts considered a wide-range of factors relevant to that student's educational potential.

Based on the 13 cases analyzed in the “before” category, 11 different sources of information were considered by courts: 1) expert evaluations, 2) IEP goals, 3) IEP services, 4) grades, 5) standardized test scores, 6) grade promotion, 7) LRE placement, 8) behavior intervention plans (BIPs), 9) extended school year (ESY) services, 10) transition services for
post-graduate life, and 11) witness testimony. In any given case, one or several of these sources were used to evaluate the offer of a FAPE (see Table 8). The most commonly referenced source, by far, in 11 out of 13 decisions (85%), was a student’s annual IEP goals. A student’s grades and standardized test scores were the next two most common sources, although both of these were only used in 6 out of 13 decisions (46.2%). Five decisions (38.5%) considered the expert evaluations prepared for a student and four decisions (31.0%) considered a student’s placement along the LRE continuum. The remaining six sources were only used by courts sporadically (see Table 8).

Table 8.

Factors Considered in Substantive FAPE Decisions by Regional Circuit (Before Endrew F.)

<table>
<thead>
<tr>
<th></th>
<th>Evaluations</th>
<th>IEP Goals</th>
<th>IEP Services</th>
<th>Grades</th>
<th>Standardized Tests</th>
<th>Grade Promotion</th>
<th>LRE Placement</th>
<th>BIP</th>
<th>ESY Services</th>
<th>Transition Services</th>
<th>Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second (N=3)</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>2</td>
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<tr>
<td>Third (N=1)</td>
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<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sixth (N=1)</td>
<td>-</td>
<td>1</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Seventh (N=1)</td>
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<td>1</td>
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</tr>
<tr>
<td>Eighth (N=1)</td>
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<td>-</td>
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<tr>
<td>Tenth (N=1)</td>
<td>-</td>
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<td>-</td>
<td>-</td>
</tr>
<tr>
<td>D.C. (N=3)</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5</strong></td>
<td><strong>11</strong></td>
<td><strong>3</strong></td>
<td><strong>6</strong></td>
<td><strong>6</strong></td>
<td><strong>1</strong></td>
<td><strong>4</strong></td>
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<td><strong>2</strong></td>
<td><strong>1</strong></td>
<td><strong>3</strong></td>
</tr>
</tbody>
</table>

*Note.* Data based on published opinions by federal circuit and district courts.
When *Endrew F.* was issued, federal courts applying the “merely more than *de minimis* test” were overruled. But courts applying the “some” or “meaningful” educational benefits standard were forced to reconcile precedent in their jurisdiction with the new FAPE standard. In the immediate aftermath, district courts were tasked with reevaluating decisions issued by hearing officers before the change in the law. Based on the 16 cases analyzed in the “during” category, 9 different sources of information were considered by courts: 1) expert evaluations, 2) IEP goals, 3) IEP services, 4) grades, 5) standardized test scores, 6) grade promotion, 7) LRE placement, 8) BIPs, and 9) witness testimony (see Table 9).

Table 9.

*Factors Considered in Substantive FAPE Decisions by Regional Circuit (During Endrew F.)*

<table>
<thead>
<tr>
<th>Evaluations</th>
<th>IEP Goals</th>
<th>IEP Services</th>
<th>Grades</th>
<th>Standardized Tests</th>
<th>Grade Promotion</th>
<th>LRE Placement</th>
<th>BIP</th>
<th>ESY Services</th>
<th>Transition Services</th>
<th>Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>First (N=1)</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Second (N=4)</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>2</td>
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<td>-</td>
<td>-</td>
<td>4</td>
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<tr>
<td>Third (N=5)</td>
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<td>3</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Fourth (N=2)</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Fifth (N=2)</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Eleventh (N=1)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
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<td>-</td>
</tr>
<tr>
<td>D.C. (N=3)</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3</strong></td>
<td><strong>14</strong></td>
<td><strong>8</strong></td>
<td><strong>5</strong></td>
<td><strong>4</strong></td>
<td><strong>5</strong></td>
<td><strong>2</strong></td>
<td><strong>1</strong></td>
<td><strong>-</strong></td>
<td><strong>10</strong></td>
</tr>
</tbody>
</table>

*Note.* Data based on published opinions by federal circuit and district courts.
Cases decided “during” *Endrew F.* also placed a high value on a student’s annual IEP goals – 14 out of 16 decisions (87.5%) considered them. Unlike the previous period, however, much more consideration was given to witness testimony. Here, 10 out of 16 decisions (62.5%) used witness testimony in their FAPE determinations, whereas in the previous period only 3 out of 13 decisions (23.1%) used them. The consideration of IEP services (e.g. instruction, supports) also increased. Previously only 3 out of 13 decisions (23.1%) considered IEP services, but now 8 out of 16 decisions (50.0%) considered them. A student’s grades and grade promotion were used in five decisions (31.2%) and a student’s standardized test scores were used in four decisions (25.0%). The remaining three sources were only considered in a handful of decisions. During this period, no court decisions considered ESY or transition services (see Table 9).

Once *Endrew F.* became settled law, hearing officers started applying the new FAPE standard and precedent continued to evolve in the federal courts. Based on the 14 cases analyzed in the “after” category, 9 different sources of information were considered by courts: 1) expert evaluations, 2) IEP goals, 3) IEP services, 4) grades, 5) standardized test scores, 6) grade promotion, 7) LRE placement, 8) BIPs, and 9) witness testimony. Transition services were not considered by any court during this period either (see Table 10).

For the first time, annual IEP goals were not the most commonly referenced source. Instead, IEP services took the lead with 10 out of 14 decisions (71.4%), an increase of 21.4% since the previous period. Annual IEP goals followed closely behind with 9 out of 14 decisions (64.3%), although this is a decrease of 23.2% from the previous period. Witness testimony was considered in six decisions (42.9%), while grades and standardized test scores were considered in five decisions each (35.7%). Grade promotion and LRE placement also factored into four
decisions each (28.6%). The remaining three sources were only used once and all by the same regional circuit (see Table 10).

Table 10.

Factors Considered in Substantive FAPE Decisions by Regional Circuit (After Endrew F.)

<table>
<thead>
<tr>
<th></th>
<th>Evaluations</th>
<th>IEP Goals</th>
<th>IEP Services</th>
<th>Grades</th>
<th>Standardized Tests</th>
<th>Grade Promotion</th>
<th>LRE Placement</th>
<th>BIP</th>
<th>ESY Services</th>
<th>Transition Services</th>
<th>Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>First (N=1)</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Second (N=3)</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Third (N=2)</td>
<td>-</td>
<td>2</td>
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<td>2</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Sixth (N=2)</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Seventh (N=1)</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Ninth (N=1)</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tenth (N=2)</td>
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<td>2</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>D.C. (N=3)</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>1</td>
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<td>-</td>
<td>1</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
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<td>4</td>
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</tr>
</tbody>
</table>

*Note.* Data based on published opinions by federal circuit and district courts.

Substance of Information Sources

This section focuses on the three sources of information most commonly considered by the federal courts in a FAPE determination: IEP goals, IEP services, and witness testimony (see Table 11). In this discussion, I will present examples illuminating how the information in these
sources was analyzed by judges. Although these sources were also evaluated as indicators of progress that analysis will be discussed separately in the section that follows.

**IEP Goals.** When judges considered the substance of IEP goals in their decisions, they centered their analysis on whether the goals addressed the unique needs of the child and whether they were appropriately leveled considering these needs. This remained true for cases decided

Table 11.

*Factors Considered in Substantive FAPE Decisions by Regional Circuit (All Cases)*

<table>
<thead>
<tr>
<th></th>
<th>Evaluations</th>
<th>IEP Goals</th>
<th>IEP Services</th>
<th>Grades</th>
<th>Standardized Tests</th>
<th>Grade Promotion</th>
<th>LRE Placement</th>
<th>BIP</th>
<th>ESY Services</th>
<th>Transition Services</th>
<th>Testimony</th>
</tr>
</thead>
<tbody>
<tr>
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<td>-</td>
<td>-</td>
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<td>-</td>
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<td>4</td>
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<td>-</td>
<td>-</td>
<td>7</td>
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<td>-</td>
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<td>-</td>
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</tr>
<tr>
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<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
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<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Sixth (N=2)</td>
<td>-</td>
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<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
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</tr>
<tr>
<td>Seventh (N=2)</td>
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<td>1</td>
<td>1</td>
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<td>-</td>
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<tr>
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<td>-</td>
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<td>-</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Ninth (N=1)</td>
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<td>-</td>
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<td>1</td>
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</tr>
<tr>
<td>Tenth (N=3)</td>
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<td>-</td>
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<tr>
<td>Eleventh (N=1)</td>
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<td>-</td>
</tr>
<tr>
<td>D.C. (N=7)</td>
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<td>-</td>
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<td>-</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
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<td>21</td>
<td>16</td>
<td>15</td>
<td>10</td>
<td>10</td>
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<td>1</td>
<td>19</td>
</tr>
</tbody>
</table>

*Note.* Data based on published opinions by federal circuit and district courts.
before, during, and after *Endrew F*. In *Bohn v. Cedar Rapids Community School District* (2015), for example, the court held that the absence of any IEP goals addressing the plaintiff’s phonological weakness (a central aspect of her disability) was grounds for denial of a FAPE.

Whereas in *S.W. v. Abington School District* (2018), the court found that the IEP was appropriate because it included goals addressing plaintiff’s “then-current needs” in writing fluency, behavior, and executive functioning skills (p. 34). Furthermore, the removal of S.W.’s reading goal was appropriate because his mastery signaled there was no longer a need for specialized instruction in this area. Thus, IEP goals were deemed satisfactory when they targeted the unique needs of the child.

But simply including an IEP goal in the area of need was not sufficient. Courts also required that goals be appropriately leveled to the child’s current abilities. For instance, in *Dixon v. District of Columbia* (2015) the court noted that the IEP goals were appropriate because they were based on the plaintiff’s current academic and functional performance levels. The court accepted the hearing officer’s analysis that the school district may use Common Core Standards as a guide to develop the goals “to ensure that the student will be involved in and make progress in the general education curriculum” because no evidence suggested these goals were *not* within reach for the student based on her unique needs (pp. 232-233). However, the court in *L.H. v. Hamilton County Department of Education* (2016) found that the IEP goals were inappropriately calibrated to grade level standards above the plaintiff’s cognitive abilities. Here, the parents of L.H. insisted – against the recommendations of his teachers and school staff – that the IEP goals align with second grade level standards even though these goals were unrealistic for L.H. given his previous lack of progress. Though the court ruled the IEP was substantively inappropriate because the goals were not based on L.H.’s present levels of performance, and thus too difficult
for him, damages were not awarded to the family because the error was a result of their own requests of the school.

**IEP Services.** Courts began looking at IEP services more frequently after *Endrew F.* Similar to IEP goals, judges evaluated whether IEP services were appropriately tailored to the unique needs of the child, especially as these needs shifted over time. Take, for example, *Sean C. v. Oxford Area Sch. Dist.* (2017), where plaintiff’s behavioral problems were addressed through IEP services like weekly counseling and instruction modifications, rather than IEP goals. The court held that these service decisions were appropriate because the district took “proactive and consistent steps” to address Sean’s behaviors, and “responded proportionately” when the behaviors worsened (pp. 29-30). Although school districts are required to provide behavioral support when a student’s progress is inhibited by that behavior, the court supported the district’s argument that “a child’s needs and weaknesses can be appropriately met with accommodations or modifications because not every concern requires an IEP goal” (p. 26). However, the court stressed that when there is evidence of a growing concern, a “more aggressive plan” is necessary to provide a FAPE (p. 30). Along the same lines, the court in *Lauren C. v. Lewisville Independent School District* (2017) held that even though the district did not diagnose Lauren with autism (against the wishes of her parents), she received appropriate IEP services because they were individualized to her specific needs. In fact, the district incorporated Applied Behavior Analysis methodologies in her therapy services “regardless of the disability label” (p. 25). Moreover, Lauren was consistently reevaluated to determine if an autism diagnosis was appropriate so that her IEP services could be adjusted accordingly.

Although the needs of the child dictate whether IEP services appropriately provide a FAPE, there are limitations on what a district is required to offer. For example, the court in
Matthews v. Douglas County School District Re 1 (2018) held that the district was not required to use a specific reading program to address a reading disability, so long as the program chosen uses appropriate strategies to addresses the child’s deficiencies. This reasoning falls in line with other court decisions, including McKnight v. Lyon County School District (2018) and Carr v. New Glarus School District (2018), both of which found that the IDEA does not mandate use of specific service methods (e.g. 1:1 aide, “traditional” math strategies) even if the parent prefers that method or if that method may result in greater educational benefits. As the Fifth Circuit strongly noted in Michael F. (1997), the educational program provided under the IDEA:

[N]eed not be the best one, nor one that will maximize the child's educational potential; rather it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him ‘to benefit’ from the instruction (pp. 247-248).

In this sense, courts are less concerned with the type of IEP services provided and more concerned with how these services appropriately addressed and evolved with the evident needs of the child.

However, in S.H. v. Rutherford County Schools (2018), the court held that staff must be trained to offer appropriate IEP services for a student with Prader-Willi Syndrome, which requires specific strategies not typically used for other students with disabilities. But this decision is distinguishable from the others because the disability in question is extremely low-incidence and requires extensive, specialized training (Zirkel, 2017b).

Witness Testimony. The weight afforded witness testimony, primarily teacher testimony, increased significantly after Endrew F. As this source of information gained importance, several trends emerged from its consideration by federal courts. First, the courts
expressed a clear deference for teacher testimony over expert testimony. In *Parker C.* (2017), the court upheld the hearing officer’s decision to give more weight to the testimony of the district’s experts over the independent expert because “they had spent far more time with him” (p. 34). Additionally, teacher testimony was used as supporting evidence to refute the claim that Parker’s grades were inflated. Similarly, in *F.L. v. Board of Education of the Great Neck Union Free School District* (2017), the court gave deference to the testimony provided by educators and noted that a disagreement with outside experts does not mean the chosen methods are inappropriate.

Second, a number of decisions considered teacher testimony as an indicator of progress. For example, a math teacher’s testimony in *Carr* (2018) that the plaintiff was making meaningful progress in a challenging class and could take calculus the next year was deemed “more persuasive” than other indicators suggesting a lack of progress (p. 30). In *S.W.* (2018), both teacher and principal testimony was “credibly” provided as evidence that the plaintiff was making progress on his behavior goals (p. 32). And in *E.R* (2018), the court found a FAPE was provided when “numerous educational professionals” – including teachers and district evaluators – testified that the plaintiff was “making appropriate progress” (p. 767).

Finally, conclusive teacher testimony was considered valid evidence for decisions about the provision of IEP services. When parents insisted their son be provided with a recording device as an assistive technology in *Pollack v. Regional School Unit 75* (2018), extensive staff testimony that the device would actually hinder the plaintiff’s education and isolate him from his peers was used to deny the request. Likewise, IEP services were deemed appropriate based on the testimony from five educators (e.g. special education teacher, school psychologist) in *Y.N. v. Board of Education of the Harrison Central School District* (2018) that the specific
recommendations outlined in the IEP would meet the plaintiff’s unique needs. Conclusive testimony was also indicative of when the removal of IEP services was appropriate. In *Spencer v. Burrillville School Community* (2018), for example, the district court upheld the finding that expert testimony unanimously supported removing specialized math instruction because plaintiff did not need math goals to access a FAPE. Also, in *Davis v. District of Columbia* (2017), teacher testimony based on four overwhelmingly positive classroom observations supported the conclusion that behavior interventions were no longer necessary for the plaintiff. The increased significance given to the testimony of educators is not surprising considering *Endrew F.*’s reinforced deference to the application of expertise and the exercise of judgment by school authorities.

**Prescriptions of Progress**

Every court tasked with applying the substantive FAPE standard must consider what degree of progress is appropriate. That being said, there is still no clear answer to this question and courts largely make these determinations on a case-by-case basis. While the case law analyzed for this study did not reach a consensus either, there are general trends that emerged from the data.

**Reasonably Calculated.** Before, during, and after *Endrew F.*, courts latched onto the first part of the substantive FAPE standard (which remained unchanged) requiring that an IEP be reasonably calculated to provide progress. The crux of this argument is that the provision of a FAPE cannot, and should not, guarantee any specific outcomes to a student. As the Supreme Court explained in *Endrew F.* (2017):

> The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials . . .
Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal (p. 999).

Moreover, courts agree that reasonability determinations can only be made “as of the time it is offered to the student, and not at some later date” (See, e.g., *Fuhrmann ex rel. Fuhrmann v. E. Hanover Bd. of Educ.*, 1993, p. 1040).

In the cases analyzed here, past progress was evaluated to determine whether an IEP was reasonably calculated to provide future progress. In *Sean C.* (2017), for example, the court held that past progress with the previous year’s IEP demonstrated that the current IEP was reasonably calculated to allow him to make progress. They noted that improvements in Sean’s grades, IEP goals, and attendance signified that “there was no compelling reason for the School District to drastically modify an IEP that allowed Sean to excel throughout the 10th grade” (p. 36).

Similarly, the court in *R.E. v. Brewster Central School District* (2016) determined that the plaintiff’s above average grades on a grade-level curriculum and average test scores in reading in the 2012-2013 school year demonstrated that a similar program for the next school year was “likely to yield ‘progress, not regression’” (p. 273). However, on remand from the Supreme Court, the district court in *Endrew F.* (2018) found that the school district’s inability to offer a program to address Endrew’s maladaptive behaviors limited his past progress to “minimal at best.” As a result, a newly proposed IEP with minor updates “cuts against the reasonableness” of its FAPE offer (p. 1184).

Courts also considered the consistency of progress required for an IEP to be considered reasonably calculated. In *Jack J. v. Coatesville Area School District* (2018), for instance, the plaintiff mastered and progressed on some of his IEP goals, but regressed or performed inconsistently on others. The court found that “on the whole” Jack made progress on his IEP
goals even though he “did not show linear progression.” Coupled with Jack’s passing grades, the court concluded that his “collective progress” indicated the IEP was reasonably calculated to enable meaningful progress (p. 40-41). The court in Sean C. (2018) similarly determined that progress does not have to occur in all areas of need to be deemed appropriate. Here, Sean met his IEP goals in reading and math, but not writing, and improved his grades and attendance. The court concluded that an IEP is still reasonably calculated to allow for appropriate progress even if a student does not “advance in all categories of his education” (p. 35).

As these cases demonstrate, federal courts heavily rely on the reasonably calculated qualification to prescribe how evidence of progress should be evaluated, even after Endrew F. This consistency notwithstanding, the case law does not definitely provide a threshold for what constitutes an appropriate degree of progress.

### Meaningful Does Not Mean Maximized.
Both Rowley (1982) and Endrew F. (2017) support the notion that an IEP is not required to maximize the potential of each handicapped child. After Endrew F., as plaintiffs began testing the boundaries of the newly refined substantive FAPE standard, courts increasingly emphasized this dictum. Consequently, courts were quick to point out that a rejection of the “merely more than de minimis” standard did not overrule the “meaningful” educational benefits standard, and school districts were still not required to provide every specialized service requested (See, e.g., Dunn v. Downington Area Sch. Distr. (In re K.D.), 2018; E.R., 2018; Spencer, 2018).

When making a determination about appropriate progress, courts relied heavily on this dictum as an upper limit. This played out in the case law in a variety of ways. For example, in E.R. (2018), plaintiffs argued that the IEP was inappropriately limited to E.R.’s critical needs when it did not include a goal for every fourth grade standard. The court rejected this argument
because “excessive goals” would have made success unlikely and “the IEP standard is not perfection” (pp. 768-769). Instead, evidence showing E.R. was likely to master each of her IEP goals by the end of the year resulted in a finding of FAPE. In *Spencer* (2018), the plaintiff sued for continued services in math despite performing on grade level and receiving passing grades and test scores in the subject. After several education experts also testified that specialized instruction in math was not necessary for the plaintiff to receive a FAPE, the court held that the parents’ “strong dissatisfaction with Nicole’s math SAT scores and a strong preference for the tutoring she was receiving” is not sufficient evidence that the IEP was not appropriate (p. 18). Similarly, the court in *McKnight* (2018) found that a one-on-one aide was unnecessary because the plaintiff was already making progress in the general education classroom. Here, the plaintiff’s parents did not dispute that progress was made under the relevant IEPs, but rather took issue with “the degree of progress” being made (p. 19). While these cases do not shed light on the lower limits of what constitutes appropriate progress, they do reinforce the upper limit prescribed by *Rowley* and *Endrew F*.

**Passing Marks or Appropriately Ambitious.** Before *Endrew F*, the prevailing guideline for courts making progress determinations stated that a child fully integrated into the general education classroom should receive an IEP “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade” (*Rowley*, 1982). This guideline was reaffirmed in *Endrew F* (2017) for students who are mainstreamed and it is still widely used by courts, albeit with varying prescriptions for progress. In *Wood v. Katy Independent School District* (2015), for instance, the court found sufficient progress occurred because the plaintiff received above-passing grades in all of his classes and he passed the state’s standardized achievement test. And in *P. v. West Hartford Board of Education* (2018), the court held that the plaintiff’s
transition from a “failing student” to a “mostly ‘A’ and ‘B’ student” (his GPA was slightly below 3.0) indicated appropriate progress (p. 759). On the other hand, the court in *E.D. v. Colonial School District* (2017) concluded there was sufficient progress even though the plaintiff’s kindergarten report card showed improvement in some areas and no improvement in others. The judge explained: “There was no question that E.D. made progress, and that she advanced to First Grade. While it is true that E.D. did not make progress in all categories, this does not mean that she was denied a FAPE” (pp. 41-42). In sum, the threshold for sufficient progress based on grades is still undefined. While above-average grades or passing every class is a clear indication of progress in the general education classroom, it seems courts are willing to find that improvement in only a few areas or classes is also sufficient.

Prior to *Endrew F.*, there was no legal guideline for courts evaluating appropriate progress for students educated in special education classes or schools. Today, *Endrew F.* (2017) states that a child who is not fully integrated into the general education classroom and not able to achieve on grade level should receive an IEP “appropriately ambitious in light of the child’s circumstances” and “have the chance to meet challenging objectives” (p. 1000). While this new rule provides courts with greater direction for making progress determinations in this context, the language still leaves room for interpretation. For example, in *E.R.* (2018), the plaintiff did not receive an IEP goal for every fourth grade level standard because “there was a high likelihood she would not be able to meet those goals.” The court relied on testimony from E.R.’s special education teacher that the plaintiff “was able to learn some of the skills described in the goals, so they were not too ambitious, but had not mastered the goals, so they were not too easy” (p. 768). Adopting this logic as consistent with *Endrew F.*, the court determined the IEP was appropriately ambitious. On a related note, in *C.S. v. Yorktown Central School District* (2018), the plaintiff
was “a student expected to perform below grade-level in light of her established educational history and disability” (p. 74). Based on these circumstances, the court held that the “controlling issue” was not whether the plaintiff achieved the goals set forth in the IEP, but rather “her progress toward achieving them” (p. 70). Moreover, in reference to the plaintiff’s assessment results, the court added that it “looks at patterns of errors and . . . gains and . . . at tremendous gain even though it’s below benchmark” (p. 77). And in J.B. v. District of Columbia (2018), the court found that the plaintiff’s progress had to be evaluated according to her unique circumstances as a student with an intellectual disability that has “significant cognitive and academic weaknesses” (p. 63). In this context, J.B.’s slow but consistent progress was evident in her completion of goals in the areas of language skills and motor skills. Because the facts in each case are highly individualized to the plaintiffs’ circumstances, courts did not establish a set formula determining what “appropriately ambitious” progress looks like. And it is unlikely to occur in the future because the standard was created to be flexible. Whether or not this is a positive consequence of the change in the law remains to be seen.

**Conclusion**

This chapter presented the findings from a doctrinal legal analysis of 43 federal court cases applying the substantive FAPE standard from January 1, 2015 to December 31, 2018, the period directly preceding and following the U.S. Supreme Court’s decision in Endrew F. During this time, courts found 88.4% of plaintiffs’ IEPs substantively appropriate, which reflects an 8:1 pro-district outcome ratio and suggests courts strongly defer to the educational expertise of school authorities when determining whether a FAPE was provided.

Before and after Endrew F., courts primarily focused their analysis of a FAPE on the quality of the plaintiff’s IEP goals. In particular, courts considered whether the goals written into
the IEP addressed the specific needs and achievement levels of the plaintiff. After *Endrew F.*, courts increasingly considered the appropriateness of the IEP services provided to plaintiffs, especially as their needs evolved over time. The increased focus on IEP services and the continued focus on IEP goals make sense with *Endrew F.*’s clarification that progress be determined in light of the child’s circumstances. That being said, the case law did not provide a clear answer about what degree of progress is necessary to satisfy the standard, even after *Endrew F.* Variable levels of progress were deemed sufficient and in many cases the degree of progress made was irrelevant, so long as the IEP itself was reasonably calculated to enable progress. Thus far, the only clear answer on progress is the restatement that an IEP is not required to maximize the potential of a student. In this respect, the federal courts are narrowly interpreting *Endrew F.* as rejecting the “merely more than de minimis” educational benefits standard, but not as raising a new, higher standard beyond what *Rowley* and its progeny have already projected.
CHAPTER FIVE: Empirical Findings

In this chapter, I present the findings from my empirical legal analysis examining how district representatives interpret the substantive FAPE standard. First, I describe the participants interviewed for the study and the context of the school district in which they work. Second, I briefly review the methods used to collect and analyze the interview data. Third, I provide background information about participants’ legal knowledge and training, as well as the extent of their decision-making authority in the IEP process, as detailed in the interviews. Finally, I present the three approaches district representatives used to make sense of the substantive FAPE standard and I explain how these approaches impacted their understanding of the refined standard in Endrew F.

Participants and Context

This chapter addresses research question #2: How do district representatives in a large, urban school district make sense of the substantive FAPE standard articulated in the U.S. Supreme Court’s Rowley and Endrew F. decisions? To answer this question, I conducted in-depth interviews with 18 district representatives working at four different levels within the JUSD SELPA. From the highest level to the lowest level of the administrative unit, this included: two senior directors, four senior managers, six managers, and six specialists (see Figure 1). Participants represented four out of six areas (66.7%) that comprise the school district as a whole. The senior managers representing the remaining two areas declined to participate in the study.

All 18 participants work for the special education division of a large, urban school district in California. In the 2018-2019 school year, JUSD provided special education services to 13% of its K-12 student population (California Department of Education, 2019). The ethnic/racial
demographics of these students were reported as follows: Latino (75.2%), Black (10.8%), and White (9.8%). All other ethnic/racial groups had populations of 2.0% or less (California Department of Education, 2019). The vast majority of these students (88%) were classified into one of four disability categories: specific learning disability (42.4%), autism (18.2%), speech or language impairment (14.8%), and other health impairment (12.4%) (California Department of Education, 2018c).

Figure 1.

Organizational Structure of District Representatives in the JUSD SELPA

Note: The number of participating district representatives from each level are indicated in parentheses.

Overall, JUSD is not socioeconomically diverse. Eighty percent of all students receive free and reduced priced lunch and 82.8% of students with disabilities receive free and reduced priced lunch in the district (California Department of Education, 2019). However, Area #4 has a significantly lower percentage of students receiving free and reduced price lunch compared to
the other three participating areas (JUSD SELPA, 2019a). In an effort to include a sample of
district representatives that works with both higher and lower income students with disabilities,
managers and specialists from Area #4 were overrepresented 3:1 (see Table 12).

Table 12.

*Participation of District Representatives by Area and Position*

<table>
<thead>
<tr>
<th>Area</th>
<th>Senior Director</th>
<th>Senior Manager</th>
<th>Manager</th>
<th>Specialist</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
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<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Area #2</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Area #3</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Area #4</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2</strong></td>
<td><strong>4</strong></td>
<td><strong>6</strong></td>
<td><strong>6</strong></td>
<td><strong>18</strong></td>
</tr>
</tbody>
</table>

*Note.* Senior directors are not assigned to an area because they oversee all six regions.

**Data Collection and Analysis**

Part 2 of this study used qualitative research methods to examine the socially constructed
realities of law (Webley, 2010). Through in-depth interviews, I explored the process of providing
a substantive FAPE to students with disabilities through the experiences of the people who help
carry out the process. The resulting data provides insight about how the law works in practice
and whether the developing legal norms are consistent within the district.

The interviews followed a semi-structured protocol (see Appendix) that employed
Seidman’s three-part approach focusing on the participant’s life history, the phenomenon being
studied, and the meaning made from this phenomenon (2013). Due to the strict schedules and
limited availability of my participants, all three parts of the interview were conducted in one
sitting. Most of the interviews (13) ranged from 54 and 72 minutes long, but a small group (5) ranged from 31 and 46 minutes long. Interviews were conducted over the phone and recorded with the consent of the participants. The questions primarily focused on how participants constructed the meaning of a FAPE in their current capacity as a district representative and how these constructions shaped the understandings of the school level educators they support. The remainder of this chapter discusses the overarching themes that emerged from these findings. Participants also described the challenges of implementing a FAPE and the set of dynamics that complicate the process, but these findings are discussed separately in Chapter 6.

Interview data was analyzed using iterative cycles of inductive reasoning that derived patterns as the research process progressed (Webly, 2010). This approach, what Creswell calls the spiral approach (2013), involved three rounds of coding to identify the core concepts emerging from the interview data. The first round employed descriptive and in-vivo coding to capture the essence of participants’ responses, the second round used pattern coding to organize similarly coded data into broader categories called meta-codes, and the third round synthesized related meta-codes into even broader parent-codes assigned to the research question they addressed. This last step reduced the codes into the most important themes that I address in the sections that follow.

**Legal Knowledge and Training**

Every district representative, from the senior directors to the specialists, previously worked as a special education teacher. In fact, JUSD requires three years of full-time experience as a teacher of students with disabilities as a minimum requirement for entry-level district representative positions. Of course, all participants exceeded this minimum requirement and typically served in other administrative roles within their schools as the special education
coordinator or as an instructional or behavioral coach for other special education teachers. As special education teachers, however, district representatives acknowledged that they knew “very little, if anything, about the law” (Manager 6, interview, November 27, 2018) and it was common to “learn about FAPE along the way during IEP meetings” (Specialist 5, interview, November 16, 2018). Additionally, district representatives agreed that they learned the most about special education on-the-job through “baptism by fire” (Senior Manager 2, interview, October 18, 2018) and much of their training depended on strong mentors and colleagues in their schools that “passed on everything they knew and why they did it” (Manager 1, interview, October 25, 2018). District representatives who later served as special education coordinators at their schools were “responsible for knowing more about IEP timelines” and ensuring that “accommodations were being followed and services were being provided to each student” (Specialist 1, interview, October 30, 2018). But they noted this only covered “the gist of the IDEA . . . and knowledge about the law was still minimal” (Manager 4, interview, November 15, 2018).

As district representatives took on higher roles within the district, they received more professional development on special education policies and procedures. According to Manager 6, incoming specialists attend a legal training run by a law firm that presents “case studies on special education law” and provides “in-depth analysis about why a student qualifies for the services they receive and how this situation may be unique to the student” (2018). However, specialists explained that overall “there is not much [formal] training . . . it’s more hands-on training than anything else” (Specialist 1, 2018) because “you get put in situations where you have to interpret the law as best as you can” (Specialist 2, interview, November 7, 2018). As a result, Specialist 5 noted that she’s “learned more since becoming a [specialist], but is not
proficient” and maintains a “low understanding of the law” (2018). District representatives that advance to manager positions receive ongoing training in the law, but it comes in “spurts” (Manager 6, 2018) and most learning occurs from “listening and watching . . . how colleagues handle calls and problems” (Manager 1, 2018). Although managers reported having “more time to review bulletins issued by the district about policies and procedures,” they recognized that a deeper understanding of the law required additional, independent study: “When you are supporting schools, you need to know the rules, so there is a self-motivating practice to learn” (Manager 2, interview, November 6, 2018). A senior director reflecting on his prior experience as a manager similarly acknowledged the need to seek out legal answers by himself: “As a professional, I had to take it upon myself to go deeper because I wanted to know . . . I wanted to give good advice. . . . Not everyone does that and it’s an important factor to it all” (Senior Director 1, interview, August 30, 2018). Thus, despite receiving more professional development as district representatives, most participants felt there were gaps in their legal knowledge and training.

The impact of these gaps was evident in district representatives’ unfamiliarity with the Supreme Court’s decisions in Rowley and Endrew F. Out of 18 participants, only one district representative – a senior director – made specific references to Rowley and Endrew F. and recognized that the substantive FAPE standard had changed:

So I use Rowley and Endrew as my kind of foundation of determining what I consider FAPE. . . . And so, in order to have provided FAPE, we need to make sure that the student is making some progress, and obviously we know now it's more than de minimis. We can't just say we have a bit of progress and we're done here and so the standard is changing. . . . (Senior Director 2, interview, October 11, 2018).
According to Senior Director 2, the district presents on due process “year after year after year,” but she acknowledged that the training is “probably a little over [district representatives’] heads.” In fact, she credits her previous working experience in the due process office of the district for providing a more intimate knowledge of the case law: “When you’re analyzing for a FAPE all day long, you’re looking at it differently than when you’re the assessor or the provider. I don’t even know if I knew what a FAPE was before I had that job” (2018). In this respect, Senior Director 2 was exposed to legal training that is not provided to all district representatives and this experience provided her with a greater understanding of the law than her colleagues.

Despite the fact that 17 district representatives were not familiar with the significance of *Rowley* and *Endrew F.* as cases, they were all familiar with the terms FAPE and educational benefits. I will describe their understanding of these terms in detail in the sections that follow, but for now I would like to note that five specialists and one manager only recognized educational benefits as a term used strictly during annual school district compliance reviews. To them, educational benefits were “only applied when auditing schools” (Specialist 2, 2018) and they were “not considered during typical IEPs” (Manager 3, interview, November 15, 2018). In this sense, one-third of participating district representatives understood educational benefits as a concept divorced from the FAPE that educators are required to provide in schools on a daily basis, which signifies a deep disconnect between the source of legal language and its use in district procedures.

It should be also noted that after describing the facts and holding of *Endrew F.* to each participant during their interview, one manager recalled that the case was presented at a meeting the previous year. However, she could not remember why the case mattered, what material was presented at the training, or what new language was used in the decision (Manager 2, 2018).
Thus, when participants were interviewed, more than a year and a half after *Endrew F.* was decided, 17 district representatives were still unfamiliar with the substantive FAPE standard articulated in *Endrew F.*

**Decision-Making Authority**

The IDEA requires school districts to provide a FAPE to every child with a disability (20 U.S.C. § 1412(a)(1)). In order to do so, schools are responsible for creating an IEP that lays out the special education and related services to be provided to students (20 U.S.C. § 1401(9)). The IEP is developed and reviewed annually by the IEP team, which is composed of school personnel and the student’s parents or guardians (20 U.S.C. § 1414(d)(1)(B)). During this process, the IEP team must consider the strengths of the student, the results of recent evaluations, and the academic, developmental, and functional needs of the student (20 U.S.C. § 1414(d)(3)(A)). Ultimately, decisions regarding placement, curriculum, services, and supports are made at the discretion of the IEP team.

Within JUSD, special education teachers typically write the IEP (with input from other teachers and related service providers) and assistant principals approve the offer of a FAPE in IEP meetings. However, any administrator, coordinator, counselor, or teacher working at a school site can complete a 4-hour training to become an administrative designee in place of the assistant principal. Because district representatives are not members of the IEP team, they do not have the authority to make decisions about the FAPE provided to students with disabilities in the district. Instead, district representatives help school sites build their capacity to provide special education services through periodic group trainings and individual coaching, as well as provide advice on policies and procedures, monitor compliance, and resolve conflicts between schools and families (see Figure 2). Although district representatives only have the authority to make
suggestions and recommendations to school sites, they still serve as the support and training system that influences school level educators’ understandings of a FAPE and how it should be enacted.

Figure 2.

FAPE Decision-Making Structure in the JUSD SELPA

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Making Sense of the Substantive FAPE Standard

District representatives are responsible for providing training and support to school level educators regarding the development and implementation of a FAPE in JUSD. In this capacity, how district representatives make sense of the substantive FAPE standard can directly shape how school level educators come to their own understandings about the law. Because courts strongly defer to the professional judgment of school authorities in due process, it is important to examine whether district representatives’ interpretations of a FAPE align with current legal standards.
The IDEA specifically defines the term FAPE as:

special education and related services that—(A) 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 school, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program required under section 614(d). (20 U.S.C. § 1401(9)).

But in the interviews with district representatives, I asked participants to conceptualize a FAPE beyond the meaning of its acronym or strict definition in the IDEA. Rather I asked participants what a FAPE meant to them personally and what a FAPE should look like in schools.

In this endeavor, district representatives made sense of a FAPE in one of three ways, two of which do not align with the substantive FAPE standards articulated in Rowley or Endrew F. (see Figure 3). The first approach, expressed by three district representatives, championed the idea that a FAPE should aim to provide growth for students with disabilities that is commensurate with their nondisabled peers. Interestingly, this heightened interpretation is similar to the argument made by Amy Rowley’s parents and the dissenting justices in Rowley (1982) who contended that the IDEA’s “legislative history thus directly supports the conclusion that the Act intends to give handicapped children an educational opportunity commensurate with that given other children” (p. 214). The majority opinion, however, rejected this interpretation as “an entirely unworkable standard requiring impossible measurements and comparisons” (p. 198) and held that “the Act does not require a State to maximize the potential of each handicapped child” (p. 177).
### Alignment of District Representatives’ Interpretations of the Substantive FAPE Standard with Supreme Court Decisions

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**Rowley**

(Majority)

“[I]f the child is being educated in the regular classrooms of the public education system, [the IEP] should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

**Rowley**

(Dissent)

“[T]he Act intends to give handicapped children an educational opportunity commensurate with that given other children.”

**Endrew F.**

(Unanimous)

“[F]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

“If [integration in the regular classroom] is not a reasonable prospect for a child, his IEP need not aim for grade level advancement. But his educational program must be appropriately ambitious in light of his circumstances . . .”
The second approach, expressed by nine district representatives, emphasized that a FAPE means providing a student with the necessary supports to successfully access the curriculum appropriate for their capabilities. They measured successful access to the curriculum in academic gains such as improved grades, assessment scores, and grade advancement. In this respect, the second approach most closely aligns with the substantive requirements of *Rowley* (1982) that a child fully integrated into the general education classroom should receive an IEP “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade” (p. 204), as well as the clarification in *Endrew F.* (2017) that a child who is not fully integrated into the general education classroom and not able to achieve on grade level should receive an IEP “appropriately ambitious in light of the child’s circumstances” and “have the chance to meet challenging objectives” (p. 1000).

Finally, the third approach, expressed by six district representatives, conceptualized a FAPE as the development of a program that fits the whole child – academically, behaviorally, socially, and emotionally. This holistic interpretation doesn’t parallel with any existing court decisions because these district representatives measure progress in ways that include social and emotional outcomes, an approach that has not been considered by the IDEA. Indeed, the IDEA was last reauthorized in 2004 to align with the accountability goals of the NCLB (2002), which focused on academic progress and standardized testing. Perhaps education reform efforts that value a whole child approach will be incorporated into future reauthorizations of the IDEA, but for the time being, it will remain a school level or individual level interpretation of a FAPE.

**Approach 1: Commensurate with Nondisabled Peers**

Three district representatives working at different levels in the administrative unit stated that a FAPE should enable students with disabilities to grow at a rate commensurate with their
nondisabled peers. This is a high bar to achieve because it aims for equal growth between the two groups. Senior Director 1, the highest-ranking district representative in this group, best articulated the idea:

> To put together a program that is going to be appropriate for that child to grow in a similar fashion as their colleagues who are nondisabled. . . . The spirit of FAPE is about closing the gap between disabled and nondisabled students. (2018).

As noted above, an approach working towards commensurate growth for students with disabilities is grounded in the same argument made by the dissent in *Rowley*. Although the Supreme Court in *Rowley* rejected this argument, Senior Director 1 is likely making sense of the substantive FAPE standard based on his understanding of the NCLB’s push to close achievement gaps for disadvantaged students, including students with disabilities (2002). Indeed, Manager 1 similarly asserted that a FAPE offers “what your child needs to be successful like their nondisabled peers . . . as close to what they would have if they didn’t have a disability” (2018). Here, Manager 1 doesn’t use the gap closing language of the NCLB, but she does advocate for a substantive standard that maximizes the potential of students with disabilities in line with the argument made by the plaintiffs in *Rowley*. Finally, Senior Manager 4 explained that determining whether a FAPE is appropriate requires “a comparison with the progress of their nondisabled peers” (interview, October 31, 2018). Like her colleagues, Senior Manager 4 believes nondisabled peers are the goal post for equity and a FAPE should level the playing field in an effort to achieve this equity.

While this approach sets a worthwhile goal, the Supreme Court explicitly rejected its premise in *Rowley* and again in *Endrew F.* as beyond the confines of the IDEA. According to the Court in *Rowley*, “the Act does not require a State to maximize the potential of each handicapped
child commensurate with the opportunity provided nonhandicapped children” (p. 177). The Court further explained that “an equal opportunity” interpretation would require “unworkable” standards, measurement, and comparisons (1982, p. 198). In addition to being unworkable, the Court fails to mention that determining which groups of nondisabled students should serve as the comparison could lead to issues of inequity for students of color and low-income students with disabilities whose nondisabled peers attend underperforming schools.

**Approach 2: Successfully Access the Appropriate Curriculum**

Nine district representatives, including all six specialists, stated that a FAPE allows students with disabilities to successfully access the appropriate curriculum when necessary supports are provided. Across this group, participants’ responses were remarkably similar. For example, Senior Manager 2 said a FAPE “provides what a student needs to successfully access their curriculum” (2018), while Senior Manager 3 said a FAPE “offers a student opportunities to access the general education curriculum, if that’s appropriate, with the supports they will need to be successful in doing that” (interview, October 25, 2018). Moreover, Specialist 2 defined a FAPE as “putting the child in a situation where he can access the curriculum to the best of his abilities” (2018) and Specialist 3 noted “the intent [of a FAPE] is to make sure we’re providing the supports for a student to be successful and have access to the curriculum that the IEP team feels is appropriate” (interview, November 14, 2018). The consistent language used to describe a FAPE suggests this may be the official definition presented by the district in the annual due process training. This proposition is further supported by the fact that the approach articulated by every specialist, the entry-level position for the administrative unit, falls within this group.

Each of these participants centered their interest on the curriculum itself and described progress primarily in terms of academic gains and grade advancement. Specialist 4, for example,
said a student is receiving “educational benefit when he shows growth over time . . . on his grades, periodic assessments, summative assessments, and portfolios” (interview, November 14, 2018). Specialist 1 likewise explained that a student is “accessing the curriculum when his needs are met so that he can learn and progress to the next grade level” (2018). And Senior Manager 2 described successful access as “demonstrating an understanding of [grade level] standards” (2018). These descriptions of progress make sense because the acquisition of academic skills, grade advancement, and standardized tests are typical indicators of whether a student accessed the curriculum. In this regard, approach 2 closely aligns with the guiding dictum from Rowley (1982) and Endrew F. (2017), which states that a child who is fully integrated into the general education classroom should receive an IEP reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. Both Rowley and Endrew F. prize academic gains as indicators of a substantive FAPE, and these district representatives are conceptualizing successful progress in the same manner.

Moreover, district representatives’ recognition that a substantive FAPE depends on the individual capabilities of each student resembles the new guiding dictum in Endrew F. that states children not fully integrated into the general education classroom and not able to achieve on grade level should receive an IEP appropriately ambitious in light of the child’s circumstances (2017). While participants did not articulate a different substantive standard based on the educational setting of the student, they did acknowledge that the provision of services and the expected degree of progress will “change from student to student depending on their needs” (Specialist 3, 2018). In particular, Specialist 5 explained that a student’s present levels of performance “lays the foundation” for a FAPE because “it guides the IEP team on what is appropriate for the child . . . and it depends where the student is at” (Specialist 5, 2018). In this
sense, approach 2 also aligns with *Endrew F.*’s clarification of a substantive FAPE because it makes room for a FAPE based on the academic and functional abilities of the individual.

**Approach 3: Whole Child**

The remaining six district representatives stated that a FAPE provides a program of services that address the needs of the whole child. Unlike the majority of their colleagues, this group envisioned measuring progress in areas beyond just academics. As Manager 6 explained:

Educational benefit is the result of a FAPE. It means a student is making progress toward their [academic] goals, building relationships with their peers . . . it means they feel safe and connected to the school community. It’s the whole package. (2018).

By considering the social, emotional, and behavioral progress of the student, in addition to the academic, a FAPE “looks at the whole child and finds a program that fits their needs in all areas” (Manager 2, 2018). According to Senior Manager 1, a FAPE is “moving into its truest form toward inclusiveness, where children are looked at as children and not a disability, a behavior, or a test score.” However, she noted the district is “not there yet” (interview, July 26, 2018).

The whole child approach articulated by this group of district representatives does not align with any of the Supreme Court’s interpretations of the substantive FAPE standard. It also goes beyond the essential function of an IEP to provide a FAPE that enables functional and academic advancement as dictated by the IDEA (20 U.S.C. § 1414(d)(1)(A)(i)(I-IV)). Though students with disabilities can access related services to address identified social and emotional deficiencies, district representatives want students’ overall well being to be a part of the progress calculus, just as much as academics. To illustrate the importance of this approach, Senior Director 2 reflected on turning point in her career as a special educator:
I remember when we started moving towards inclusion [in the district], we surveyed the kids in self-contained programs and 90% said they would rather fail their classes, but be in gen ed, over passing in the self-contained class. That was really powerful for me and it started getting me thinking about the social and emotional needs of students. (2018).

As Senior Director 2 explained, the social and emotional needs of students with disabilities, especially those placed in a special education classroom are “often overlooked by the IEP team” to the detriment of students’ well being and likely their academic progress as well. Manager 6 similarly noted that her colleagues in the district and at school sites “agree that social and emotional learning is important, but in the classroom academics are the focus.” Consequently, to the extent social and emotional learning requirements exist for a student with disabilities, they are “not being faithfully followed” (2018).

In order to better prioritize well-being outcomes, Manager 4 recommended that school sites review informal data alongside formal data because “the narrative in between is equally important.” To this end, she suggested:

We need to consider how the services are working collectively to support the student. Are they accessing the curriculum? Are they participating in the school community? . . . Are there anecdotal records, observations . . . parent comments too. . . . We live in an interdependent society where relationships and social opportunities are important for students to engage in too. (2018).

Manager 6 likewise recommended the expanded use of informal progress data like “student interviews, classroom observations . . . work samples that show the variety of work offered to students . . . and information about a student’s rapport with teachers, other students, and their families” (2018). Through these data sources, IEP teams can consider important information
about the social and emotional needs of students that may be overshadowed by formal progress data. Finally, Senior Director 2 made the important point that educators also need to consider “how one student might demonstrate a skill differently than another” and what this means for the metrics being used to evaluate a student (2018). Thus, to evaluate the whole child, district representatives in this group conceptualized FAPE determinations as a holistic process that required multiple sources and methods of progress monitoring.

**Effects of Endrew F.**

As discussed earlier in this chapter, more than a year and a half after *Endrew F.* was decided, only one district representative was familiar with the case and its potential impact on special education law before participating in this study; the other 17 contemplated the new language for the first time during their interviews. Because participants were unfamiliar with *Endrew F.*, I presented the facts and holding of the case before asking them any questions. I also reviewed the holding of *Rowley* and pointed out what language in the substantive FAPE standard had changed as a result of *Endrew F.* Finally, I asked participants to consider how or whether the requirement for an IEP to be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (*Endrew F.*, 2017, p. 999) differed from the requirement for an IEP to be “reasonably calculated to enable a child to receive educational benefits” (*Rowley*, 1982, p. 207).

Irrespective of the approach used to make sense of a FAPE earlier in the interview, the majority of district representatives (10) felt the substantive FAPE standard refined in *Endrew F.* was communicating the same message as *Rowley* and a minority group (7) felt there was a difference between the two standards. One district representative opted out of this question.
There were no patterns of understandings based on the position or level district representatives held in the administrative unit.

How district representatives interpreted the substantive FAPE standard in *Endrew F.* was not predicated on how they made sense of a FAPE. In fact, district representatives using all three approaches understood *Endrew F.* in different ways. For example, Senior Director 1 defined a FAPE as requiring commensurate growth with nondisabled peers, but felt *Endrew F.* was a “repacking of ed benefit” that wouldn’t result in any differences “from a practical point of view” (2018). At the same time, Senior Manager 2’s definition of a FAPE focused on providing access to the curriculum, but she also felt *Endrew F.* was “not different or separate” because “students are receiving educational benefit if they are progressing to the highest level they are capable of doing” (2018). Furthermore, Manager 4 defined a FAPE in reference to the needs of the whole child and felt *Endrew F.* “communicates the same message . . . but will help people outside of education know that progress is not all about content and academics” (2018).

Even the district representatives that interpreted *Endrew F.* as different from their own definitions of a FAPE were divided on what the new standard signified. Senior Manager 4, for example, believed a FAPE should level the playing field with nondisabled peers, but felt *Endrew F.* introduced “more vagueness . . . because determining what is appropriate [progress] is where the differences lie between families and the district” (2018). However, Senior Manager 3, who believed a FAPE provides successful access to the curriculum, felt *Endrew F.* was actually “more specific” and gives schools the “leeway to look at students as individuals . . . by looking for progress, which is less open to interpretation than educational benefit” (2018). Finally, two district representatives whose definitions of a FAPE employed the curriculum approach and the whole child approach expressed concern that *Endrew F.* could exacerbate issues of inequity for
specific subgroups of students with disabilities. In particular, they worried about how the phrase “in light of the child’s circumstances” would be used:

How are we defining circumstances? Are we using the circumstances as an excuse not to challenge the student? It makes me wary . . . Because then it’s saying for these kids, they come from this low poverty area so they don’t need that much. They just need the basics. (Manager 6, 2018).

Specialist 6 made a similar argument in her interview:

What does that mean for students . . . in foster care or who are homeless? Is the progress going to be considered enough due to their circumstances? . . . How is [progress] going to be equal for students that have access to state-of-the-art computer labs? (interview, November 29, 2018).

Although the interpretations put forward by these two district representatives are outside the bounds of the Court’s use of the term “circumstances” in relation to the nature of the child’s disability, it is not unreasonable to assume that attorneys could pursue this argument as an implicit interpretation in future litigation. In fact, legal scholars have already raised questions about whether the child’s parents or school setting may qualify as factors being considered as part of the circumstances equation (Zirkel, 2017c).

Nevertheless, it is clear that district representatives are not aligned on how, or even if, Endrew F. has changed the meaning of a FAPE. While most of the district representatives believe the practical implications of Endrew F. are minimal, others believe the increased ambiguity adds another layer of confusion for schools and families. This result is understandable considering the one participant familiar with Endrew F. acknowledged that the decision “hasn’t been fully fleshed out in [the] district” (Director 2, 2018).
Measuring Educational Benefit and Progress

When district representatives provided their definitions of a FAPE, a group of seven participants independently described how they conceptualized educational benefits for students with disabilities. The eleven participants who did not initially describe their understanding of educational benefits were asked if they were familiar with the term, which they all answered affirmatively. Participants were then asked to describe what educational benefits meant or looked like to them. Throughout their interviews, district representatives used the term progress interchangeably with educational benefits. As previously mentioned above, five specialists and one manager reported that they recognized the term educational benefits only in reference to annual compliance reviews. Although these six district representatives understood that students received educational benefits when there was evidence of progress on their IEP goals, they did not link the substantive requirement for educational benefits to the provision of a FAPE.

District representatives overwhelmingly agreed that measuring progress required the evaluation of multiple metrics because one data point cannot tell the whole story about a student. However, district representatives did not agree about the areas in which progress should be evaluated. On one hand, the majority of district representatives (12) recommended looking at a variety of academic metrics like standardized tests, informal assessments, and grades. On the other hand, a minority group of district representatives (6) believed progress should be considered in areas beyond just academics. District representatives in both groups disagreed about the degree of progress required to satisfy a FAPE and their prescriptions for progress relied on subjective frameworks for measurement.

There was clear alignment among district representatives about the need to consider multiple measures of progress when determining a FAPE. As Specialist 3 explained, it is
important to adopt a “global view of progress” that is “not based on any one assessment” (2018). Senior Manager 1 likewise stated that an evaluation of progress should never put “too much weight in any one measure” (2018). Indeed, Senior Director 1 verified that the district recommends an IEP team “discuss at least three metrics for each area of need, one of which must be standardized” but “gives schools leeway on what to consider” (2018). This district policy recognizes that one number cannot and should not define a student.

Despite reaching a consensus on the use of multiple metrics, district representatives did not agree on the areas where progress should be evaluated. However, this discrepancy can be explained by the differences in how district representatives made sense of a FAPE. The majority group included those district representatives who felt a FAPE should provide students with disabilities commensurate growth with their nondisabled peers (approach 1) and those who felt a FAPE should provide successful access to the appropriate curriculum with any necessary supports (approach 2). The FAPE definitions used in both of these approaches were grounded in academic terms that require progress indicators such as “curriculum assessments, state assessments, and grades” which are “data driven and based the student’s individual achievement levels” (Specialist 3, 2018). On the contrary, the minority group included those district representatives who felt a FAPE should address the needs of the whole child (approach 3). While this group does not disregard the importance of academic indicators of progress, they viewed educational benefit as a more holistic goal that needs to consider the social and emotional well being of students:

There is quite a bit of testing to determine if the program provides educational benefit. There are interim assessments, DIBELS, targeted reading assessments, informal teacher assessments, the San Diego Quick . . . but the emotional health component, especially for
students in the special day classes, adding this to the calculation . . . should be part of educational benefit. There needs to be more to progress than just academic benefit. (Manager 2, 2018).

Thus, this group of district representatives measured (or wanted to measure) progress in a wider array of areas because they constructed a FAPE as more than an academic mandate.

District representatives’ varied approaches to a FAPE not only consider different areas of progress, but also the degree of progress that is deemed appropriate. As discussed earlier in this chapter, district representatives who defined a FAPE as requiring commensurate progress strove for equal rates of growth between students with disabilities and their nondisabled peers, while those who defined a FAPE as successful access to the appropriate curriculum or addressing the needs of the whole child simply looked for an undefined degree progress or growth. Of course, the Supreme Court rejected the former interpretation for being overly demanding, but the latter interpretation is legally valid and worthy of further consideration.

An interpretation of a FAPE that requires progress or growth indicates a relative amount, but it does not prescribe the degree of progress that is actually required to satisfy the substantive FAPE standard. Indeed, district representatives that attempted to explain the degree of progress necessary to satisfy their own definitions of a FAPE provided nebulous or tautological descriptions at best. Take, for example, Specialist 5’s explanation of educational benefit: “It means there was progress. That the student is striving in whatever classroom setting he’s in and he was given the chance to be successful and make progress toward his IEP goals.” (2018). Specialist 6 offered a different, but equally vague definition of the term:
Educational benefit is when the student benefitted from special education services. Did the services help you to be able to learn and grow and benefit . . . has it impacted any learning . . . are we setting you up for success? (2018).

While the sentiments from these district representatives are sincere, both explanations fail to provide any insight into the degree of progress necessary to satisfy a FAPE. Words like striving, successful, learn, and grow are not quantifiable; they are highly subjective, value-laden terms that are open to interpretation. So how are progress determinations being made? Ultimately, Manager 3 acknowledged that there is “no guideline for progress and the decision is left to the IEP team and based on individuals’ opinions” (2018). Specialist 3 made a similar revelation when he stated “educational benefit . . . is a value that IEP team members come to” (2018). As it stands then, district representatives are not aligned on, and offer no clear sense of, what would constitute a standard for progress.

**Conclusion**

This chapter describes the empirical findings from in-depth interviews with 18 district representatives working for a large, urban school district. Participants reported low levels of legal knowledge when they worked as special education teachers and administrators. Despite receiving more professional development as district representatives, participants acknowledged gaps in their legal knowledge. This was particularly evident from the fact that, more than a year and a half after *Endrew F.* was decided, 17 district representatives were still unfamiliar with the case and its significance to special education law.

Because district representatives are responsible for providing training and support to school level educators regarding the development and implementation of a FAPE, how district representatives make sense of the substantive FAPE standard can directly shape how school level
educators come to their own understandings about the law. The findings from this study indicate that half of district representatives do not interpret the substantive FAPE standard in line with current legal standards. Moreover, district representatives disagree about *Endrew F.*’s impact on the substantive requirements for a FAPE, and district representatives could not reach a consensus about or even articulate a clear standard for appropriate progress. These findings raise important questions about the judicial deference granted to school authorities in due process that will be addressed in more detail in Chapter 6.
CHAPTER SIX: Equity Impact

In the previous two chapters, I examined how federal courts and district representatives interpret the meaning of the substantive FAPE standard. In this chapter, I examine the factors that influence how a FAPE gets implemented in schools and how these factors contribute to inequity for subgroups of students with disabilities. First, I describe the constructs of a critical practice approach to policy, which I use as an interpretative framework to examine the data. Second, I examine a set of dynamics within JUSD that complicate the process of providing a FAPE. Finally, I explain how the demographic context of regional areas in JUSD are associated with inequitable access to legal remedies and related services for subgroups of students with disabilities.

Critical Practice Approach to Policy

This chapter addresses research question #3: How, and in what ways, is the FAPE provided to subgroups of students with disabilities shaped by factors beyond the interpretations of federal courts or district representatives? To answer this question, I used a critical practice approach to policy to examine the social practices of power involved in the construction and operationalization of a FAPE. A critical practice approach looks beyond the process of implementation that traditional policy studies favor, and instead focuses on the formation, negotiation, and appropriation of policy in situated social arenas (Levinson et al., 2009). In particular, this approach recognizes that policy is not just made through authorized channels, but also through unauthorized channels where actors like educators and parents “interpret and take in elements of policy . . . into their own schemes of interest, motivation, and action” (Levinson et al., 2009, p. 779). In this sense, a critical practice approach questions how local actors influence policy through sociocultural negotiations of knowledge and meaning.
Using this interpretive framework, I analyzed my data in light of the likelihood that special education policy was being negotiated in situated social arenas like area- or school-wide trainings or IEP meetings. With this in mind, I asked myself the following questions when considering the data: Where (in what spaces) was policy negotiated? Whose voices were privileged in these spaces? Whose voices were silenced? What were the social and cultural contexts of these spaces? How did these negotiations impact specific subgroups of students with disabilities? In this way, I examined contextualized communities of practice where informal policymaking led to normative constructions of a FAPE.

**Dynamics Complicating Implementation**

The preceding chapters found that federal courts and district representatives in JUSD conceptualized a substantive FAPE in different ways and did not have a clear standard to determine adequate progress. Adding to these findings, the section that follows presents a set of dynamics within JUSD that further complicates the implementation of a FAPE in schools. Because a FAPE is negotiated and enacted by educators and families on the ground level, competing understandings and demands of local actors impact how a FAPE gets realized. It is important to note, however, that the dynamics reported below are based solely on the views of special education professionals since general education professionals were not included in this study.

**Educators’ Mindsets**

District representatives reported that colleagues working at school sites and in district offices maintained outdated or misinformed mindsets (i.e. assumptions and beliefs) about special education that impacted the implementation of a FAPE in schools. According to participants, these mindsets scaled the ranks of the entire district from superintendents to principals to
teachers. Furthermore, while most of these mindsets were exclusive to general educators, even special educators perpetuated some harmful norms.

First, general educators widely assumed that students with disabilities fell outside of their purview. As Manager 1 explained, “general education teachers think special education is a Band-Aid that releases them from being responsible for a child with disabilities” (2018). Similarly, Manager 3 noted, “even in such a large district special education tends to be an island and principals will say that’s not my responsibility” (2018). Due to these misunderstandings, both managers reported having to coach teachers and principals to understand that special education is not a silo and they need to think about students in special education as well as general education. Even Senior Director 1 was challenged by the misinformed mindsets of his colleagues in district offices:

One of the hardest things is convincing people that kids with disabilities aren’t the property of the Division of Special Education. They are kids who are part of the same community as the gifted kids and they should get the same level or an equitable amount of attention from teachers, school site administrators, and other support professionals who are at the school. (2018).

The assumption that students with disabilities are solely the responsibility of special educators is problematic. For one thing, it suggests that students with disabilities are not full members of their school communities and therefore receive access to fewer resources than their nondisabled peers. And for another, it allows general educators to relinquish accountability for a subgroup of students that are more likely to thrive in inclusive and collaborative schools.

Second, general educators believed that any student who is struggling should be placed in special education. This practice is based on the misconception that “any person who doesn’t
learn in a particular way or at a particular pace is a problem” and thus needs to be removed from the general educational setting (Senior Director 1, 2018). But, as Senior Manager 1 pointed out, “just because a child doesn’t fit into the box doesn’t mean he needs special education” (2018).

Unfortunately, however, many general educators equate “challenging learning styles” with something that needs to be fixed in special education. Senior Director 2 made the ramifications of this mindset particularly evident:

They think special education is better for the kid because it’s slower and has a different curriculum, so he will get an A, not a D, in the self-contained world. . . . But is this offer right for the kid or right for you because it’s what you believe in? All students should have the opportunity for higher learning, even if it means their grades are lower. (2018).

Here, the belief that special education is a means to help struggling students get better grades, even at the expense of being placed in a more restrictive educational setting, misses the mark entirely. The IDEA specifically aims to include students with disabilities in the general education classroom to the greatest extent possible. But outdated beliefs about how struggling students should be supported in schools can lead to over identification for special education services and the provision of those services in increasingly segregated placements.

Third, general and special educators overwhelmingly supported the removal of students with behavior problems from the general education classroom or even the whole school. In fact, Specialist 2 stated, “special education has become an avenue for school sites to deal with behavior when behavior isn’t a special education issue – it’s an education issue” (2018). Again, this practice is based on the misconception that special education is a place where students are sent to be fixed because they don’t conform to school-wide norms. According to Manager 2, when this mindset infects a school, it can be “very difficult” to change:
It’s always he needs services because of his behavior, so he should go to this other school. It’s never what are we going to do at this school to provide him with assistance to change those behaviors. Sometimes it’s coming from one teacher and sometimes it’s a whole-school culture that doesn’t do well with anyone who doesn’t fit into their nice little box. (2018).

To counteract these attitudes, managers and specialists coached educators to think about how they can support students with behavior problems before moving them to a more restrictive placement, albeit with mixed success. As Manager 5 explained, “it can be challenging to convince schools they can support a student on their own campus because they see the child as costing time and resources from their staff” (interview, November 16, 2018). Because exclusion is the most efficient option for schools, educators are incentivized to make placement decisions that increase segregation. When schools operate under this mindset, students struggling with behavior are treated like any other problem that needs to be removed, not a child that needs to be supported by the larger school community.

**Expectations of Parents and Guardians**

District representatives also consistently reported that the expectations of parents and guardians impacted their ability to support the implementation of a FAPE in schools. Generally speaking, families wanted access to additional services for their children even when the need for such services was not well established. This effect was especially pronounced in regional areas with the lowest rates of low-income students with disabilities.

Many parents and guardians want schools to provide a FAPE that maximizes their child’s potential even though this substantive standard was rejected by both *Rowley* and *Endrew F*. Families often request services beyond what is recommended by the IEP team because they
believe more services equates to more progress. As Manager 1 explained, “overzealous parents want their child to be the absolute best, so they start talking about college in kindergarten and they want every service in the book to ensure their kid will get straight A’s” (2018). What many families fail to understand, however, is that adding services in one subject area can mean their child is missing content in another subject area. For example, additional speech and language services may be scheduled during a science or physical education class. For this reason, Senior Manager 3 trained her staff to provide a FAPE based on student need, not “adult-driven agendas” or “a parent’s desire to have something their kid doesn’t actually need” (2018). Along the same lines, some parents and guardians request additional services when their child is not performing at the maximum level expected. But Senior Manager 2 noted, “it is unreasonable to expect every student to perform at a certain level . . . this is not the standard we hold for nondisabled students, so it shouldn’t be the standard for special ed” (2018). In these situations, the expectations of the families are so high, they request services that would allow their child to outpace even their typically performing peers.

In addition, parents and guardians increasingly request behavioral aides for their children when district representatives do not deem it necessary and the demand is highest from affluent families. According to Manager 2, families want behavioral aides because it means “there is a person attached to their child at all times to help with school work, focus, and safety” (2018). Manager 1 likened behavioral aides to a “shadow” that will “explain to parents what is happening with their child every day” and “help with tutoring even though that’s not their purpose” (2018). This highly individualized service is coveted among “affluent families who will fight tooth and nail” to get a behavioral aide (Manager 6, 2018), especially when they see their “friend’s son has that and it’s helping him academically” (Manager 1, 2018). However, when
parents and guardians focus their attention on maximizing academic progress, they lose sight of how a behavioral aide can hinder their child’s social and emotional health. Because families “don’t see a behavioral aide as more restrictive” (Manager 4, 2018), they don’t “consider what it feels like to have an adult shadow, what is does to their friendships . . . to their internal motivators” (Manager 2, 2018). Although district representatives try to provide a FAPE that satisfies parents and guardians, the process gets complicated when “they have something else in mind . . . or what they want is unreasonable” (Senior Manager 2, 2018).

Training Limitations

District representatives are primarily responsible for supporting school sites with the development and implementation of a FAPE for students with disabilities. Within this capacity, district representatives provide periodic group trainings and individual coaching on topics such as instructional support, legal advice, conflict resolution, positive behavior strategies, and IEP writing. However, district representatives at every level reported that internal policies limited the effectiveness of training efforts and opportunities offered to educators.

First, assistant principals typically serve as the administrator that approves the offer of a FAPE in IEP meetings. On its face, this procedure is innocuous. In practice, however, it means that principals are not required to attend IEP meetings or special education trainings provided by the district. Without these experiences, principals will be out of touch with the needs of students with disabilities in their school and uninformed about the best strategies to address these needs. Furthermore, this division of labor perpetuates the mindset that only certain educators are responsible for students with disabilities (Manager 3, 2018). Second, training for assistant principals is only mandatory for elementary schools and new hires. At secondary schools, special education is an “adjunct responsibility to a plate that is already full” (Manager 6, 2018). Without
mandatory trainings, district representatives “don’t have as much contact with secondary teams except on a voluntary, individual basis” (Manager 2, 2018). Not only does this policy hinder efforts to align schools on special education law and procedure, it also sends the message that programs for students with disabilities in middle and high school are less important. Third, the district is not allowed to make training for teachers mandatory. As a result, district representatives provide much of their support through individual, as needed coaching (Specialist 5, 2018). Unfortunately, district representatives reported that teachers arrive at schools “ill prepared” to address the complex needs of students with disabilities (Senior Director 2, 2018), and school-based professional development rarely covers special education topics (Manager 2, 2018). The district’s opt-in training policies contribute to the set of dynamics limiting their ability to address the shortcomings of misinformed professional judgment and localized school capacity issues complicating the implementation of a FAPE.

**Demographic Context of Regional Areas**

Although the IDEA supports the notion that an appropriate education can be provided to all students with disabilities, the IEP process is so localized that variability in the offer of a FAPE is almost inevitable. By inviting input from all parties – parents, teachers, service providers, and administrators – the IDEA effectively encourages the construction of a subjective FAPE. Indeed, what one person considers appropriate for a child may differ greatly based on their sociocultural beliefs or socioeconomic status. As the district level data presented below will demonstrate, the demographic context of regional areas in JUSD correlated with the inequitable distribution of related services and legal remedies for subgroups of students with disabilities.

JUSD is a predominantly low-income school district. Eighty percent of all students receive free and reduced priced lunch (California Department of Education, 2019) and 89.9% of
students with disabilities receive free and reduced priced lunch in the district (JUSD SELPA, 2019a). Across the six regional areas in JUSD, the percentage of students with disabilities receiving free and reduced price lunch remains high (see Table 13). However, within this concentration of low-income families in the district, there are two areas − #4 and #6 − that include more families who are not low-income.

Table 13.

Percentage of Students with Disabilities Receiving Free and Reduced Price Lunch (FRPL) by Area

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #4</th>
<th>Area #5</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRPL</td>
<td>95.5%</td>
<td>92.0%</td>
<td>91.8%</td>
<td>77.4%</td>
<td>99.7%</td>
<td>80.4%</td>
<td>89.9%</td>
</tr>
<tr>
<td>No FRPL</td>
<td>4.5%</td>
<td>8.0%</td>
<td>8.2%</td>
<td>22.6%</td>
<td>0.3%</td>
<td>19.6%</td>
<td>10.1%</td>
</tr>
</tbody>
</table>

Table 14.

Percentage of Students with Disabilities by Racial/Ethnic Demographic and Area

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #4</th>
<th>Area #5</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>7.4%</td>
<td>19.3%</td>
<td>3.3%</td>
<td>6.0%</td>
<td>1.0%</td>
<td>28.2%</td>
<td>10.3%</td>
</tr>
<tr>
<td>Asian</td>
<td>4.0%</td>
<td>3.3%</td>
<td>2.7%</td>
<td>6.8%</td>
<td>1.0%</td>
<td>3.8%</td>
<td>3.5%</td>
</tr>
<tr>
<td>Latino</td>
<td>84.1%</td>
<td>71.7%</td>
<td>81.9%</td>
<td>66.0%</td>
<td>95.2%</td>
<td>53.1%</td>
<td>76.2%</td>
</tr>
<tr>
<td>White</td>
<td>4.1%</td>
<td>4.6%</td>
<td>11.5%</td>
<td>20.5%</td>
<td>2.5%</td>
<td>14.2%</td>
<td>9.3%</td>
</tr>
</tbody>
</table>

*Note.* Demographic data for Filipino, Multi-ethnic, Native American, and Pacific Islander students was not reported because their populations were less than 1% within each area.

Additionally, the vast majority of students in JUSD are students of color. Seventy-four percent of all students identify as Latino (California Department of Education, 2019) and 76.2% of students with disabilities identify as Latino in the district (JUSD SELPA, 2019a). When disaggregated by area, the percentage of students with disabilities that identify as Latino is close to or higher than the district average in all areas, except Area #4 and Area #6 (see Table 14).
Given the significant demographic differences in Area #4 and Area #6, the figures included in the remainder of the chapter will present the data for these two areas adjacent to each other to facilitate comparisons.

**Access to Related Services**

After an initial IEP is developed for a child, the IEP team must meet at least once a year to update the present levels of performance, monitor whether goals are being met, and to make necessary changes (20 U.S.C. § 1414(d)(4)). Part of this review includes determining whether or not a student requires related services to receive a FAPE. Under the IDEA, related services are defined as “transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education” (20 U.S.C. § 1401(26)(A)). According to JUSD policy, related service determinations must be “based on an assessment by a qualified assessor” and it is permissible to “engage in appropriate preparatory [assessments] prior to the IEP meeting” to more efficiently complete or amend the student’s IEP (JUSD SELPA, 2009, p. 2). However, district representatives acknowledged that there is “no formal process for making service decisions” (Manager 6, 2018) and the IEP team retains ultimate discretion. While this discretion enables IEP teams to individualize goals and supports based on a student’s unique needs, it also makes room for the inequitable distribution of related services among subgroups of students with disabilities.

Within the district, there are significant discrepancies across areas in the percentage of students with disabilities receiving two types of related services: 1) behavior implementation interventions (colloquially referred to as behavioral aides) and 2) occupational therapy (JUSD SELPA, 2019a) (see Table 15). Area #4 and Area #6 had the highest percentages of students with disabilities receiving behavior implementation intervention and occupational therapy
services. In comparison to Area #5, which has the highest concentrations of poverty in the district, students with disabilities in Area #4 and Area #6 were 2.7 and 2.9 times more likely to receive these related services.

Table 15.

Percentage of Students with Disabilities Receiving Behavior Implementation Intervention (BII) and Occupational Therapy (OT) Services by Area

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #5</th>
<th>Area #4</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>BII</td>
<td>5.2%</td>
<td>3.7%</td>
<td>6.9%</td>
<td>3.3%</td>
<td>9.0%</td>
<td>9.7%</td>
<td>6.1%</td>
</tr>
<tr>
<td>OT</td>
<td>10.5%</td>
<td>7.4%</td>
<td>12.1%</td>
<td>7.5%</td>
<td>13.7%</td>
<td>14.6%</td>
<td>10.8%</td>
</tr>
</tbody>
</table>

When this data was disaggregated by free and reduced priced lunch, the relationship between related services and socioeconomic status became even clearer (JUSD SELPA, 2019a). For example, students with disabilities not receiving free and reduced priced lunch were 3.1 times more likely to receive behavior implementation intervention services than their less disadvantaged peers in the district (see Table 16). Similarly, students with disabilities not receiving free and reduced priced lunch were 2.3 times more likely to receive occupational therapy services than their less disadvantaged peers in the district (see Table 17). This

Table 16.

Percentage of Students with Disabilities Receiving Behavior Implementation Intervention Services by Free and Reduced Price Lunch (FRPL) and Area

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #5</th>
<th>Area #4</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRPL</td>
<td>4.8%</td>
<td>3.1%</td>
<td>5.8%</td>
<td>3.2%</td>
<td>6.6%</td>
<td>6.8%</td>
<td>4.9%</td>
</tr>
<tr>
<td>No FRPL</td>
<td>9.3%</td>
<td>8.7%</td>
<td>16.8%</td>
<td>-</td>
<td>15.8%</td>
<td>18.9%</td>
<td>15.3%</td>
</tr>
</tbody>
</table>
disproportionate relationship between related services and socioeconomic status existed within each area in the district as well.

The connection between related services and socioeconomic status would not surprise the district representatives interviewed in this study. In fact, they repeatedly recognized the “high demand” for specific related services, particularly behavioral aides (Senior Manager 2, 2018). Manager 2 even mentioned that requests for behavioral aides were “more prevalent in wealthier areas” due to a “culture among parents of what will your attorney get you” (2018). But the lack of surprise among participants should not be interpreted as a lack of concern. A number of district representatives worried that “service determinations seem arbitrary” and sometimes “there is no rhyme or reason why kids are here or there” (Senior Manager 2, 2018). Furthermore, Senior Manager 3 expressed concern about “the cost of FAPE” in Area #4 and Area #6 where “you have a good attorney . . . so you’re going to get everything you want” (2018). Indeed, the district level data supports district representatives’ claims that socioeconomic status factors into related service determinations.

**Access to Legal Remedies**

If a parent or guardian disagrees with the offer of a FAPE in their child’s IEP, they can pursue three avenues to resolve the matter: 1) informal dispute resolution, 2) state mediation, or 3) formal due process. The first avenue, informal dispute resolution (IDR), is an optional,
internal process that is “designed to be faster, less formal, and less adversarial than mediation and due process proceedings” (JUSD SELPA, 2018, p. 18). During IDR, parents or guardians voice their issues and work with district representatives to quickly resolve them. The second avenue, state mediation, is a voluntary, external process that employs a neutral mediator to facilitate discussion and resolution among the parties (20 U.S.C. § 1415(e)). At a mediation conference, only the assigned mediator, parent or guardian, and a district representative with decision-making authority participates in the process (JUSD SELPA, 2018). The third avenue, due process, is required if a party files an official complaint (20 U.S.C. §1415(f-h)). The formal hearing is presided over by an administrative law judge and parties on each side present documentary evidence, witness testimony, and argument (JUSD SELPA, 2018). Parents and guardians are not required to exhaust other dispute resolution avenues to pursue due process, and participating in IDR or state mediation does not preclude parents and guardians from pursuing due process either.

Within JUSD, the percentage of students with disabilities pursuing any of the three dispute resolution avenues is relatively low. That being said, there is a discrepancy across areas in the percentage of students with disabilities whose families pursue dispute resolution (JUSD SELPA, 2019a) (see Table 18). Overall, Area #4 and Area #6 had the highest percentage of dispute resolution at 2.34% and 3.37%, respectively. When disaggregated by each avenue of dispute resolution, these two areas also had the highest percentage of IDR and mediation. Interestingly, this trend did not continue for due process where Area #1 and Area #3 narrowly surpassed Area #4. Area #6, however, retained its spot with the highest percentage of due process. Although we cannot know for sure why this drop in due process occurred in Area #4, it
is possible that district representatives here were more likely to give families the additional services they requested in IDR or mediation to avoid litigation.

Table 18.

*Percentage of Students with Disabilities Pursuing Dispute Resolution Proceedings by Area*

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #5</th>
<th>Area #4</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDR</td>
<td>0.47%</td>
<td>0.73%</td>
<td>0.64%</td>
<td>0.60%</td>
<td>1.06%</td>
<td>1.40%</td>
<td>0.80%</td>
</tr>
<tr>
<td>Mediation</td>
<td>0.36%</td>
<td>0.36%</td>
<td>0.45%</td>
<td>0.29%</td>
<td>0.47%</td>
<td>0.72%</td>
<td>0.43%</td>
</tr>
<tr>
<td>Due Process</td>
<td>0.88%</td>
<td>0.67%</td>
<td>0.90%</td>
<td>0.54%</td>
<td>0.80%</td>
<td>1.26%</td>
<td>0.83%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1.70%</td>
<td>1.76%</td>
<td>1.99%</td>
<td>1.43%</td>
<td>2.34%</td>
<td>3.37%</td>
<td>2.05%</td>
</tr>
</tbody>
</table>

A number of district representatives reported or suggested in their interviews that Area #4 and Area #6 had the highest occurrence of dispute resolution. They attributed this trend to the “increased demands from high socioeconomic chunks of families” within these regions (Senior Manager 2, 2018), as well as the “larger pockets of wealth” that could afford attorneys to fight for these demands (Manager 1, 2018). In fact, demographic data from the 2018-2019 school year indicates Area #4 and Area #6 had the lowest percentage of students with disabilities receiving free and reduced price lunch at 77.4% and 80.4%, respectively. On the other hand, their neighboring areas had at least 91.8% or more of their students with disabilities receiving free and reduced price lunch. (Special Education, 2019a) (see Table 13).

The relationship between socioeconomic status and dispute resolution is further illustrated by the overrepresentation of less disadvantaged families in proceedings throughout the district (Special Education, 2019b) (see Table 19). In fact, the percentage of students with


Table 19.

Percentage of Students with Disabilities Pursuing Dispute Resolution Proceedings by Free and Reduced Price Lunch (FRPL) and Area

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #5</th>
<th>Area #4</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRPL</td>
<td>73.1%</td>
<td>71.8%</td>
<td>55.4%</td>
<td>63.4%</td>
<td>62.4%</td>
<td>61.5%</td>
<td>64.1%</td>
</tr>
<tr>
<td>No FRPL</td>
<td>26.9%</td>
<td>28.2%</td>
<td>44.6%</td>
<td>36.6%</td>
<td>37.6%</td>
<td>38.5%</td>
<td>35.9%</td>
</tr>
</tbody>
</table>

Disabilities not receiving free and reduced price lunch that pursued dispute resolution in JUSD was 35.9%, but this group made up only 10.1% of the population. That means less disadvantaged families were 3.6 times more likely to pursue dispute resolution than low-income families in the district. While the overrepresentation of less disadvantaged families in dispute resolution was consistent across all areas, Area #4 and Area #6 actually had the lowest disproportionality ratios at 1.7 and 2, respectively. One possible explanation for this result is that low-income families living in less disadvantaged areas may learn or benefit from the “affluent parents that know how to navigate the process much better” (Specialist 6, 2018). As Senior Manager 3 explained, “groups of parents advocate for one another by going to IEP meetings for them or with them” (2018). Alternatively, another district representative pointed out that attorneys “shop their services in the same neighborhoods and often represent many students at the same school” (Senior Manager 4, 2018). Thus, the intentional and unintentional sharing of resources within less disadvantaged areas may contribute to lower disproportionality ratios, albeit not to the extent that the disproportionality is eliminated.

Although district representatives did not report or suggest in their interviews that racial/ethnic demographics played a role in dispute resolution, the data supports a positive correlation. In the 2018-2019 school year, families of students with disabilities pursued over 1,000 dispute resolution proceedings. When these proceedings were disaggregated by
racial/ethnic demographics, the data showed consistent overrepresentation of White students with disabilities in dispute resolution\(^{12}\) throughout the district (Special Education, 2019b) (see Table 20). Indeed, the percentage of White students with disabilities whose families pursued dispute resolution in JUSD was 17.4\%, but this group made up only 9.3\% of the population. That means the families of White students with disabilities were 1.9 times more likely to pursue dispute resolution than the families of non-White students with disabilities in the district. While the overrepresentation of White students with disabilities in dispute resolution was consistent across all four areas involved in proceedings, again, Area #4 and Area #6 had the lowest disproportionality ratios at 1.5 and 1.7, respectively. However, Area #6 also showed an overrepresentation of Asian students with disabilities in dispute resolution with a ratio of 1.8 and an underrepresentation of Latino students with disabilities with a ratio of .68. That being said, the disproportionality ratios for White students with disabilities whose families pursued dispute resolution were much lower than those for the families of students with disabilities not receiving

Table 20.

<table>
<thead>
<tr>
<th></th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #5</th>
<th>Area #4</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>8.3%</td>
<td>22.4%</td>
<td>-</td>
<td>-</td>
<td>6.2%</td>
<td>30.2%</td>
<td>12.8%</td>
</tr>
<tr>
<td>Asian</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>9.3%</td>
<td>6.8%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Latino</td>
<td>79.6%</td>
<td>64.7%</td>
<td>63.6%</td>
<td>91.5%</td>
<td>51.3%</td>
<td>36.2%</td>
<td>60.7%</td>
</tr>
<tr>
<td>White</td>
<td>-</td>
<td>8.2%</td>
<td>29.0%</td>
<td>-</td>
<td>30.1%</td>
<td>24.5%</td>
<td>17.4%</td>
</tr>
</tbody>
</table>

*Note.* Dispute resolution data for Filipino, Multi-ethnic, Native American, and Pacific Islander students was not reported because the N < 10 within each area.

\(^{12}\) Disproportionality ratios of 1 +/- .3 were not included in this discussion.
free and reduced price lunch. Thus, the positive correlation between racial/ethnic demographics and dispute resolution is less significant than socioeconomic status and dispute resolution.

The data also revealed a relationship between the disability classification of autism and dispute resolution. Across JUSD, the percentage of students with autism was relatively similar with slightly higher percentages in Area #4 and Area #6 (Special Education, 2019a) (see Table 21). Additionally, across all areas, students with autism were overrepresented in dispute resolution (Special Education, 2019b) (see Table 22). While the percentage of students with autism in JUSD was 20.2%, the percentage students with autism whose families pursued dispute resolution was 39.1%. That means the families of students with autism were 1.9 times more likely to pursue dispute resolution than the families of students with other disability classifications in the district. The fact that more than one third of dispute resolution proceedings were brought by the families of students with autism certainly warrants additional investigation, and district representatives even acknowledged “increasing rates of students with autism” that “impact the autism classes” (Specialist 2, 2018). Previous research demonstrating a positive

<table>
<thead>
<tr>
<th>Area</th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #4</th>
<th>Area #5</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autism</td>
<td>19.9%</td>
<td>19.5%</td>
<td>19.0%</td>
<td>19.7%</td>
<td>21.6%</td>
<td>21.9%</td>
<td>20.2%</td>
</tr>
</tbody>
</table>

Table 21.

Percentage of Students with Disabilities Classified with Autism by Area

<table>
<thead>
<tr>
<th>Area</th>
<th>Area #1</th>
<th>Area #2</th>
<th>Area #3</th>
<th>Area #4</th>
<th>Area #5</th>
<th>Area #6</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autism</td>
<td>34.4%</td>
<td>33.5%</td>
<td>38.6%</td>
<td>52.1%</td>
<td>42.5%</td>
<td>35.8%</td>
<td>39.1%</td>
</tr>
</tbody>
</table>

Table 22.

Percentage of Students with Disabilities Classified with Autism Pursuing Dispute Resolution Proceedings by Area
correlation between income and autism prevalence (Durkin et al., 2010) suggests the disproportionality findings for students with autism in dispute resolution may be mediated by socioeconomic status.

The overrepresentation of students with disabilities not receiving free and reduced price lunch and White students with disabilities in dispute resolution at the local level is further supported by the legal findings from Chapter 4 at the national level. Although the sample of 43 cases was fairly small, there was a positive correlation between socioeconomic status and litigation as well as racial/ethnic demographics and litigation. Indeed, 66.7% of federal cases analyzed in the sample were brought by plaintiffs attending schools with less than 30% of their student population receiving free and reduced price lunch, and 62% of these cases were brought by plaintiffs attending schools with a majority White student population. Therefore, the sum of all the data – case law, interviews, and district demographics – reinforces previous research establishing disproportionate representation of specific subgroups of students with disabilities in dispute resolution and litigation.

Conclusion

Through a critical practice approach to policy, the data from this study revealed how social practices of power enabled certain local communities to disproportionality pursue dispute resolution and receive greater access to behavior implementation intervention and occupational therapy services. Indeed, the sociocultural makeup of the regional areas directly correlated with access to legal remedies and related services. These results support the notion that local actors, especially less disadvantaged White families, appropriate special education policy based on their own sociocultural understanding of what a FAPE means for their child. In other words, when a family with more resources (e.g. time, money, education) conceptualizes a FAPE as maximizing
the potential of their child, they can leverage these resources to negotiate for additional supports and services. As a matter of fact, district representatives reported that less disadvantaged families are more knowledgeable about the IEP process and commonly bring attorneys to their IEP meetings. These resources empower less disadvantaged families to request or litigate for additional services in ways low-income families cannot. The result is a reinforcing cycle where schools feel pressured to meet the demands of less disadvantaged families to avoid the cost of litigation. Because school districts are more responsive to families that can pursue litigation, or legitimately threaten to pursue litigation, socioeconomic disparities persist (Gumas, 2018). So long as socioeconomic status is associated with the capacity to challenge the offer of a FAPE (in IEP meetings or the court room), inequalities in implementation are almost inevitable.

To a lesser extent, the racial/ethnic demographics of local districts and the disability classification of a student also correlated with access to legal remedies. More specifically, White students with disabilities and students with autism were overrepresented in dispute resolution compared to non-White students with disabilities and students with other disability classifications. These findings are not surprising given the positive association between income and racial/ethnic demographics (Kochhar, Fry, & Taylor, 2011), as well as income and autism prevalence (Durkin et al., 2010). In this respect, these subgroups likely made up all or a significant part of the less disadvantaged families discussed earlier.

If the goal of a critical practice approach to policy is to expand participation in policy formation, we must question how to redistribute the social practices of power in the IEP process, the earliest stage of negotiation. At the judicial level, review happens too late in the process and the disproportionate representation of less disadvantaged White families is even starker – these families have already invested their time and money to pursue legal remedies (Gumas, 2018).
Although efforts to enhance the participatory power of families was built into the IDEA through parent training and information centers (20 U.S.C. § 1471), the subsidized services provided at these facilities were found to be “quite effective for medium-income families, but less so for those with little money and even less time” (Caruso, 2005, p. 194). Stated differently, even with the help of public advocates or attorneys, low-income families could not afford to miss work and forgo wages through a lengthy legal process. Reform efforts should focus on empowering low-income families and school sites before the IEP meeting. Working within the constraints of confidentiality, it would be valuable to make the provision of services more transparent on a local level. Perhaps creating aggregated data files that show the distribution of services within the community – at the school level or community level – could better inform educators, administrators, and families about issues of inequity. Additionally, educators need training and support to manage the expectations of wealthier families and in countering threats for litigation. If educators feel empowered to stand up to these threats, it may reset the litigious culture that has developed in the district.
CHAPTER SEVEN: Conclusion

When Congress first required states to provide students with disabilities a FAPE in the EAHCA of 1975, the law focused on expanding access to public schools. Indeed, in the early 1970s only 20% of students with disabilities were being educated in public schools and many states had laws that excluded students with disabilities from receiving a public education (Yell et al., 2017). In the decades that followed, significant amendments to the law shifted its focus from access to outcomes. The most recent reauthorization of the law, now referred to as the IDEA, took place in 2004 when Congress sought to increase the quality of special education programs by increasing accountability for the outcomes of students with disabilities. However, even as the goals of the IDEA evolved, the definition of a FAPE remained the same:

special education and related services that (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 school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(20 U.S.C. § 1401(9)).

This definition of a FAPE is primarily procedural rather than substantive because Congress recognized the difficulty of specifying educational requirements for students with individualized needs and capabilities. Instead, the IDEA set forth specific procedures that require school personnel and families to work collaboratively to develop an IEP for each student with disabilities (20 U.S.C. § 1414). The implementation of a FAPE is thus realized through the development of the IEP.

In the absence of legislative guidance on what exactly constitutes a substantive FAPE,
there has been much debate and litigation on the matter. In 1982, the Supreme Court developed a two-part test in *Rowley* to determine if a school has met its obligations under the IDEA to provide a FAPE: “First, has the [school] complied with the procedures of the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” (pp. 206-207). In its decision, the Court refused to establish any one test for determining the adequacy of educational benefits in the standard. Despite numerous opportunities for amendments or clarifications to the substantive FAPE standard enumerated in *Rowley*, Congress has maintained its silence on the matter, even to this day. Consequently, the ambiguity of the term “educational benefits” led to divisive interpretations of a FAPE among parents, schools, and the federal courts for years (Yell, 2012; Zirkel, 2013). In 2017, the Supreme Court reexamined the substantive FAPE standard in *Endrew F.* for the first time in 35 years. This landmark ruling rejected previous interpretations of a FAPE that only required “merely more than *de minimis*” educational benefit and refined the substantive standard to require an IEP that was “reasonably calculated to enable a student to make progress appropriate in light of the child’s circumstances” (p. 999). The Court also acknowledged that “every child should have the chance to meet challenging objectives” through the goals of their IEP regardless of their educational setting or ability to achieve on grade level (p. 1000). Over the past two years, lower courts have started internalizing these changes in the standard. Because every regional circuit applied their own interpretation of *Rowley*, and these interpretations actually evolved within circuits over time, it is necessary to examine how federal courts have interpreted the substantive FAPE standard since *Endrew F.* was decided.

While *Endrew F.* provides courts with new guidelines for evaluating the adequacy of a substantive FAPE, the judicial system ultimately serves as the last line of defense for students
with disabilities. Under the IDEA, the primary responsibility of interpreting and implementing the educational requirements of a FAPE is still left to schools and parents to decide through the IEP process. The courts only weigh in when there is a disagreement among the parties. That is to say that the IDEA places significant trust in the ability of teachers, administrators, providers, and families to faithfully and equitably implement the law. However, this framework dismisses the importance of a school’s local context – in terms of capacity, demographics, and funding – as potential variables that affect the construction of a FAPE, especially in the continued absence of a clear substantive standard after *Endrew F*. Indeed, the concept of “appropriate” progress and “challenging objectives” is no less obscure than educational benefits, and the localized judgment of school personnel and families is likely to result in variable offers of a FAPE. While some of this variability is necessary to address the individual needs of students with disabilities, it also leaves room for the inequitable construction of special education policies. Current issues of inequality in special education demonstrate that decisions about eligibility, disability classification, placement, and discipline are already highly subjective. As such, it is necessary to examine how a FAPE gets realized in different local contexts.

What’s more, the Supreme Court in *Rowley* and *Endrew F*. asserted deference to the expertise of school authorities to determine matters of education policy. In fact, the Court repeatedly refused to define a “bright-line rule” satisfying the substantive FAPE standard because doing so might be mistaken as “an invitation to the [lower] courts to substitute their own notions of sound educational policy for those of the school authorities which they review” (*Endrew F.*, 2017, p. 1001). But there is a dearth of literature examining the expertise of school authorities as it applies to interpretation and implementation of the substantive FAPE standard. The research that is available shows educators frequently misunderstand special education law
and implement its policies according to their own agendas, which raises important questions about the appropriateness of judicial deference. Given the considerable latitude granted to school authorities, research examining how educators understand the substantive FAPE standard is necessary to evaluate whether the law is being applied equitably.

**Key Findings**

This study provided a critical reflection on the inconsistent interpretations of the substantive FAPE standard by internal (e.g. judges and lawyers) and external (e.g. educators and families) actors. In Chapter 4, a doctrinal legal analysis systematized the legal arguments used by federal courts to examine the consistency and coherency of legal norms as they were applied to the substantive FAPE standard within the legal system (Schrama, 2011). In Chapter 5, a qualitative legal analysis examined the socially constructed realities of law as they played out in a large, urban school district through the experiences of district representatives (Webley, 2010). In Chapter 6, a critical practice approach to policy considered how social practices of power in situated arenas shed light on the appropriation and negotiation of a FAPE by local actors in the district (Levinson et al., 2009).

The legal analysis conducted in Chapter 4 examined how a student’s right to a FAPE has evolved in the federal court system. Thus far, courts have interpreted *Endrew F.* narrowly. That is to say, courts acknowledged that the “merely more than *de minimis*” educational benefits interpretation from *Rowley* is no longer valid, but they have not read *Endrew F.* as requiring a specific degree of progress, much less a high degree of progress. Indeed, courts relied on the reasonably calculated qualification in the substantive FAPE standard to argue that there was no requirement for progress to be linear (*Jack J.*, 2018) or to occur in all areas (*E.D.*, 2017; *Sean C.*, 2018). So long as the IEP was calibrated to enable progress, the requirement for demonstrating
actual progress was effectively eliminated (Zirkel, 2015). Moreover, the clarification in Endrew F. that students not achieving on grade level should receive an IEP that is “appropriately ambitious and offers challenging objectives has been interpreted to require a showing of “progress toward achieving [the goals]” rather than actual achievement of the goals (C.S., 2018, p. 70). In this respect, federal courts have not established a clear standard for progress and they have not interpreted Endrew F. as significantly raising the bar beyond more than de minimis.

Over the four-year period of analysis, courts primarily considered the quality of the plaintiff’s IEP goals. In particular, courts considered whether the goals written into the IEP addressed the specific needs and achievement levels of the plaintiff. After Endrew F., courts increasingly considered the appropriateness of the IEP services provided to plaintiffs, especially as their needs evolved over time. The increased focus on IEP services and the continued focus on IEP goals make sense given Endrew F.’s clarification that progress be determined in light of the child’s circumstances. During this time, courts found 88.4% of plaintiffs’ IEPs substantively appropriate, which reflects an 8:1 pro-district outcome ratio and suggests courts strongly defer to the educational expertise of school authorities when determining whether a FAPE was provided. This finding supports previous studies establishing disproportionate pro-district ratios (Karanxha and Zirkel, 2014; Zirkel, 2018). Finally, plaintiffs attending wealthy, White schools brought the majority of the cases in this study. Two-thirds of plaintiffs attended a school where less than 30% of the student population was receiving free and reduced price lunch and 62% of plaintiffs attended schools with a majority White student population. These findings are not surprising since the significant costs of litigation (e.g. time, money, resources) make pursuing legal remedies a heavier burden for low-income families (Chopp, 2012; Koseki, 2017), which suggests
access to the IDEA’s private right to enforcement is inequitably available to subgroups of students with disabilities.

The qualitative legal analysis in Chapter 5 evaluated how district representatives conceptualize the right to a FAPE and how these understandings align with the federal courts. District representatives overwhelmingly reported low levels of legal knowledge when they worked as special education teachers and administrators in school sites. Even though district representatives acknowledged receiving more training when they transitioned out of the classroom and into district offices, most participants still reported significant gaps in their levels of understandings. These findings align with previous research showing educators receive minimal legal training in their leadership and teacher preparation programs (Garrison-Wade, 2005; Militello & Schimmel, 2008; Pazey & Cole, 2013) and do not have the capacity to handle the demands of accountability mandates (Crockett et al., 2007).

Additionally, this study found that half of district representatives did not interpret the substantive FAPE standard in line with current legal standards and all but one district representative was unaware of the changes made in Endrew F. or its potential impact on special education practices. This is unsurprising in light of earlier studies showing administrators reported misunderstanding many issues related to special education (Garrison-Wade et al., 2007) and felt the ambiguous language of the IDEA made implementation confusing (Lashley, 2007; McHatton et al., 2010). Furthermore, similar to the federal courts, district representatives could not reach a consensus about or even articulate a clear standard for appropriate progress.

The critical policy analysis in Chapter 6 revealed how a student’s right to a FAPE gets enacted at the local level and how competing understandings of a FAPE result in the inequitable distribution of related services and legal remedies for subgroups of students with disabilities. In
fact, the racial/ethnic and socioeconomic makeup of the regional areas directly correlated with such access. These results support the notion that local actors, especially less disadvantaged and White families, appropriate special education policy based on their own sociocultural understanding of what a FAPE means for their child. In other words, when a family with more resources (e.g. time, money, education) conceptualizes a FAPE as maximizing the potential of their child, they can leverage these resources to negotiate for additional supports and services. Because school districts are more responsive to families that can pursue litigation, or legitimately threaten to pursue litigation, socioeconomic disparities persist in the quality of services provided to students with disabilities (Gumas, 2018). So long as socioeconomic status is associated with the capacity to challenge the offer of a FAPE (in IEP meetings or the court room), inequalities in implementation are almost inevitable.

**Implications**

Inconsistent interpretations of adequate progress among federal courts and district representatives are problematic. A standard that is too flexible is likely to confuse educators and families about what to aim for or expect from the IEP process. Although the courts assume that IEP teams can reach an objective agreement, the findings of this study show contextualized understandings of what constitutes an appropriate education. Indeed, the IEP process for each student will directly depend on the make-up of the IEP team – the training of their teachers and administrators, the funding available to their school, and the know-how of their parents or guardians. In this sense, the IEP meeting is a space where the meaning of a FAPE is negotiated based on the localized knowledge and resources of its participants.

This reality has substantially severe implications for students of color and low-income students who disproportionately attend lower performing schools with less experienced teachers
and administrators, and whose families are less likely to have the resources to pursue legal remedies. At the same time, there are implications for school authorities because the courts defer to the expertise of educators to enact a FAPE. But this study suggests school authorities – at the district and school level – lack the legal knowledge necessary to faithfully implement the law. To be sure, school authorities are seasoned professionals that are trying to do a complex job to the best of their abilities. But at the end of the day, most do not have a nuanced understanding of the law or how their decisions contribute to the inequitable distribution of related services and legal remedies.

To address these issues, school authorities and the courts need to recognize that the meaning of a FAPE gets constructed in practice over time and the local context of the IEP team impacts decision-making. At the district and school level this may require specific training around the social construction of a FAPE and how these understandings impact vulnerable subgroups of students with disabilities. Districts and schools could also share disaggregated data with educators and families to make service and support decisions more transparent, and they could develop plans to address areas of disproportionality among subgroups. At the federal level, courts would also benefit from wide-scale data sets showing the provision of special education services, particularly the most sought-after services like behavioral aides and private school tuition, to help judges understand where issues of inequality exist in the IEP process. Moreover, just as the IDEA addresses disproportionality rates in special education identification, legislation could require schools and districts to collect data about disproportional access to dispute resolution and related services.

**Limitations**

There were a number of limitations that must be considered in light of the study’s
findings. First, although the search parameters for the case law generated 87 total cases within the four-year period of analysis, only 43 cases specifically evaluated the substantive FAPE standard. As a result, the findings in Chapter 4 were based on a relatively small sample size. Second, published court decisions do not provide access to the testimonial or evidentiary records used by the hearing officers and judges to make their decisions, and specific references to this material vary considerably among the courts. In some cases, judges (or more likely their legal clerks) wrote detailed opinions that explained how the court reached its conclusions of law and fact, and in other cases, they did not. As such, the legal analysis was limited to the information provided in the published opinion. Third, the racial/ethnic identity and socioeconomic status of the plaintiff or their families is rarely noted in the case law. For this reason, the demographic information of the plaintiff’s assigned district school was used as a proxy and thus can only be used as estimation. Fourth, the findings in Chapter 5 and 6 were also based on a small sample size of 18 district representatives working in just four out of six regional areas within the district. In a large, urban school district, this group is not representative of the overall number of staff in the administrative unit. Fifth, the participant sample only included district level representatives, not school (e.g. administrators and teachers) or community (e.g. parents and advocates) level representatives. Although participants alluded to the experiences and opinions of these groups, a phenomenological study recognizes the subjective reality of the individual. Finally, the raw data files provided by JUSD did not include all of the demographic information requested and the researcher alone could not further disaggregate it.

**Future Directions for Research**

Additional research on this topic is crucial. The findings of this study demonstrate that a FAPE is socially constructed based on the localized knowledge, capacity, and resources of the
school community. Future research should include the experiences of school and community level representatives that participate in IEP meetings. To the extent possible, research should observe IEP meetings or interview IEP team members after the meeting concludes. Additionally, research should evaluate the differences in IEP construction within and across schools with varied demographic contexts and school structures (e.g. charter schools and magnet schools). Of course, this type of research is extremely challenging to conduct because IEPs are confidential. It will be difficult to gain access to IEPs and IEP meetings, and school officials may be reticent to discuss these matters on the record, even under a pseudonym, because of liability concerns. Yet this type of research is necessary to truly understand the factors that play into the inequitable distribution of special education services.

Another route for future research would include interviewing families that filed a due process complaint, but did not pursue the hearing because the issue was resolved with the school district. It would be interesting to determine the factors that led to the issue being resolved and whether these factors are associated with racial/ethnic identity or socioeconomic status. Moreover, future legal analysis of special education law would benefit from accessing the decisions of hearing officers. These decisions may include more detailed information about the substance of students’ IEPs that was included in the hearing officer’s analysis.
Appendix: Interview Protocol

**Background Info**

1. Why did you become an educator?
2. How did you get involved with special education?
4. What did you know about special education law before you started working as a district representative? How did you gain access to this information?

**Current Experience**

5. What is your current role within the district? How long have you been in this role? What qualifications/experience are required for this role?
6. Describe your day-to-day job responsibilities.
7. What are the biggest challenges you face in this role?
8. What support(s) do you need to address these challenges?
9. Are you familiar with the legal term “free and appropriate public education” (FAPE)? What does it mean to you?
10. How did you learn about FAPE? What training or experiences informed your understanding of FAPE?
11. How do you train principals/teachers to understand FAPE? What challenges have you experienced with the process?
12. What support(s) do you need to address these challenges?
13. How do you determine whether a student with disabilities should be promoted to the next grade? Are there specific standards or policies that you use?
14. How do you train principals/teachers to make grade promotion decisions? What challenges have you experienced with the process?
15. What support(s) do you need to address these challenges?
16. How do you determine what services a student with disabilities should receive in his/her IEP?
17. How do you train principals/teachers to make service decisions? What challenges have you experienced with the process?
18. What support(s) do you need to address these challenges?
19. How do you stay informed about changes in special education law? What sources of information do you use or have access to?
20. Are you familiar with the legal term “educational benefit” in reference to FAPE? What does it mean to you?
21. Are you familiar with the legal term “progress appropriate in light of the child’s circumstances” in reference to FAPE? What does it mean to you?
22. Are you familiar with the legal term “grade to grade” or “grade-level advancement” in reference to FAPE? What does it mean to you?
Reflection

23. Who decides if principals/teachers need to be retrained when there is a change in the law? How does that process occur?
24. Do you think a FAPE, as you understand it, is a fair and/or achievable standard for schools and districts to provide to students with disabilities? Why or why not?
25. What challenges do you experience that make it difficult to fulfill the promise of a FAPE to students with disabilities that are specific to the communities in which you work?
26. How would you change the legal standard, if you could? Or what support can other educational professionals, policy makers, etc. provide to better assist you in your role?
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