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Special Education Dispute Resolution Procedures: A Study of the Factors Influencing the Decision- Making Practices of Special Education Administrators

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Decision-Making Practices of Special Education Administrators

Steven James Bayne

University of Connecticut, 2018

Abstract

My research examines how and when special education administrators use discretion during due process procedures, as well as the contexts and factors that shape decision-making. This qualitative cross-case study explores the decision-making practices of special education administrators working in high-performing and low-performing school districts in Connecticut. It is important to study this topic because there is a lack of research examining the decision-making practices of special education administrators. The existing research indicates that due process procedures are costly, contentious, and negatively impact the human and financial resources of school districts. Furthermore, due process requests continue to rise across Connecticut. I find that cost, time, stressed parent-district relationships, the burden of proof, and the perceived bias of independent hearing officers are factors that influence the decision-making of special education administrators. Consequently, special education administrators appear compelled to settle disputes through mediation. Participants reported having discretion while working with parents during PPT meetings and the early stages of due process procedures, including mediation. I find they act as street-level bureaucrats, using their discretion to build relationships, negotiate and compromise with parents, and build district programs in an effort to manage their clientele. I find high-performing districts reported a higher number of due process requests and a higher frequency of mediations. Lower-performing districts reported fewer due process and mediation requests. In these districts, families with limited resources reportedly rely on free legal aid to

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resolve disputes. Policy makers should consider making the following changes to special education dispute resolution procedures: a) align state and federal special education law, which would place the burden of proof on the party seeking relief, b) communicate a clear understanding of FAPE to stakeholders, and c) allow impartial mediators to provide guidance to hearing officers regarding the merits of a due process request. Future research should examine the effect mediated agreements have on special education expenditures.

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Decision-Making Practices of Special Education Administrators

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B.A., State University of New York at New Paltz, 1993

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A Dissertation

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APPROVAL PAGE

Doctor of Education Dissertation

Special Education Dispute Resolution Procedures: A Study of the Factors Influencing the
Decision-Making Practices of Special Education Administrators

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CHAPTER 1

Introduction

According to the National Center for Education Statistics, during the 2011-2012 school year 6,401,000 schoolchildren 3 to 21 years old were served under the Individuals with Disabilities Education Act (IDEA)¹. The Act affords federally protected education rights to students with disabilities, such as a free appropriate public education (FAPE) in the least restrictive environment (LRE). Special education administrators are responsible for allocating resources and for leading a group of educators and parents that develops an Individualized Education Program (IEP). The IEP details all of the required services and supports a child may need to derive educational benefit. While parents are an integral part of the team, they sometimes disagree with the decisions of the school district (Mueller, 2009).

IDEA codifies formal dispute resolution procedures to settle disagreements between parents and the LEA (IDEA, 2004). Due process is one mechanism parents may use to resolve disputes; however, research demonstrates that special education due process procedures are wrought with inefficiencies – i.e., they are costly, time consuming, and damage relationships with parents (Mueller & Carranza, 2011; Pudelski, 2013), primarily benefit wealthy families with access to resources (Opuda 1997; Pasachof, 2011) and often lead to unpredictable outcomes due to variations in the training and interpretations of hearing officers (Pudelski, 2013). Additionally, in a December 2014 memo released by the State Board of Education, a special task force identified Connecticut's burden of proof requirement – which holds that the district has the burden of proving the appropriateness of its program and services when challenged by a family –

¹ Data obtained from the National Center for Education Statistics website:
<http://nces.ed.gov/fastfacts/display.asp?id=64>

as an additional factor affecting the efficiency of due process proceedings (Connecticut Department of Special Education's *Bureau Bulletin*, March, 2014). With these issues front and center on the legislative agenda, the number of special education hearing decisions in the State of Connecticut continues to rise. See Figure 1 below².

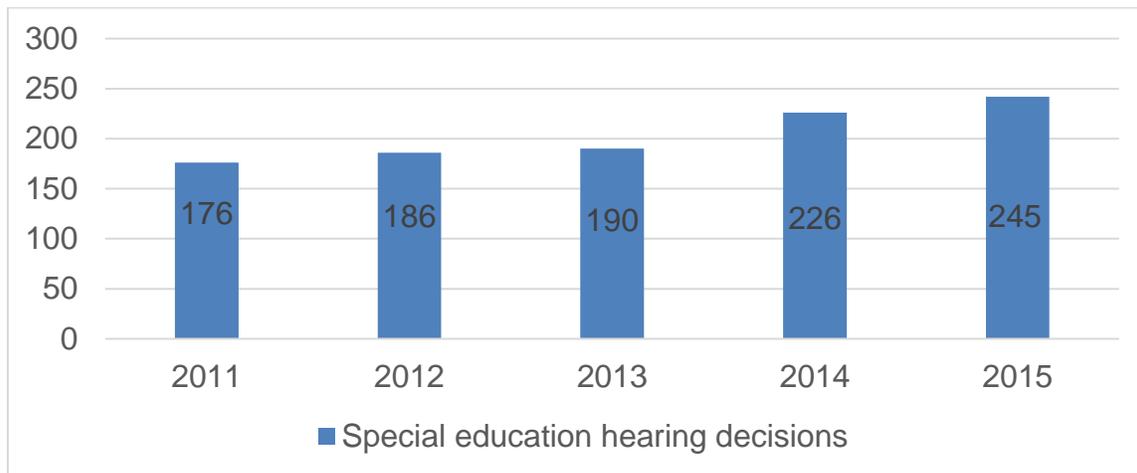


Figure 1. Number of hearing decisions in Connecticut from 2011 – 2015.

Furthermore, in a recent study of due process prevalence rates in 41 states, Connecticut ranked in the top five indicating that state and local education officials are witnessing a relatively high number of hearings when compared to national trends (Zirkel & Gischlar, 2008).

The contentious nature of a due process hearing presents a conundrum for special education directors: If a director settles with parents and avoids due process, then he or she often has to agree to supports and services that may not be appropriate and may set precedent for future decisions; however, by engaging in due process hearings, the director encounters costly, time consuming proceedings that have uncertain outcomes. My research examines the special education administrator's use of discretion in response to factors inherent in due process procedures. These factors include resource allocation, the burden of proof, the training of hearing

² Data obtained from the Connecticut State Department of Education website: <http://www.sde.ct.gov/sde/cwp/view.asp?a=2626&q=320712>

officers and the effect due process hearings have on parent-district relationships. My research also examines district-level factors, such as the average socioeconomic status of students in district and the organization of administrative support.

For clarity, I use a two-part definition of discretion to analyze my findings. Carrington (2005) defines discretion as follows: “a) the decision maker’s freedom to distinguish between two or more courses of action; and b) the freedom to decide whether through rules or one’s judgment, to act or not to act” (p.143). This definition is important because it delineates the decision-making act from the freedom one has to decide.

The purpose of this qualitative collective cross-case analysis is to understand how participants experience due process procedures across various district contexts and to explore the factors that influence their decision-making practices. I also examine how these factors influence policy implementation. My study uses the street-level bureaucracy framework to explore how special education administrators wield discretion in the implementation of policy. Additionally, this study examines how the participants’ use of discretion shapes how policy changes from special education law to experiential practice. In response to this research, policy makers and practitioners might better understand how special education administrators use discretion and the factors that influence decision-making.

Background

Due Process Policy

In 1975, Congress passed Public Law 94-142 (PL 94-142), otherwise known as the Education for All Handicapped Children Act (EAHCA). According to the U.S Department of Education (2010)³, the main purpose of the act was to “improve access to education for children with disabilities” (p.5). Prior to the passage of EAHCA, many students with disabilities were institutionalized without access to the benefits associated with receiving a public education. Strikingly, as late as 1970, only one in five students with disabilities was educated in public schools (USDE, 2010). As the tide of public opinion started to shift, pivotal court cases, such as *Pennsylvania Association of Retarded Citizens v. Commonwealth* (1971) and *Mills v. Board of Education of the District of Columbia* (1972), determined that children with disabilities had a constitutionally protected right to be educated with their non-disabled peers. With the passage of PL 94-142, students with disabilities and their families were afforded four central federally protected mandates: a) access to a free appropriate public education (FAPE) in the least restrictive environment; b) due process protection for students and families; c) federal assistance to States and localities to assist with implementation, and d) specific accountability measures to be adhered to by school districts (USDE, 2010). By providing a brief overview of the legislative intent of PL 94-142, I have shown how an initially unprotected class of citizens has gained legally protected educational rights and due process protection. My research examines how the complicating factors associated with due process protection for students and families influence the decision-making practices of special education administrators.

³ U.S. Department of Education: Thirty-five Years of Progress in Educating Children with Disabilities (2007). Available at: <http://www2.ed.gov/policy/speced/leg/idea/history.pdf>

CHAPTER II

Literature review

This section explores three clusters of material. First, I will review special education policy as it pertains to due process procedures highlighting the key area of what is “appropriate,” which is often the catalyst for parent-district disagreements. Then, I will discuss the literature on factors affecting the implementation of special education policy in the State of Connecticut. My literature review concludes by presenting the concepts of Lipsky’s (1980) street-level bureaucracy (SLB) framework, which will guide my research.

Problems with the Resolution Process

Dispute resolution procedures give parents legally protected rights to challenge the LEA’s educational program when they disagree with the offer of FAPE (IDEA, 34 C.F.R. 300.507, 2004). Hearings generally are the result of a disagreement between a parent and the local school district. Mueller and Carranza (2011) reported that parents initiated 85.4% of due process hearings. Due process requests stem from parent-district disagreements regarding eligibility, service recommendations, and placement. A lack of trust between parents and the LEA reportedly underscores the emotional tone of these conflicts. Whether a parent prevails or loses a hearing, the process often damages relations between the parents and the district (Wellner, 2012).

Most of the disputes leading to due process proceedings stem from an evolving understanding of the word “appropriate” as in “Free Appropriate Public Education” (Zirkel, 2013; Wagner & Katsiyannis, 2010). Researchers note that IDEA’s mission of ensuring students with disabilities receive FAPE is changing. For instance, Zirkel (2013) notes that courts now are more likely to hear cases addressing disagreements regarding appropriate services and supports

than they are to hear cases addressing questions of access and inclusion. The ambiguity surrounding this term continues to be a major source of contention and litigation. Developing special education programs that are “appropriate” has become increasingly problematic due to this ambiguity. (Mueller & Carranza, 2011).

The Supreme Court, in the *Board of Education v. Rowley* decision of 1982, offered legal guidance regarding the question, “What is an appropriate education?” (Zirkel, 2013). Writing for the Supreme Court, Justice Rehnquist commented that an appropriate education program had to comply with the procedural requirements of IDEA – e.g., following timelines and employing appropriate staff – as well as providing the services and supports that were “reasonably calculated to enable the child to receive educational benefits” (*Board of Education v. Rowley*, 1982, p. 206-207). This assertion guided special education legal decisions until the 2017 *Endrew F. v. Douglas County School District* decision. Writing for the Supreme Court, Justice Roberts, appeared to elevate the FAPE standard by stating that the IEP should be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (p.8). This ruling vacated the Tenth Circuit’s interpretation of *Rowley*, which held that an IEP is adequate so long as the derived educational benefit is “more than de minimus.” This new interpretation of *Rowley* is important because it appears to establish a higher threshold for FAPE. It is unclear how the *Endrew F.* decision will influence future court cases.

In summary, IDEA provides legally protected rights to students with disabilities and codified due process procedures to provide parents with an avenue to challenge a school district’s recommendations. Most of the due process hearings stem from a dispute over what constitutes a Free Appropriate Public Education. While the *Rowley* decision offered legal guidance on this matter, the majority of litigation continues to be influenced by disagreements

between parents and school districts regarding the extent to which a student's IEP provides FAPE (Zirkel, 2013). My research examines how and when special education administrators use discretion when disagreements between parents and school districts lead to due process complaints.

Factors Influencing Decision-Making

IDEA established dispute resolution procedures to resolve disputes between parents and school districts; however, the literature regarding due process procedures identifies many factors that might affect how and when special education administrators use discretion. These factors consist of the allocation of resources, including the associated costs and the time consuming nature of due process proceedings, the negative impact due process procedures have on parent/district relationships, the burden of proof (specific to Connecticut), and the training and professional background of Independent Hearing Officers (IHO). This research explores the factors that influence the special education administrator's use of discretion at the nexus of policy and practice.

Cost, Time and Relationships. Researchers found that due process procedures are costly, time-consuming procedures that often lead to diminished relationships with parents (Pudelski, 2013; Mueller, 2009; Pasachoff, 2013). Pudelski (2103) reported, "Nearly 80% of school administrators took cost into consideration when deciding whether to consent to a parent's request" (p.12). Zirkel, Karanxha, and D'Angelo (2007) studied the due process system in Iowa. They found that over a 26-year period, special education disputes had become increasingly judicialized as measured by the number of hearing sessions, the number of cases in which attorneys were involved, and the number of days between the filing for due process and the final decision.

Adding to the increased cost of special education in general is an increase in out-of-district placements. According to the March 14, 2014 edition of the CT Department of Special Education's *Bureau Bulletin*, statewide, 7.3% of all eligible special education children receive services outside of their home district, which surpasses the state's target rate of 6%. Although IDEA stresses the importance of parent/district collaboration, long hearings that involve attorneys are costly and time-consuming for both parents and school districts.

Burden of Proof. The burden of proof is another important factor that can influence the outcome of a hearing. In the *Schaffer v. Weast* (2005) decision, the Supreme Court ruled that the burden of persuasion (proof) rests with the party seeking relief. Yell, Ryan, Rozalski and Katsiyannis (2009) note that the ruling was consistent "with other forms of case law where the party seeking relief almost always bears the burden of persuasion" (p.71). Summarizing the majority opinion of the Supreme Court, the authors wrote:

If the burden of persuasion always fell on school districts, this would in effect declare every IEP developed to be invalid until a school district could demonstrate that it was not...this would place an unreasonable burden on school districts and would likely result in their devoting additional resources (funding and manpower) to perform administrative functions. (Yell, et al. p.71)

Notwithstanding the ruling of the Supreme Court, the Connecticut State Board of Education regulations state, "in all cases . . . the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency" (Conn. Agencies Regs. § 10-76h-14). Some have argued that this regulation offers a benefit to parents. Aron (2005) writes, "Where the burden shifts to the school district when the parents are the moving party, the parents receive an important procedural advantage"

(p.21). According to a 2010 Connecticut Office of Legislative Research (OLR) report, three states in the Northeast region have additional regulations allocating the burden of proof to the school districts; these include Connecticut, New York and New Jersey. Five states – Maine, Massachusetts, New Hampshire, Pennsylvania, and Rhode Island – have aligned state law with the *Schaffer v. Weast* ruling, which assigns the burden of proof to the party filing for a hearing.

Independent Hearing Officers. Once stakeholders agree to engage in a due process proceeding, Independent Hearing Officers (IHO) are ultimately responsible for determining which party prevails. Zirkel (2013) reported that, by law, hearing officers must be able to do the following: a) understand and interpret federal and state special education law, b) conduct hearings in accordance with appropriate legal practice, and c) render and write decisions in accordance with appropriate legal practice. Each state is responsible for establishing its own training requirements. Many states are turning away from using attorneys with special education background and deciding to employ administrative law judges (ALJ), which could result in further judicialization of special education due process cases with less attention to the educational merit of the case (Zirkel, 2013). Regarding impartiality, courts do not hold IHOs to the same appearance of impropriety standard as is the case with judges (Maher & Zirkel, 2007).

An IHO's training and previous experience can shape their interpretation of facts during a hearing. Zirkel (2013) reported that an IHO with an academic background might draw on her knowledge of educational best practices, whereas an ALJ may be more inclined to view a case from a purely legal perspective. IHO training also is highly variable across states, which has led to inconsistent rulings (Zirkel, 2013; Zirkel & Scala, 2010).

In conclusion, due process hearings are costly, time-consuming legal proceedings that often strain relationships between parents and school districts. Furthermore, the burden of proof

resting on the district appears to place school districts at a disadvantage. During the hearing, the training and experience of IHOs may possibly shape due process outcomes. My research examines how these factors influence the decision-making practices of special education administrators.

Local Factors Influencing Decision-Making

Socioeconomic Status. The cost associated with due process hearings gives an unfair advantage to families with access to financial resources. Opuda (1997) reported that, due to the cost associated with due process hearings, low-to-moderate income families in Maine were more likely to file complaints with the state when parent/district disagreements arose rather than to utilize attorneys and the due process mechanism. Consistent with this finding, Pasachoff (2011) writes, “When poor children enforce their rights at lower levels than wealthier children, the dynamics tend to lead to better services for wealthier children” (p.1419). This policy structure – private enforcement of public policy – contorts policy to distribute resources and services to the wealthy. It is an example of how public policy aimed at protecting the rights of an underprivileged section of the population has largely benefited those individuals with access to wealth and resources (Hymin, Rivken & Rosenbaum, 2011).

Administrative Support. The use of discretion by public service workers varies in response to increasing administrative oversight, yet serves a necessary function with any organization that provides goods and services to the public (Wastell, White, Broadhurst, Peckover and Pithouse, 2010; May, Winter, and Sorenson, 2006; Fineman, 1998). Carrington (2005) concludes that administrative measures, such as training, supervision and evaluation, shape the public service worker’s use of discretion; yet, discretion is necessary for social service

workers to perform effectively. Moore (1990) found that policy ambiguity reinforced the use of discretion.

The research demonstrates that due process proceedings are costly and unpredictable, and often damage relationships with parents. Furthermore, the training and background of independent hearing officers and the burden of proof regulation are additional factors that may affect decision-making. Working within local district contexts, public service workers encounter clients from various socioeconomic backgrounds and work under varying degrees of bureaucratic control. My research examines how these factors influence the special education administrator's use of discretion working in varying district contexts.

Street-Level Bureaucracy

To understand how due process procedures influence decision-making, I use the street-level bureaucracy theoretical framework to explore how special education administrators use their discretion while providing free services to the public.

Lipsky (2010) wrote that one function of federal and state agency bureaucrats is to enact policy and legal mandates that are then implemented by lower-level employees. He referred to these individuals as street-level bureaucrats (SLB). Similar to the SLB, special education administrators must implement special education policy, which necessitates expenditures for programs and services, while working within school budgets and the needs of the LEA. Public agencies – e.g., educational institutions – are street-level bureaucracies that have the task of implementing policy and legal mandates. Often constrained by a lack organizational resources and clearly defined goals, SLBs make decisions that shape the implementation of public policy by exercising discretion over the allocation of goods and services (Lipsky, 2010). Thus, policy is created at the nexus of bureaucrat and citizen, as the special education administrator uses his or

her discretion to implement policy while adjusting to the lack of organizational resources and clearly defined goals.

For the purposes of this study, I will focus on the actions taken by street-level bureaucrats to do the following: (a) manage resources (b) manage their clients, and (c) work under ambiguous policy goals. I will also examine how researchers have applied this theory to examine the decision-making practices of social service workers providing services to the public.

Managing Resources. Lipsky (2010) writes, “Theoretically, there is no limit to the demand of free public goods” (p.87). One issue that confronts the SLB is that public demand for services and resources outpaces the available supply. As a result, SLBs ration services and resources when distributing them to their clients. Lipsky writes that, “Services may be rationed by varying the total amount available or by varying the distribution of a fixed amount” (p.87). The allocated services or resources a client receives influences how that client relates with the SLB. Consequently, managing client relationships becomes important. By maintaining positive relationships with their clients, the SLB more efficiently distributes services and resources.

Managing Clients. Lipsky (2010) wrote that within the street-level bureaucracy, SLBs deliver goods (e.g., food stamps and public housing) and services (e.g., educational programming) to the public. To deliver services efficiently, SLBs strive to develop constructive relationships with clients. Constructive relationships with clients help SLBs to obtain a client’s approval or “consent” for the delivered good or a service. Lipsky states, “Clients’ consent is continuously being managed by public agencies” (p.57). Securing the consent of clients is important because SLBs often have to ration a limited supply of resources and are at risk of not meeting their client’s expectations. Failure to gain client consent may result in discord and may lead the client to develop a negative opinion of the SLB and/or the institution the SLB serves.

Ambiguous Policy Goals. One goal of the SLB is to distribute finite services and resources to clients. Another goal is to secure client cooperation in the distribution of services. Efficiently distributing goods and services to the public becomes problematic when client-centered goals and organization-centered goals are misaligned (Lipsky, 2010). For instance, the organization-centered goal of reducing costs may conflict with the client-centered goal of providing needed services. Thus, to limit expenditures, the social worker may have to choose either meeting with her client for one hour or reducing her time to 30 minutes. Without clear policy goals, SLBs use their discretion to interpret and administer public policy. Highlighting this point, Lipsky states, “The less clear the goals...the more will individuals in a bureaucracy be on their own” (p.40).

Applied Research

Researchers have studied the decision-making practices of teachers, special education directors and social workers, and the factors that influence their use of discretion. For instance, Anagnostopoulos (2013) employed Lipsky’s theory of the street-level bureaucrat to research how teachers responded to district accountability measures. The author found that even in the face of new district accountability measures, teachers maintained a sense of autonomy through coping strategies – such as teaching to state-mandated tests and disengaging from failing students – that allowed them to maintain their routine practices. Hehir (1990) found that special education directors in Massachusetts routinely used discretion by “cutting deals” with parents rather than engaging them in due process disputes. He cited the factors of cost, unpredictable outcomes, and competition from private special education schools – generally located in middle to upper-middle class neighborhoods – as heavily influencing decision-making practices.

In the field of social services, Fineman (1998) studied how environmental agency inspectors in the United Kingdom used discretion when enforcing environmental law. He found that inspectors avoided legal actions by negotiating compliance through “persuasion” and “bluff,” as workers took great steps to avoid a criminal justice system viewed as “laborious and fickle,” which similarly characterizes what the research has stated about the legal characteristics of due process proceedings.

Even with an increase in accountability measures, such as stricter regulations and hierarchical control, social service workers still exercise discretion. For example, May, Winter, and Sorenson (2006) reported that individual municipal worker characteristics, such as “policy predispositions” and “attitudes about clients” account for 88% of the variation in governmental policy implementation. The authors also reported that administrative factors, such as the clarity of guidance and the volume of paperwork, influenced the actions of municipal workers. Wastell, White, Broadhurst, Peckover and Pithouse (2010) reported that social workers in England and Wales wield discretion in response to increased accountability measures – such as standardized work-flow models and mandatory paperwork – that “increasingly constrain what can be done” (p.318). In response to these measures, workers have used discretion to allow additional time for intake meetings with clients even though this practice contradicts policy.

The literature supports the idea that, even in the face of regulatory measures such as district-mandated standardized testing goals and legal requirements, educators and public service workers use discretion when implementing policy. The use of discretion appears to be influenced by a number of factors (i.e., independent hearing officers, the burden of proof, cost, time, and impact on parent-district relationships) and the local district factors of socioeconomic status and administrative support. In this capstone project, I use the street-level bureaucracy framework to

examine how special education administrators use discretion in response to the various factors associated with due process procedures. Examining the special education administrator's use of discretion in response to due process procedures will offer insight into how special education policy is implemented at the nexus of policy and practice.

Research Questions

The research suggests that special education administrators, acting as street-level bureaucrats, use discretion while working with families to develop an appropriate IEP. My research will answer four questions: 1) What factors influence a director's decision-making throughout due process proceedings? 2) How much discretion do special education administrators have? 3) How do special education administrators use discretion in response to the risk of due process hearings? 4) How do the local district factors of socioeconomic status and administrative support shape the administrator's use of discretion?

CHAPTER III

Methods

I chose a qualitative cross-case study research design. This methodology allows for an in-depth understanding of the decision-making practices and experience of the participants working in diverse settings (Creswell, 2013). This analysis is an instrumental case study, as an analysis of the decision-making practices of individual special education administrators is a key lever in learning more about the factors influencing decision-making (Stake, 1995).

Sample and Setting

I used purposeful sampling methodology to select eight participants who have had at least three encounters with dispute resolution proceedings. This approach allowed me to be sure that each participant has had some experience with the issues comprising the focus of the study (Creswell, 2013).

Research demonstrates that parents with access to financial resources are more likely to utilize due process procedures (Opuda, 1997; Pasachoff, 2011; Hehir, 1990). I examined whether the decision-making practices of special education administrators varies across districts that serve families from different socio-economic backgrounds. To examine this question, I used publicly available data to identify school districts from high and low District Reference Groups (DRG)⁴. The State of Connecticut uses this system to classify school districts. The rankings place each district in Connecticut in 1 of 9 groups from A (highest) to I (lowest). DRG levels are determined based on socio-economic status as well as other factors. From the higher DRGs, I chose two districts that have a high number of due process hearings per student (DPH) and two districts that have a low number of hearings per student. Likewise, for the lower DRG group, I

⁴ Information on DRGs is available of Connecticut State Department of Education website.

categorize districts based on the same criteria. I chose one participant from each district to take part in this study. Refer to Table 1 for a more detail description of the sampled districts.

Table 1

District Placement by District Reference Group (DRG) and number of Due Process Hearings per Student (DPH)

<u>District</u>	<u>DRG</u>		<u>DPH</u>	
	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
1	x		x	
2	x		x	
3	x			x
4	x			x
5		x	x	
6		x	x	
7		x		x
8		x		x

Once I identified participating districts, I sent recruitment information via email to administrators supervising special education programs and followed up with a telephone call. When the potential research candidate reported an interest in participating in the study, I asked the following questions: a) Do you have experience with the research question, and b) Are you responsible for making fiscal decisions regarding the placement and programming of students receiving IEP services? I selected respondents for my study who met the selection criteria.

Participants

To understand how directors of special education programs in the State of Connecticut use discretion in response to due process hearings, I interviewed eight special education administrators working in eight districts in Connecticut. Subjects for this study were directly responsible for supervising either the district special education program or the local school-based program in their respective district. To varying degrees, each was responsible for making fiscal decisions regarding the placement and programming of students receiving IEP services. For

instance, several participants supervised special education programs in large districts with 15,000 students, while other participants worked in smaller districts with less than 5,000 students. Regardless of size, each was involved with at least three cases involving dispute resolution proceedings. All participants have direct experience working as street-level bureaucrats within the constraints of a public school. Each labors within the parameters of school budgets and must deliver finite goods and services to stakeholders with potentially unlimited demands. By choosing one participant per site that meets the criteria for participation mentioned above, I ensured that each participant had enough experience with the research topic to respond thoroughly to the research questions. To protect confidentiality, I reported data by ranges rather than by discrete district descriptors. I also changed participant's gender. See Table 2 for a complete description of the sampled districts.

Table 2

District Placement by Due Process Requests, DRG, Participant Years of Experience, Experience with Due Process Hearings, Mediations per Year, District Enrollment, and Percent Free or Reduced Lunch

<u>District</u>	<u>DPH per Student</u>	<u>DRG</u>	<u>Years of Experience</u>	<u>Experience w/ DPH</u>	<u>Mediation per Year</u>	<u>Enrollment</u>	<u>% F/R Lunch</u>
1	High	High	0-5	1-3	>20	<5,000	0-10
2	High	High	>20	4-7	>20	10,000-15,000	0-10
3	Low	High	16-20	1-3	8-15	5,001-10,000	21-30
4	Low	High	0-5	None	4-7	<5,000	0-10
5	High	Low	16-20	1-3	8-15	5,001-10,000	41-50
6	High	Low	>20	>7	8-15	15,001-20,000	51-60
7	Low	Low	11-15	1-3	4-7	5,001-10,000	51-60
8	Low	Low	0-5	none	0-3	15,001-20,000	>71

Data Collection

Once selected, I asked participants to engage in a three-stage interview process. First, participants responded to a 20-minute telephone interview that provide historical context and background information (Seidman, 2006). Three participants completed all of the interviews in-person on the same day. Second, I asked participants to respond to a brief vignette that described a hypothetical dispute between parents and the school district. The vignette served as an entry point to my research and helped me to understand how participants approached a complex problem involving many of the factors identified for my study. Additionally, since I relied on subjective interview data, I decided that a vignette would provide an important data point to which each participant would respond. The vignette allowed me to compare responses and to look for patterns and themes that emerged. Vignettes effectively tap general attitudes and beliefs about a research subject and have been used as complimentary measures together with other data collection actions (Barter and Renold, 1999).

Finally, participants completed an in-person interview of approximately 60 minutes in length. The interviews utilize a standardized interview protocol consisting of fourteen open-ended questions. Doing so allowed me to collect first-hand accounts from individuals having experience with the research topic and ensured that the questioning remained consistent across participants. Furthermore, a standardized open-ended format permitted follow-up questions that allowed for in-depth discussions of meaningful information as it emerged. The questions collected information on the following subjects: a) The experience of special education administrators working in socioeconomically diverse districts, b) The factors special educators consider when in conflict with families, and c) How these factors influence decision making and

the use of discretion. I recorded all interviews to aid in future analysis. I kept all responses strictly confidential.

Analysis

My strategic analysis of the data relies on the theoretical propositions of the street-level bureaucracy, which holds that bureaucrats interacting with the public use discretion when implementing policy (Lipsky, 1980; Yin, 2013). I treat each interview as an individual “case” and apply a cross-case analytic technique to the data.

Creswell (2013) describes several steps employed by researchers in the analysis of qualitative data obtained during case study research. These steps include transcribing, coding, and analyzing all collected data. Following the steps outlined by Creswell, I uploaded all transcribed interviews to the Dedoose program for storage and analysis. Then, I analyzed all of my collected information and drafted memos on the key concepts. I developed codes for global and local factors including cost, time, the effect on parent relationships, independent hearing officers, the burden of proof, administrative support and socioeconomic status. I developed codes that “describe, classify, and interpret” the data (Creswell, p.185).

After coding, I carefully reviewed all data and applied the codes to meaningful text. I analyzed coded interview data by looking for key quotes and meaningful statements. These key quotes and meaningful statements filtered into a matrix that allowed me to cluster data into categories of meaning. For example, I identified key quotes and significant statements that represented common themes. See Figure 2 below.

<u>Research Question</u>	<u>Key Quotes</u>	<u>Thematic Meaning</u>
RQ1: What factors influence a director's decision-making throughout due process proceedings?	<p>It takes hundreds of hours to be prepared to represent the district in a due process hearing.</p> <p>I mean the legal fees alone, when you win a due process hearing in Fairfield County with all of what that means, you're probably looking at \$150,000 in legal fees to win.</p>	<p>Preparing for due process is a time-consuming activity for special education administrators.</p> <p>Even if a district wins, due process hearings are expensive.</p>

Figure 2. Example of key quotes and thematic meaning by research question.

Clustering data in this way permitted me to understand how these themes represented a shared understanding. I then advanced an interpretation of the patterns and themes that captured the experience of the participants and provided evidence to address the research questions. Finally, I created visual displays that provided a “composite description” of the shared experience of the participants and highlights how each participant’s experience differs (Creswell, p.187).

Positionality

In order to alert the reader to any previously undisclosed bias, I currently work in the state of Connecticut serving as director of special services. In this capacity, I have been involved with numerous due process complaints. My interest in due process complaints stems from my experience working as a special education administrator in different regions of the country.

Prior to my current experience, I spent ten years working as a special education administrator in Title I school districts in California’s Central Valley. During that time, I was not involved in a single due process complaint. Due to a lack of resources, parents did not have access to legal counsel; however, students in my school district often needed services that were

not available to them. My experience, working in two very different districts, led me to believe that due process proceedings favor parents with access to resources; thus, I chose to examine this phenomenon by focusing one of my research questions on this topic. In light of these facts, I attempt to remain objective throughout my analysis of the research topic.

CHAPTER IV

Findings

In this chapter, I discuss my key findings and catalog each finding by research question. I found that participants avoid due process hearings owing to the factors of cost, time, the effect due process has on staff and parent relationships, the burden of proof, and the perceived bias of independent hearing officers. These factors appear to motivate participants to resolve disputes through the PPT process or through mediation. Participants reported having complete discretion during PPT meetings and mediation sessions. Participants use their discretion to build relationships with parents, negotiate compromises with parents, and improve district programming. These actions have the goal of supporting positive district-parent relationships, avoiding due process hearings, and meeting the individual needs of students. I also found that participants working in high-performing districts experience a higher volume of due process complaints. Participants working in these districts reported that families use attorneys or advocates during dispute resolution proceedings. Participants from low-performing districts reported fewer due process complaints. Parents in these districts reportedly rely on free legal services to address their complaints. Finally, I found that collaborative administrative teams support participant's decision-making.

What Factors (Cost, Time, Effect on Staff and Parent Relationships, Perceived IHO Bias and the Burden of Proof) Influence a Director's Decision-Making throughout Due Process Proceedings?

In this section, I investigate how participants interpret each factor and discuss how these factors shape decision-making. The data suggest that the factors of cost, time, and the effect on staff and parent relationships influence the decision-making practices of special education

administrators by compelling participants to settle with families through the PPT process or through mediation. Additionally, I found that participants viewed the burden of proof as favoring parents while placing an unfair burden on the defending district. Participants reported that the burden of proof makes them more inclined to settle with parents through mediation. Finally, the data suggest that the perceived bias of Independent Hearing Officers appears to diminish the confidence participants feel about their chances of winning a due process case. This lack of confidence in the decision making of Independent Hearing Officers also leads them to settle in mediation.

Cost. There was consensus across all participants that the costs associated with due process procedures were a major factor in determining whether to engage in a due process hearing. In discussing the costs associated with due process procedures, participants estimated expenses based on their experience. Acknowledging that it is difficult to understand the exact cost of a due process hearing, participant six discussed the need for more accurate understanding of due process expenditures to help guide decision-making:

I don't think that we talk enough about the true staff expense as a part of due process. I'd like to get a financial analyst to sit down and let's break it down so that we can come up with a formula that could come to the table and help you make a decision immediately, or go ahead and push forward. That true dollar of the time involved, we don't know what that is.

The price of a fully adjudicated due process hearing reportedly reaches hundreds of thousands of dollars and often proves to be a strong deterring factor for participants considering due process. Participant five stated, "Given the cost of a hearing, I have to be pretty darn sure we're going to win before I go into that just because of the investment of time and resources."

While finding it difficult to quantify, participant one reported that losing a hearing is very expensive: “In the end, if you included staff time, which would be hard to quantify but I would say the one year hit is probably \$500,000.” Participants categorized the expenditures associated with due process proceedings as (a) district and parent attorney’s fees and (b) the expense attached to the contested issue (e.g., residential placement).

Attorney’s fees. School districts utilize the services of attorneys due to the financial and legal ramifications of due process procedures. Participants reported that the expense associated with a district’s attorney fees could run into the tens of thousands of dollars. This expense is a major factor that influences the participant’s decision-making, making them more likely to settle their disagreement in mediation. Participant one reported that, “The average cost just to go through the due process hearing is going to be \$80,000 in legal fees for us.” Participant two reported that winning a hearing is almost twice as expensive, while losing a hearing would cost the district even more. Participant two describes her experience with due process hearing expenditures below:

I mean the legal fees alone, when you win a due process hearing in Fairfield County with all of what that means; you're probably looking at \$150,000 in legal fees to win. Probably triple that if you lose. You're looking at major time resources for staff. Days and days away from their work. It's a very costly process.

Special education administrators have budgetary restrictions and yet have to plan for expenses that are difficult to calculate. Participant seven reported, “You’ve got a tight budget that you have to monitor...my budget just for a hearing, just legal alone, was \$100,000.” These budgetary allotments are unpredictable as every hearing involves a different degree of preparation and expense as described below:

Oh, sure. You are doing a complete file review. You're assembling documents...you're giving them (the attorneys) the documents. They're compiling the notebook. That would be overwhelming for a director in a district that size to have to actually compile all that and it would be a burden for my folks, and at the end of the day the attorney is going to be going through it and pulling and adding and whatnot anyway. It's expensive. That's huge. It's a huge cost.

Furthermore, the cost of attorney's fees is multiplied when a district loses. Districts that lose a due process case are often saddled with the added expense of paying for the parent's attorney. This potential additional expenditure puts further pressure on participants considering whether to engage in due process hearings. Participant eight describes this consideration in the following excerpt:

If you lose that process, (we have to pay) their attorney fees, our attorney fees, and any resolution that comes out of that meeting. So, unless I feel very strongly about the fact that we're going to have a good chance of winning that due process in consultation with my superintendent and the counsel, I'm not going to go to due process. The bigger issue, I mean there is a money issue. They lost and they ended up having to pay \$200,000 due to due process and attorney's fees.

Paying attorney fees for due process hearings presents a significant financial burden on a school district. Losing a due process case adds to this financial strain by holding the district responsible for the parents' attorney fees as well. As mentioned above, the total district outlay for attorney's fees alone, in a case where a district loses, may be over \$200,000. The high cost of the districts' and the parents' attorney fees appears to motivate special education administrators to avoid due process proceedings.

Expenses Associated with the Contested Issue. Another cost factor that participants consider is the expense associated with the contested issue should a district lose. For instance, if a family is asking the district to pay for an expensive program outside of the district, the special education administrator might consider the cost of that placement when deciding whether to engage in due process proceedings. The possibility of paying for the disputed program should the district lose often provides further motivation for administrators to settle. Participant four described how losing in due process often means not only paying for the attorney's fees described above, but also funding the student's placement, "We always tend to settle more, which I have myself, because we have to pay not only the program, but then the attorney fees..." Another respondent put it this way:

It is not a great incentive for districts to go all the way to due process because it's going to cost too much money. It's going to cost hundreds of thousands of dollars, (as well as the cost) of possible placement.

Private special education facilities are expensive. Participants described outplacement costs that ranged from \$100,000 to \$400,000 per year. These exorbitant expenditures motivate participants to settle disputes rather than to engage in due process. Participant eight discussed how it is difficult to explain the cost of losing a hearing, including outplacement costs, to a school board:

... You have to go in front of the board and you have to explain why now we're going to pay legal fees in addition to an out of district placement at a \$100,000 a pop until somebody is 21...

Residential outplacement costs for students requiring significant services are even more expensive. Participant seven reported that one residential placement is "costing the district

upwards of \$400,000 per year.” This cost discouraged her from proceeding with a due process hearing and motivated her to settle. She reported asking herself, “Are we going to settle it for big bucks or spend even more money and go to a hearing and then take your chances?”

Participants unanimously reported that due process hearings are extremely expensive endeavors that strain finite school budgets. Winning a case can cost upwards of \$150,000 in legal fees, while losing a case costs the district even more. Responsibility for paying parents’ legal fees and the cost of the outplacement increases the pressure on special education administrators to resolve the issue in mediation.

Time. Participants reported that dispute resolution proceedings involve an enormous amount time for all parties involved. The time is spent in formal PPT meetings, reviewing documents, meeting with staff and attorneys, mediations, and the due process hearings themselves. Supporting this point, participant two stated, “You're looking at major time resources for staff. Days and days away from their work.” By engaging in due process hearings, participants implied that they were redirected from other job-related tasks. Participant one described how preparing for a hearing can extended for months and involve multiple PPT meetings, mediation and finally the hearing:

You're prepped for the PPT. Then we had to go back and prep for the next PPT. Then there was a third PPT to try to resolve it but each time there was months between those. So, you're prepping for that one and memorizing and reading through the reports and remembering what happened. Then, we had to have a mediation work session so we sit there with the lawyers to go through mediation. Then they go to mediation, they don't resolve it. Months later, we go to hearing and then you have to memorize everything and each date between the hearings, it's not like it's the next day. It's weeks later. You forget

things again and then you have to prepare...I would think 40-60 hours of my time to prepare for those hearings.

While participants reported that a great deal of time is spent preparing for a hearing, the amount of time varies depending on how long they have known the student and the focus of the hearing. Participant two discussed the length of time required to review documents and evidence in preparation for a due process hearing:

Hundreds and hundreds of hours. I read every single piece of paper in those binders. I review every single piece of documentation. I have to go back and forensically analyze what could be, depending on how old the student is, could be mountains of documents and documentary evidence, emails, mountains. It takes hundreds of hours to be prepared to represent the district in a due process hearing... Depending on the length of time they've worked with a student and their role and the focus of the hearing from the parents' perspective, a staff member could be on the stand for 6, 7, 10 hours. They would need probably triple that in preparation to be on the stand for 10 hours.

Participants reported how, in preparation for due process hearings, related services staff, including the special education teacher, behavior analyst, and speech and language therapist are out of the building and unable to complete their work. When a student does not receive services, participants reported that they have to make up the service hours missed. Speaking to this point, participant six noted, "I always jump to a child (who) is not being seen if you're out of the building, so therefore, I have to make that up."

Having staff away from their job responsibilities is stressful. Participant two discussed the stress experienced by staff as a result of being out of the building for multiple days:

We had 13 days of hearing... All the staff, I would say the special education teacher, board certified behavioral analyst, and speech and language pathologist from the middle school were under the most scrutiny by the parents. So they were, their time away from their work in preparation for their testimony and reviewing all the records... So they spent not only their days of testimony, but in preparation for that testimony they spent a tremendous amount of time.... One thing that I think about more after having testified is the stress it causes on the school. For each day that we had to testify, I had to leave the building. The special education teacher had to leave the building. The guidance counselor had to leave the building. There were days that I would go and just sit waiting and not actually even testify because they didn't get to me but I missed the whole day of school. It was stressful.

After the documents have been reviewed and the planning meetings have taken place, there is the hearing itself. While most hearings require several days of testimony, participants described due process hearings taking upward of 20 days. Participant five reported that, due to her experience with a long hearing and the investment of time and resources, she has to be very confident that she will win a due process case before deciding to go to a hearing:

I think it was either 15 or 20 days. It was a long hearing. It was during the summer. Yeah. It was a long, long hearing.... I have to be pretty darn sure we're going to win before I go into that just because of the investment of time and resources.”

Participants reported that they are more inclined to settle disputes with parents in mediation or through the PPT process due to the amount of time that is necessary to engage in due process proceedings. Participants described the many hours required to review documents and the weeks and months it takes to meet with attorneys and with staff. The hearing itself often

lasts 10 to 20 days, which can be spread out over months. While not explicitly stated in the participants' responses, participants implied that the time involved in the preparation for, and engagement in, due process procedures prevented them from completing other work-related duties.

Parent/District relationships. In addition to reporting that the factors of cost and time shape their decision-making, participants also reported that the combative nature of special education disputes often leads to stress and discord between families and the district. Participants stated that they worked to settle disputes with parents rather than engage in due process proceedings due to the potential for conflict and discordant relationships. Participants also reported how contentious meetings and/or those meetings involving parent attorneys' often unnerve school staff. Supporting this theme, participant five discussed how she consoles staff after acrimonious meetings by "...sitting with individual staff members to address their anxieties."

Participants unanimously reported that special education disputes often harm parent/district relationships, as families sometimes question the intentions of the special education administrator. Participant seven described feeling perceived as uncaring by families and described the stressed family-district relationship in the following excerpt:

Oh, it's definitely strained. It's a very strained relationship that the parent perhaps may see you as a non-caring person, as somebody who's only viewing his or her child through the lens of a budget. It is strained. I don't know how to say it any other way.

Similarly, participant one described how he avoids due process because of the damage special education disputes inflict on the district-family relationship:

One thing that I think about more after having testified is the stress it causes on the school...There's a lot of pressure so I think thinking about the stress of that, it makes me definitely think about is it worth taking this case...one of the large reasons why we haven't taken a case to a hearing (in my district) is that we're really trying to repair our relationships with families....

Stress on staff. Participants reported that teachers and school staff find due process procedures to be emotionally demanding due to the presence of parents' attorneys. They noted that some families seek counsel to assist them during disputes, which often creates an atmosphere of mistrust and diminishes the team's ability to work collaboratively. This has a negative impact on staff. As a result, participants reported settling with parents to avoid the negative impact stress has on staff confidence and morale. One participant discussed how introducing attorneys into the collaborative atmosphere of a PPT creates a feeling of mistrust:

I think any time a parent brings an attorney...I think it automatically forces a mistrust, a difficulty in working as a team collaboratively because, oftentimes, at meetings, the attorney or the advocate do all the talking. Even if parents end up winning the due process hearing, I don't think that contributes to a positive relationship between the district and the family. I don't see how it can.

Participant six described how parents' attorneys rattle school staff and cause school staff to question their own abilities as professionals:

I think for the teachers in the classroom, it makes them gun shy about second thinking what they do with the child, second thinking, "Gee, if I write [sic]the school this way, will this advocate say I've not (explained) the data the right way? Or, should I do it this way?" It attacks the professional confidence of our teachers. The experience of an

attorney in an IEP meeting, if it is a voracious attorney that attacks teachers around the table, then teachers don't even want to go into a meeting if there's an attorney.

Due process hearings are stressful courtroom proceedings to which teachers are not accustomed. Participants reported how staff experience tension brought about by the courtroom atmosphere of a due process proceeding:

That's not where we love to be, under that kind of bright, hot, you know, it's an interrogation process. It's really difficult. It's really difficult. Your every single question, every single word choice in a document is under scrutiny and some of it happened years ago....

Participants consistently reported that the stressful and contentious nature of due process procedures often damage district-parent relationships. In response to this factor, participants reported settling with parents to maintain positive relations. Additionally, participants reported that the parents' attorneys often unnerve teachers making them second-guess their own professional abilities. This often leaves staff in a fragile state that requires additional meetings with the administrator.

Burden of proof. Another factor that influences decision-making is the burden of proof. Participants reported that they are more likely to settle disputes through mediation because the burden of proof is always on the district. When a family files for due process, the burden of proof in the State of Connecticut resides with the district. Participants reported that this places a district in the defensive position of proving that their offer of FAPE is appropriate, which leads to additional days of preparation and the need to prepare a much broader defense of the IEP. Additionally, participants reported that, since a district will have to prove that the offer of FAPE is appropriate, families will file for due process with the hope that the district will settle in

mediation. Participant eight described how the burden of proof forces a district to prove that it has offered FAPE.

One of the problems with Connecticut specifically is no matter who brings due process, it's always the burden of the district in order to make the restitution to whatever the parent is asking for. So, if we plan the most perfect, appropriate program for a student and a parent doesn't agree with it and we go in front of a hearing officer, it's our responsibility to prove that our program is right. It's not their responsibility to prove that our program is not right. So they could ask for whatever they want to ask for and depending on the hearing officer ... that hearing officer could say, "You know what, I don't agree with that."

Participants consistently endorsed the opinion that a family can file for due process without providing facts or evidence. Participant two summarized her views below:

But the issue for me most is really unless the burden of proof is on the party moving the action what ends up happening is that we have this machine gun approach to due process. So the parent says, "The program is inappropriate." There's no specificity. So we have to, if we go back to the due process hearing we had last year, we ended up having to have 20 people testifying over three years of instruction..."

Participants supported the opinion that the current burden of proof status favors families and discourages districts from engaging in due process hearings. Participant six explained:

I think the due process system is written in favor of families and not school systems, and not written in relationship to the needs of students.... I'm not a believer that parents should not have rights and strong rights, and understanding the process.... but the burden of proof issue, we are guilty right from the beginning. That's where I have a problem. I

would like to see parents the (sic) requirement to truly present evidence that we have wronged their child. Guilty until proven guiltier. I think the due process system is written in favor of families and not school systems, and not written in relationship to the needs of students. Parents should be required to provide evidence to support their case.

Participants universally reported that having the burden of proof on the district makes them more likely to settle disputes with families in mediation. Participants reported that having the burden of proof on the district encourages families to claim, without specificity, that a district has not offered FAPE. This reported trend places an added burden on the district to defend spurious charges. Participant four stated, “I think that parents can bring lawsuits and they expect school districts to mediate them because it's the district's responsibility to provide the facts in this particular case. So, I think that's a huge issue.”

Independent hearing officers. The fifth policy factor I examined is the perceived bias of the IHO assigned to the due process case. While not unanimous, seven of eight participants reported that the Independent Hearing Officer (IHO) assigned to a special education due process case directly influences his or her decision to move a case to due process because some are understood to be less sympathetic to a district. For instance, participant one stated, “Based on what hearing officer is assigned to us, we think heavily about whether we would actually take a case to a hearing.” Participants also reported that IHO’s often have biases that influence how they rule. In the excerpt below, the participant discussed how the IHO assigned to her case influenced her decision to settle in mediation:

There are hearing officers that come to special education with a particular, bias isn't the right word, but come to it with their own set of experiences. And when you look at their rulings, that's the way they rule. So you go into it with a sense of, "I have a chance in this

case or I don't." And it influences the resolution process. If you get a hearing officer that has a tendency to rule in a certain way, then it might influence how far you're willing to go in mediation or not.

Participants learn about the previous decisions of hearing officers either from direct experience or from discussions with their attorney. Participant three reported that board attorneys recommend either taking a case to a hearing or settling in mediation based on their past experience with a particular IHO:

Oh, I hear it from our attorneys all the time. Like, "Oh, we got so-and-so and this is going to be a tough one," or, "We got so-and-so and she really looks for this." Our attorneys have done this so much that they understand their personalities as well. They understand what they bring to the table. They'll say, "This one really likes the data. Let's pump this up. This one really likes the narrative. Let's pump this up." It's just proof in the pudding that the human factor is a significant component.

Of the eight participants interviewed, one reported that she does not consider which hearing officer is assigned to a case; however, she did report that she has gotten to know some of the hearing officers and that her relationship with them influences her decision-making. This subject had over 20 years of experience as a special education administrator and had participated in 7 or more due process hearings. Participant six describes her experience below:

I really don't care what hearing officer we face, but over the years you get to know some of them, and you develop a relationship with them as well, which allows them, if they feel you're way off, you'll find that out in the way that they ask questions, and so that may make you say, "Can we have a break and go out and talk to your attorney? Let's make an

offer; let's get out of this quick. I can see where this hearing officer is going. The history and the experience will allow you to read them as well as they (sic) to read you.

By contrast, seven of eight of participants reported that the IHO assigned to their case influences their decision-making during due process. Board attorneys share information with special education administrators about a IHOs past rulings that influences whether they want to take a case to due process. Participants also reported that they would adjust points of emphasis in a due process case to shape the opinion of the hearing officer.

In sum, these findings demonstrate that the factors of cost, time, effect on staff and parent relationships, perceived IHO bias, and the burden of proof influence the decision-making of special education administrators. Participants reported they are more likely to settle disputes with parents and families in mediation or through the PPT process due to these factors. I found that participants act as street-level bureaucrats as they distribute limited resources (e.g., money and time) to parents while working with ambiguous policy goals (Lipsky, 2010). The factors mentioned above, when understood through the SLB framework, pressure participants to settle disputes in mediation. Failure to settle dispute through mediation or the PPT process expose special education administrators to environments and factors beyond their control (i.e., the due process hearings, the burden of proof, and the perceived bias of the IHO). Special education administrators need discretion to allocate limited resources and manage their clientele. The use of discretion also allows special education administrators to manage clients rather than losing control of them during unpredictable due process hearings. In the next section, I examine how much discretion participants have when working with families at odds with a school district.

How Much Discretion do Special Education Administrators Have When Working with Families?

In response to the factors mentioned above, participants reported settling disputes with parents through the PPT process or through mediation. In this section, I examine the extent to which participants report having discretion to make decisions that directly affect parent-district disputes. As mentioned above, I define discretion as follows: “a) the decision maker’s freedom to distinguish between two or more courses of action; and b) the freedom to decide whether through rules or one’s judgment, to act or not to act” (Carrington, 2005). I found that all participants have complete discretion during PPT meetings and during the early stages of the dispute resolution process. I also found that as the dispute becomes ever more expensive, contentious, and/or public, six of eight participants reported less independent discretion and more collaborative decision-making involving the superintendent, district cabinet members, and the district’s attorneys. Two participants reported rarely seeking counsel from their administrative teams. Each of these participants reported over 20 years of experience as a special education administrator in their current district. This variation is discussed further under research question four.

Discretion. Participants reported that they exercise a great deal of discretion to choose between two or more courses of action during formal PPT meetings and informal meetings with parents. For instance, participant one reported, “Within a PPT I feel that I am acting completely independently.” Participants described having the freedom to make decisions that meet the programming needs of their students. Participant five discussed how she has discretion to make decisions on individual cases and district programming:

I have a lot of freedom in the discretion as far as my ability as a director to move the district forward to implementing new programs or services for our students... I'm given a

lot of freedom and trust from my superintendent and chief operating officer to do what I need to do to meet the needs of our students. I have a lot of discretion to make decisions and move in the direction that I feel the district needs to go on both individual cases as well as programs district-wide.

Participant four reported how she has “full discretion” at a PPT, using her discretion to change her position based on the information she hears: “I am truly a team player and I truly have gone to PPTs ... planning to take one course of action and changing my mind based on information that I hear.” However, as disputes become increasingly contentious, litigious and expensive, their discretion diminishes as participants reported working more closely with administrators and attorneys in a collaborative manner to resolve disagreements. Participant one describes how, during mediation, he needs the approval of his superintendent before agreeing to expensive programming:

In terms of the mediation process, a little bit less. I think the assistant superintendent and superintendent are pretty involved. The assistant superintendent, she wants to know dollar figures. I can't approve anything without her having the final yes. Sometimes she'll stay. If it's going to be a big mediation, sometimes she'll stay for the day but she'll want to know where we think we're going to end on, and especially around now when we're finalizing our budget, she's pretty concerned with those numbers of what we're going to end on.

Similarly, participant eight reported of her administrative team, “They let me do my job.” Yet, she seeks the input of her cabinet administrative team on issues that expose her district financially, noting, “When it comes to things monetary, issues like big monetary issues, I won't

go forward unless I talk to them first or programmatic issues. Those things need to be decided by a team.”

In conclusion, participants reported that they have discretion when working with parents at PPT meetings; however, their discretion diminishes as they engage in dispute resolution procedures that have the potential to become expensive for the district and/or expose the district publicly. The decision-making continuum generally proceeds from one of independent decision-making to one of shared decision-making. Lipsky (2010) wrote “Street-level bureaucrats work at jobs characterized by relatively high degrees of discretion and regular interactions with citizens” (p.27). My findings show that special education administrators share these characteristics. Keeping with the theoretical framework of the street-level bureaucrat, participants reported having complete discretion to distribute resources and manage clientele during PPT meetings and the early stages of the dispute resolution process. In the next section, I examine how special education administrators use their discretion in response to the risk of due process hearings.

How do Special Education Administrators use Discretion in Response to the Risk of Due Process Hearings?

In the last section, I discussed how participants reported a high degree of discretion when working with parents and families to develop appropriate programs and to settle disputes. I also reported how participants identified this discretion as the freedom to choose between two courses of action and the freedom to act or not to act. In this section, I will examine how participants use their discretion in response to the risk of due process procedures.

The data suggest that participants use their discretion to avoid due process hearings by taking a number of actions that fall in one or more of these three categories: (a) building relationships with parents, (b) negotiating a compromise with parents, and (c) improving district

programs. Participants identified these actions as fostering positive collaborative relationships with families, while ensuring that the district provides appropriate services for students. When these actions fail to address the concerns of aggrieved parents, participants described making a calculated business decision, which I describe as a cost/benefit analysis.

Building relationships with parents. Participants unanimously endorsed the importance of building and maintaining positive relationships with parents to avoid due process. As an example, participant one discussed how building rapport can put a parent at ease: “I think I've had the experience where it was said to me this parent's impossible to work with and just through some rapport building, actually had a good experience with certain families.” When disagreements over appropriate programming occur, positive relationships with parents can help prevent the disagreement from escalating to a due process complaint. Participant seven reported how “...trust and building relationships is so important. If you put that in the forefront with the child in mind, you're going to come out with a good outcome.” Participants consistently referenced building positive relationships with parents as the most important factor in preventing and resolving disputes. In my analysis of the data, I found that participants reported taking three main actions to establish and maintain positive parent-district relationships. I categorized the data under the following themes: (a) establishing time for meetings; (b) listening to parent concerns, and finally (c) engaging parents in the decision-making.

Establishing time for meetings. Participants reported that they use their discretion to resolve disputes by scheduling individual meetings with parents and advocates outside of the PPT. At these informal meetings, parents and advocates discuss their concerns with special education administrators in a convivial manner without resorting to dispute resolution

procedures. Participant two described her informal meetings as a “dispute resolution” work where parents feel comfortable to discuss conflicts. Participant two explains:

Parents will come and sit with me and say, "You know, here's the conflict. Can we resolve this conflict in a more amicable way? I don't want to go to due process; I don't want to fight with people. I just feel like this is not meeting my child's needs. Can we work something out?"

Creating positive relationships with families that engenders this type of trust and openness involves setting aside time for families. One participant described how “...parents come and meet with me regularly when they have questions or concerns, even if there's no conflict.” This proactive collaborative approach to working families helps to maintain positive relationships with families and the advocates they employ. Participant three discussed how she used her discretion to schedule meetings with local advocates with the aim of establishing collaborative relationships and avoiding conflict:

I decided to call them all together and I invited them all to a breakfast. First of all, they don't even know each other very well, and if they do they don't necessarily like each other because they're competitors. But at the same time, I see common themes among all of them. I kind of played the newbie card and said, "I'm having a breakfast because I want to get to know you guys".... You have to start that collaborative approach. If you don't, then the next step is you go through the legal process.

Listening to parent concerns. After establishing meetings with parents and advocates, participants were unanimous in reporting that it is important to listen to parent concerns and to learn about their experience. This reportedly helps to build positive relationships and to guide future decision-making. In response to the Vignette, participant one reported, “The first thing I

would do is try and meet with the parent to learn about their experience... I would try to build a relationship with the parent.”

Participants reported that frustrated parents request meetings to discuss grievances and concerns. Participant two explains how listening to parent concerns can defuse a tense situation with a disconsolate parent:

So certainly trying to develop a meaningful relationship with the parent to understand what are the concerns that the parent has that are actually driving their demand. Often in these situations, particularly in a situation where a new student is moving into town, the parent is bringing with them their experiences from past relationships with special education, special education directors, special education staffing. So when you have a parent who walks in and says, "Hello, how are you, and here is my attorney and I'm going to sue you if you don't give me everything I want," the first piece is to try to listen and understand and get to know their perspective about what the challenges that they face are, what the challenges they've seen are, what they're hoping for. So gathering all of that information and trying to be open to hearing, the position is one thing, the concerns that drive that position is the area that I like to try to understand before I make a decision about anything.

Participants discussed the importance of listening to parents in order to learn more about the factors motivating their grievances. Often, parents who have had a negative experience in another district bring their negative experience into the new setting. Participants reported that they use their discretion to listen to the experience of parents before making any programmatic decisions.

Engaging parents in decision-making. Once participants have met with parents and have listened to their concerns, they use their discretion to engage parents in the decision-making process by following state mandated PPT guidelines and procedures. These guidelines and procedures ensure that parents have the opportunity to make decisions that affect the development of the IEP. One way to engage parents in decision-making is to provide reports and IEP goals to parents before the PPT. This gives them time to review the documents, in advance, and develop questions for the team. Participant one discussed how he uses his discretion to bring his team together to develop IEP-related documents and send them home to parents in advance of the PPT:

A week before the PPT, the team comes together and meets about the student. If there's an evaluation, they review their evaluations. If not, they're presenting on their data, on their IEP goals and objectives and reviewing the student's current grades and performance in class and thinking about the student at that time. They review their draft goals and objectives and any proposed changes that they're going to make. All of that is sent home to the family on that day so the family gets it a week before.

This participant also discussed how the team includes parents in decision-making by not deciding to implement programs and services in advance of the PPT. The participant reported that this practice had alienated parents previously, which led to a complaint filed with the state:

At the PPT, we're really careful to include the parent in that process. Part of our state complaint three years ago was regarding predetermination happening before meetings. We're very careful not to predetermine before meetings and make sure that the parent's voice is really heard during the meeting. I think our parents, as I explained before, are very knowledgeable and want to be engaged in the process so it's not necessarily hard for

us to get their engagement and get their participation in the meeting but just to make sure that we actually do include them as part of that process.

Failing to provide documents to parents ahead of scheduled PPT meetings and predetermining programs and services can disengage parents from decision-making. Participant three discussed how she engages parents in the PPT process by following legally mandated procedures and following an established agenda:

The number one priority was to engage families in the PPT process...make sure that you're doing all of those things (legally mandated compliance tasks), that you're engaging parents before the PPT so that you understand their perspective. I've also asked every single PPT to have an agenda.

This participant also engaged parents in decision-making by soliciting feedback through surveys and questionnaires that she would then use to improve district practices. For instance, participant three stated, "I also asked a certain number of schools to pilot a written interview or questionnaire to send to parents before the PPT, so we can engage them and their perspective ahead of time, and the school can be prepared to talk about it in the PPT...It's giving the teams a lot of really good feedback."

Participants unanimously discussed how they use their discretion to build positive relationships with parents by listening to parent concerns, establishing time for meetings, and engaging parents in decision-making. Participant six aptly summarized these actions utilizing a "customer service" metaphor to describe the importance of building positive parent relationships to avoid due process hearings:

Staff hears me say this all the time. It's really all about customer service, because if you're providing that right from the beginning, the family's not going to hesitate in saying, "You

know, I'm uncomfortable with..." instead of saying, "Hmm," over the dinner table, "Dad, let's get an attorney." No, the first thought, "We should sit down with the teacher and find out what's going on because I'm uncomfortable." That's where it should happen.

Negotiating a compromise. Participants reported that building relationships with parents is one way to avoid disputes. A second approach is to negotiate a compromise. Participants reported that they use their discretion to negotiate a compromise when parents ask for special education programming the district feels is not appropriate. This sentiment is echoed in the words of participant one: "I would say it's a negotiation. I think often times what happens is a family wants this and we want that and where can we fall somewhere in the middle so that we don't have to go into a mediation or due process."

By using their discretion to negotiate a compromise with parents, participants maintain positive collaborative relationships while avoiding the negative policy factor effects associated with due process hearings. These data reveal three themes linked to negotiating a compromise including (a) remaining emotionally neutral during heated negotiations (b) showing a willingness to compromise around student programming, and (c) viewing negotiation and compromise through a cost/benefit lens.

Remain emotionally neutral during heated negotiations. Parent-district negotiations require that both parties show willingness to interact in a respectful manner. Parent-district interactions can be contentious; therefore, participants reported that it is important to understand the parent's perspective and the emotion that they bring to the meeting, while acknowledging that parents, generally, are not seeking conflict. Participant two discussed how she tries to understand a parent's intentions during negotiations while recognizing the importance of remaining amicable:

Most families don't want the conflict either. They're doing what they think is right for their child. So if you can stay in that place and say, "Reasonable people in this work can disagree. Reasonable people whose hearts are all in the right place who are smart, and trained, and capable can still disagree sometimes in this work." So we don't have to be angry at each other to try to work this out in a way that makes sense.

Show a willingness to compromise around student programming. Participants reported that they negotiate and compromise with parents over student programming and services. District compromises might entail financial reimbursement for services, or placing students in private special education facilities. These negotiations occur at PPT meetings, in informal meetings with parents, and more formally, during mediation. Negotiating a compromise helps special education administrators maintain positive relationships while avoiding the contentious structure of dispute resolution procedures. Participant one relates how these PPT negotiations involve compromising with parents over variety of issues including physical therapy (PT), occupational therapy (OT), and the cost of a computer:

I'll give you an example. A family in a PPT made three requests. 1) They wanted compensatory (PT) for a year because we had noted (PT) concerns but hadn't appointed a service and the student was out placed, 2) reimbursement for a (computer), and 3) a private evaluation. We worked together. It was a very contentious meeting with lawyers and ended up agreeing that I would provide them in-district evaluators from different buildings. People who didn't know them, we would agree upon them, they'd get to meet them ahead of time. We were able to not have to deal with the outside evaluation. With the PT, I offered them an outside evaluator who we know and said if there are OT concerns presently, we'll provide service but we won't do compensatory. They agreed to

that so these are two no cost things. Then, I approved the computer because I just didn't want to get into it.

This quote exemplifies how parents enter a PPT with specific requests. Then, the district attempts to negotiate compromises that satisfy the parents and the district, thus, avoiding due process procedures while maintaining the district-parent relationship. While not stated explicitly, the participant implied that the district agreed to programming they believed to be unnecessary, such as providing the student with a computer.

Participants reported that most parents are willing to negotiate and compromise at PPT meetings; however, there are some instances where parents want something specific (e.g., out of district tuition) and file for due process with the hope of compromising in mediation. For instance, one participant stated, "If the tuition is \$60,000 and you give them 30 or 40 (in mediation), they're going to be ok." In a situation like this, parents believe that by filing for due process, the district will be more inclined to settle in mediation. Due to the factors cited earlier in this analysis, participants reported that they are likely to settle the majority of disputes in mediation even when they believe they have offered appropriate programming. Participant three discussed how most parents file for due process but settle in mediation and laments the fact that more cases don't go to a full hearing:

It's interesting because we have a lot of people who file for due process, but very few who actually go through due process. Most of them are mediated. I'd like to take a percentage of those and actually follow through on due process because I think they're warranted.

Participant one described his experience working with parents who use mediation to settle disputes to increase the amount of money they receive for programming:

Probably every case that was filed ... was not filed for the intention of actually going to a hearing. It was filed to motivate a settlement to happen faster or to motivate us. If we've already agreed on let's say 30 a year but the parent doesn't agree to that. Then, they'll file for a hearing to try to get to 40. I think it's also unfortunate... the family is using the process to get what they want, not actually because they have a true complaint.

I found that participants' willingness to compromise appears to be supported by the mediation process itself, which encourages both parties to compromise. This may stimulate parents to use mediation to secure desired programming, rather than to address a failure to provide FAPE. The factors mentioned above appear to compel special education administrators to settle in mediation. While not overtly stated, participants expressed frustration with a system that encourages compromising even when the district has offered appropriate programming.

Cost/benefit analysis. When building relationships with parents and negotiating compromises fail to resolve disputes, participants reported that they apply a cost/benefit analysis to the given dispute. Participants reported analyzing the anticipated costs (e.g., tuition, services, attorney's fees, etc.) of due process against the benefits (saving money and time, maintaining positive parent-district relationships, and meeting the needs of the student) of settling the dispute in mediation. I found that a cost/benefit analysis guides participants' decision-making during parent-district disputes. Participants reported using their discretion to settle disputes when the cost of a hearing outweighs the benefit of winning. One participant stated, "Unless I have a really strong case, I'll probably try to resolve it because in mediation, it's more cost effective than go into a full hearing." Participant two describes how she weighs the cost of winning against the cost of losing while considering the effect due process has on the student:

You know, when we go forward it's about doing an analysis of the cost to win, and I use win loosely, because nobody wins. But the cost to win a due process hearing, the cost to lose a due process hearing, and what would the cost be to be able to move forward without that. Because that's where I try to focus my attention and energy. I'd rather have my teachers teaching than prepping testimony. I'd rather have the kids with their teachers than subs. I'd rather have all of those things.

Participants recounted feeling disheartened by the purely financial reasons for making decisions about student programming given that so much time and effort is spent developing appropriate programming for students. In the end, most disputes are decided based on the cost of settling versus the cost of a due process hearing. One participant stated, "When you're down to the wire in a case that you don't think anybody's really going to bend on, that's where you go, is you go with the money, which is sad. It's sad." Elaborating on this theme, participant six described the cost/benefit analysis that occurs in mediation as a "poker game," where the needs of the student are hardly mentioned:

My feeling is that mediation's all about the dollars. The student's name is hardly mentioned in mediation. The needs of the child are only mentioned after the mediator meets with the family, the mediator comes in and says, "The family has these issues," and the child may be mentioned once or twice in that conversation, but the mediator always ends up, "Here are the issues and here's what the family wants." The want is the dollar. Now, the dollar buys things, but once you get to mediation, it's no longer about the child. That's why I call it the poker game.

Improving district programs. Participants reported using their discretion to develop programs that address the needs of students and meet the expectations of families. Participants discussed two prominent objectives for developing appropriate programming for students in the district: (a) develop high quality programming for students with unique learning needs, and (b) reduce parent requests for outplacements, thus saving district resources and maintaining collaborative relationships with parents. One participant noted, “There's a new wave of disabilities or issues that are impeding learning. And districts are going out and making good faith efforts.” Participants reported building programs for students with autism, behavioral disorders, and students with multiple disabilities. Participants develop these programs to meet the changing needs of students, but also in response to mediation or as a result of due process complaints.

Developing high quality programming for students. Participants unanimously reported using their discretion to build programs that address the unique learning needs of students with disabilities. For instance, participant two describes how she used her discretion to develop programs that served students with autism: “We increased the capacity of all our schools to meet the needs of students with autism spectrum disorders. But we also built a program internally for kids most significantly impacted by autism.”

Participants reported having a “student first” approach when developing in-district programs, as one participant noted, “It's really about what's best for their students.” Participants reported that they strive to develop appropriate programming for students. Participant one discussed how his district works to service a student in-district even if the program is more expensive than other educational modalities:

Building a program that's helping your child in district is much more expensive but it's going to benefit your child a lot more. I think some of these families feel like it's about money when it's not even always about money. It's really about what's best for their students.

Participants reported that by using their discretion to develop in-district programs, they reduce parent requests private special education programming. As one participant noted when referring to her in-district autism program, “Now we very rarely place a student more significantly impacted by autism.”

Students requiring highly specialized programming out of district often have behavioral needs that are difficult to manage in public school settings. Participant five discussed using her discretion to develop programs that meet the needs of students with multiple disabilities:

I've been able to create in district...programs (for students) that have difficulty with their behavior as well as those students with multiple disabilities. I've created an elementary program and 3 ABA classrooms to address the programming of those students who require the 1-1 instruction.

As reported earlier in this section, outplacing students is expensive and often ensues from mediated settlements or due process hearings. Participants reported building in-district programs after settling in mediation and/or due process hearings. Participant eight reported how she used her discretion to develop a pre-K program and to develop programming in the elementary and secondary schools after a mediated settlement:

That's where something good came about, and having your own pre-K meant that and does mean there are fewer pre-K children that you now have to outplace, because you have your own. It had a strong impact on programming. The end result of either

mediation or an outplacement, because often the reason for the mediation is you don't have a placement, and families want somewhere else, is evidenced in our budget this year. We have two new programs that we're bringing into play, one elementary, one secondary, specifically designed around the thought of a certain type of child, and if we had a program we could keep them here. That's in the budget so that's driven by past mediations and of course, past outplacements. There is a positive that can come out of it. If you're looking for improvement, you can use that to help you with improvement, and the complaint process, as well.

Participants acknowledged that they do not always have the services in place to meet the needs of students; therefore, participants will outplace students when in-district programming is not available. Participant eight reported, "I always try to work with families and...service that child the best that we possibly can in district. There are some children that... we just cannot service in the district.... So, at times, it is appropriate but we try to service every child."

In summary, the data reveal that participants use their discretion to avoid due process procedures by building positive relationships with parents, by negotiating a compromise with parents, and by improving district programs. When negotiating with parents, participants apply a cost/benefit analysis of the potential positive and negative outcomes surrounding dispute resolution procedures. Looking at these discretionary strategies through the lens of the SLB theoretical framework, these strategies help special education administrators to manage their clients. Managing clients allows for efficient delivery of special education services and reduces the chances for conflict. Managing clients in this way also helps special education administrators to negotiate compromises with families. In the next section, I examine how local district factors shape participants' use of discretion.

How do the Local District Factors of Socioeconomic Status and Administrative Support Shape the Administrator's Use of Discretion?

In this section, I examine how the local district factors of socioeconomic status and administrative support shape the use of discretion. In this analysis, I represent socioeconomic in two respects: (a) as a category to discuss the common characteristics of families filing for due process across DRGs, and (b) as a category to make inter-district comparisons. I use this approach to examine how participants' use of discretion in high DRG districts compares to the experience of participants working in lower DRG districts.

Socioeconomic status of parents. Participants unanimously reported that the majority of due process requests, regardless of a district's DRG, originate with parents from higher socioeconomic backgrounds. These parents reportedly have greater access to financial and informational resources (i.e., knowledge of their special education rights and the available services) when compared to less-resourced parents. The data reveal that, in most circumstances, families use their resources to fund advocates and attorneys, which puts added pressure on participants to settle in mediation. This trend occurs across all of the participating districts. I found that participants use their discretion to settle disputes in mediation when parents leverage their resources during disputes.

Access to resources. Participants reported that parents with access to financial and informational resources file the majority of due process requests. As mentioned earlier in this analysis, parents with access to financial and informational resources acquire the services of advocates and attorneys who leverage the factors mentioned above in an effort to compel districts to meet their demands for specific special education programming and services.

Participants reported that well-resourced parents use their means to fund attorneys and advocates. As an example, participant three describes how most families that file for due process have the financial resources to hire an attorney: “It seems as though the families that end up filing, for the most part, if I'm going to make a generalization, are those that can afford council. So they definitely represent a portion of our district, not all of our district.”

Augmenting this theme, participant four discussed how her district has families who, not only have access to resources to fund attorneys, but in some cases, are attorneys themselves. She explains how there are “a lot of families with a lot of money... They have more. Some of my parents are attorneys themselves. Some parents, even if they don't bring attorneys to the PPTs, they're talking to attorneys.”

Advocates and attorneys understand dispute resolution procedures and achieve their objectives by seeking mediation. Speaking to this point, one participant noted that many times a due process request “was not filed for the intention of actually going to a hearing. It was filed to motivate a settlement to happen faster or to motivate us.” Consequently, participants reported using their discretion during mediation to compromise with parents and negotiate a settlement. As an example, one participant noted, “They (parents) understand the process. They usually ask will you be willing to mediate this case.” This scenario plays out repeatedly in districts with a large number of well-resourced families. For instance, participant one reported, “One of the things that we think about a lot is we're working with families that have extensive resources... Most families are looking for their fair portion from the district. If we can get to a number that we also feel is fair, then we feel like it's a win.”

While participants reported that families with resources use mediation to strike compromises with the district, parents from more modest means reportedly do not. Participant

one described how lower income families in his district do not access dispute resolution procedures:

There is a very, very small section of low-income housing and families in that housing complex, we do have a number of families who have high need students. I think we are really careful to work with them on an IEP basis. We don't really go through dispute resolution processes with them.

Participants working in lower-performing districts with a higher concentration of economically disadvantaged families and a high number of due process hearings (i.e., district five and district six) reported that the families who do file for due process also have access to financial and informational resources. Participant five stated, “We have some of the most affluent families financially in this state, and we have families that are on Medicaid assistance.” Participants indicated that it is the parents with access to resources that file for mediation or due process while lower-income parents depend on free legal services to address their complaints (see District Comparison below). Participant six described how most parents seeking legal remedies to special education disputes have access to resources, while parents without financial resource rely on free legal services:

Oh, absolutely it's a pattern. The pattern is a financial one. The families whose economic structure within their home is stronger, they sue more. Our minority families sue less, and the minority families only sue when they get advice from someone else and a legal firm takes the case for pennies or nothing at all.

Finally, Participant seven compares her experience working in a low performing district to her colleagues working in affluent surrounding towns. She reported:

Most of our families don't have resources. Now, I live in (redacted) ... and that's a fairly wealthy community, and I talked to the directors there ... they're up against parents who are attorneys and who (say) "I don't care what you have to say, I'm going to get it. You know, maybe my kid's only six months behind in reading, but I'm going to get extended school year services. I'm getting it and I don't care."

While not overtly stated, her quote highlights how special education administrators working in high performing districts encounter parents who use dispute resolution procedures to acquire their desired education programming. This stands in contrast to her experience working in a low performing district.

In summary, participants representing districts from high DRGs and low DRGs concurred that the majority of families who file due process requests have access to financial and informational resources. They use those resources to hire attorneys and advocates who have experience with mediation and due process procedures. As a result, participants reported a higher frequency of due process complaints originating with wealthier families. Families without access to resources rely on free legal services or do not utilize due process procedures. I will address how families using free legal services shape participants' use of discretion in the following section.

District comparisons. In this section, I examine how the local district factors of parental involvement and pressure from private schools shape participants use of discretion. I found that that higher DRG districts see a much higher degree of parent involvement. I also found that that participants working in these districts experience a higher frequency of due process requests. Participants representing DRG 1-4 also reported that competitive pressure from private special education schools places added pressure on them to settle in mediation. I found that participants

in high performing districts experience a higher frequency of mediations; thus, increasing the frequency with which they use the discretionary actions described under research question three. Unlike the experience of participants in DRG 1-4, participants in DRG seven and eight reported that families in dispute rely on free legal services rather than expensive private attorneys and advocates. Free legal aid attorneys reportedly are more likely to ask for changes in existing programming than to request more expensive outplacements. As a result, it appears that participants lower performing districts are less likely to settle disputes in mediation regarding expensive outplacements and may explain why there are fewer due process complaints in the these districts.

Parental involvement. Participants reported that families who file for due process hearings have a high level of involvement in the special education programs run by their district. As an example, one participant noted, “The families have a huge interest in making the schools as good as they can be... our families feel very empowered.” Parents in high performing districts, with high numbers of due process requests, reportedly share information in parent groups and have strong opinions about the types of services and supports they want for their children. For instance, participant one discussed how parents in his district are involved through an advisory committee that shares information on special education policies:

They are very knowledgeable in special education policies. We have a special education parent advisory committee that runs independently of the schools. We had a meeting with them last Wednesday. 75-100 parents will show up to those meetings to ask questions and they want to be knowledgeable of what's going on.

In contrast, participants in lower DRGs with a high number of due process requests reported a smaller number of involved parents. Participant five noted:

As far as the parents, you have an eclectic mix. You have parents who are very much in involved in planning and attending meetings. You have a pocket of parents that may not have transportation. It is difficult to have them attend after school meetings or workshops.

Finally, participants from lower DRG districts with lower numbers of hearings reported even less parent involvement. Whereas parents from well-resourced districts form their own parent advisory groups, participants from low performing districts reported that their district plans the parent outreach. For instance, participant eight reported how her district tries to engage parents through a parent education night:

We also do parent education night, in many ways. We do it through our department, through the IDEA grant and each school also does their own education for parents based on the need for that particular population because they are very different in different schools.

This excerpt is important because it implies that special education directors experience fewer contentious, expensive, and time-consuming due process complaints in the lowest performing districts.

Pressure from private schools. Participants in high DRG districts reported that parents request placements for their children in private special education facilities. A family with access to resources may choose to place their student in a private school and then request mediation to ask the district to pay for the placement or a part thereof. I found that participants from high performing districts use their discretion to negotiate and compromise with parents in response to these requests. Participant one noted how a family has an outcome in mind before engaging the school district in a negotiation: “We have a lot of cases where the family clearly knows they're

going for Windward or they're going for Eagle Hill or their going for Winston Prep and ask for a PPT." Parents reportedly seek out these programs because of the highly trained staff, which makes the programs attractive to parents. As one participant noted when discussing the staff at private special education facilities, "every teacher is Orton-Gillingham certified." The implication here is that the private school will offer superior services – thus the students will perform better – if all staff have this type of training. This may place the public school at a disadvantage if the parent believes that Orton-Gillingham is the best type of certification.

Participants one and two reported that these programs are not superior to public school special education programs but are unfairly viewed as such by parents, advocates, attorneys, and hearing officers. Participant two describes her perspective below:

The other piece that happens in a community like this one is we have lots and lots and lots of private schools and private providers and private people. And so they're out making a lot of money. And so there's a lot of money in this work. For lawyers, for advocates, and then for the private providers themselves. And private providers automatically get more; a private provider will automatically get a higher level of credibility than a public school educator. From hearing officers, from parents, those people are given a great level of credibility simply because they're private... I think it further erodes the trust in public education because of this cottage industry out there that is worth a tremendous amount of money in districts where parents have the resources to make unilateral placements and then come back and sue the district later. It creates a have and have-not, further have and have-not situation between wealthy families and families without the fiscal resources to do that kind of thing.

This quote is important because it highlights how wealthy families take advantage of due process mechanisms to secure special education resources at rates higher than disadvantaged families. At first appearance, this seems to create an inequitable distribution of resources. This theme is discussed further in the Discussion section.

Frequency of due process requests. I found that participants working in high performing districts reported higher levels of parental involvement and increased pressure from private special education schools. I also found that wealthier parents file the majority of due process requests. The data reveal that the high level of parental involvement and the pressure from private schools appears to coincide with a higher frequency of mediations. See Table 3 below.

Table 3

District placement by Number of Mediations per Year, DRG Rank, and DPH per Student

<u>District</u>	<u>Mediation</u>	<u>DRG</u>	<u>DPH</u>
1	>20	High	High
2	>20	High	High
7	4-7	Low	Low
8	0-3	Low	Low

I found that the high number of mediations shapes the participants' use of discretion by compelling them to settle with parents in mediation at a greater frequency than participants working in lower performing districts. Participants in high DRGs with a high number of due process requests reported the highest number of mediations per year. For instance, participant one stated, "We probably do on a light month two and a heavy month six to eight. In the summer we do a lot of mediations and we pretty much only work with two mediators." Participant two stated: "Formal mediations, probably 20 to 25. More informal where I resolve the case here, another 20 or so. And some of them are little, little dispute kinds of things, some of them are

more significant.” Conversely, participant eight reported that she has very few mediations noting, “So, I have a mediation coming up ... that's my first one I'm going to sit through.”

Use of legal aid. I found that participants in lower performing districts use their discretion to improve district programming rather than to negotiate out of district placements with parents in mediation. Participants from low performing districts reported that parents with access to financial resources primarily file for due process, while parents with limited resources tend to utilize the services of legal advocates and/or file a complaint with the state. As one participant noted, “What I tend to see is that those that have more resources financially would generally get attorneys involved whereas other families would have an advocate or legal services.” Legal aid attorneys reportedly do not demand placements at expensive private schools; rather, they ask for programmatic changes to help the children of the clients they serve. For instance, participant eight discussed how a legal aid attorney asked for an extended summer program to help a student with autism:

It's not that we had holes in our program, but for instance, our extended school year program was shorter in duration and then they cite the autism research that says we get oh, you only should have a week at the end. It's like, you know what, okay. All right, and so we gave them that one.

While not overtly stated, participants seven and eight implied that they view the presence of legal aid attorneys and advocates with less concern than they would have for well-resourced parents' attorneys. Participant seven discussed how her supervisors work with legal aid attorneys: “Generally, if we have attorneys from legal services, we usually don't use our board counsel. There are some other attorneys that my coordinators will just attend...I've gotten to the level where my coordinators are definitely capable....”

Participants also reported an increase in the frequency with which legal aid attorneys attend PPT meetings. Participant eight noted, “It’s interesting to note too that once Connecticut legal aid became active and provided support to families that have children with special needs, the amount of attorneys that have shown up in our PPT’s has tenfold in the last three years.”

In conclusion, participants working with affluent families reported a high degree of parental involvement, and increased pressure from private special education facilities. This appears to coincide with a higher frequency of mediated agreements. As a result, participants in high performing districts appear to spend more time using their discretion building relationships with parents, negotiating compromises, and developing district programs. While not overtly stated, participants implied that they are more inclined to settle with parents in mediation due to the impact these local district factors have on their decision-making. Participants in low DRGs reported that families rely on free legal services and rarely file due process requests; rather, they request improvements to the district’s existing programming. In this situation, participants use their discretion to improve existing programming.

The street-level bureaucrat does not respond to client demands uniformly. Lipsky (2010) writes, “The relationship between poor people and public agencies provides grounds for concluding that poor people receive a qualitatively different kind of treatment from the state” (p.54). Similarly, my findings show that wealthy families place more legal pressure on special education administrators to settle in mediation. As a result, participants reported that they respond to these actions by spending more time working with wealthy parents to resolve disputes. I also found that participant’s in high performing districts reported having more organized parent groups and more parental involvement in matters concerning special education. This is an important organizing principal for parents who desire more control over the allocation

of special education resources. Lipsky (2010) writes, “These administrative arrangements suggest to citizens the possibility that controlling, or at least affecting, their structures will influence the quality of individual treatment” (p.10). In the next section, I look at how administrative support shapes participant’s use of discretion.

Administrative support. Under research question two, I found that participants reported full discretion while negotiating with families and during PPT meetings. I referred to this as independent decision-making. I then reported how participants transition to a shared decision-making model as parent-district disputes become litigious and/or expensive. In this section, I examine how administrative structures influence a participant’s use of discretion.

I found that collaborative, trusting administrative teams support the participants’ use of discretion. Participants unanimously reported that the collaborative, trusting nature of their administrative teams supports their use of discretion. When needing guidance for complicated due process matters, all participants reported having access to counsel. I also found that more experienced administrators reported less collaboration during parent-district disputes, indicating that they maintain more freedom to act independently. This appears to be attributed to years of experience and years of district employment.

Administrative teams. I found that across all districts collaborative administrative teams support participants’ use of discretion. Participants reported that their administrative teams are collaborative, and that their administrative teams trust them to use their discretion to resolve disputes when working with parents and families in PPT meetings and during dispute resolution procedures. Participants also reported that they were available for consultation and collaboration at any point in the dispute resolution continuum. Regardless of the district’s size, participants reported that administrative structures supported their decision-making.

Participants unanimously reported that it was important to have trust among administrators and to work collaboratively. As participant one noted, “I would say that I think we trust each other.” Participants also reported that they have regularly scheduled meetings with their administrative team and communicate on a variety of issues. Participant eight discussed how she has weekly meetings with her administrative team and collaborates over larger issues: “We have a supervisors’ meeting every week and we do talk about some big cases that we have and ways to resolve them. So, we really do work collaboratively as a team. I find that very valuable.” Participant three discussed how her superintendent created a team that he trusts, which gave her the structure to support her use of discretion:

He has created a team that he feels really comfortable with, and trust is very important to him.... We meet twice a week for two hours each time, and so there's a lot of conversation and talking that goes on about everything in the district. And so I think in that, he feels pretty confident in our ability to make decisions that are within his comfort zone. And so I do have discretion because of that structure, because there's a certain level of autonomy and freedom to be creative.

Variations by director experience. I found that less experienced administrators reported more consultation and more collaboration with district-level administrators when facing parent-district disputes. More experienced administrators reported less communication and less consultation with their superintendent. For instance, one administrator with less than three years of experience relied on the advice and opinions of her superintendent while working within dispute resolution procedures. She notes, “I am on a huge learning curve, so I think it is important to have other administrators...which I do go to the superintendent for guidance.” Less experienced administrators reported feeling comfortable speaking with their administrative team

regarding budgets and student matters. Participant three reported how she shares information with administrative colleagues to help guide her decision-making:

I have a lot of interplay between my budget guy and my superintendent and my assistant superintendent, one of them in particular. I often seek their council, or I often seek to problem solve with them. I don't feel nervous about approaching them at all. It's a very open dialogue. And again, because I sit on executive, it's very common for me to bring student issues to the table there.

I found that more experienced administrators collaborate less often with their administrative team. This finding implies that these administrators have more discretion throughout dispute resolution procedures. For example, two participants with more than 20 years of experience as administrators and more than 20 years of experience working in their current district reported maintaining the freedom to act independently throughout all stages of dispute resolution proceedings. While most participants reported more collaboration and consultation with cabinet-level administration and attorneys as the likelihood of due process increased, two high-experience administrators reported that they meet with the superintendent to provide details of the case, but maintain their ability to act independently. Unlike less experienced administrators who reported consulting with the budget office during potentially expensive mediation cases, participant two reported how she consults with the superintendent on high-profile cases, but generally has discretion to mediate cases on her own:

Oh I have a lot of discretion. I mean certainly if I think the case is out in the public then I make sure the superintendent is aware of it. I usually will sit down with the superintendent if we're in a situation where I'm going to go forward to a full-blown due process hearing. Just to review the case, because it's going to be very costly. So I'm going

to let them know that. So I'll do that. But I mediate cases all the time; I do all of that without having to go seek permission from the superintendent.

Finally, participant six with more than 20 years of experience reported the most discretion. She stated that she determines “the weight of the case and whether I feel I can resolve it with family in a resolution meeting, or even mediation without attorneys.” When a case might go to due process, she reported consulting with the city attorney first before advising the superintendent:

I have worked for (many) superintendents in (my district) ... and I'm consistent in how I advise, and with our newest superintendent, the city has a court counsel and I spoke to court counsel to make sure that court counsel would support what I was recommending to the superintendent and they clearly did.

In conclusion, participants unanimously reported that they have collaborative administrative structures in place that support their use of discretion. I found that participants trust their administrative team to advise them, as needed, during parent-district disputes. I also found that less experienced administrators rely on their administrative teams more often than more experienced administrators who have worked in their district for 20 years or more.

CHAPTER V

Discussion

Special education administrators work with families to develop an appropriate IEP. Occasionally, parents and the district disagree over specially designed programs and services. Due process procedures give parents access to an impartial hearing when a disagreement cannot be resolved. The literature indicates that due process procedures have many negative factors that may dissuade districts from engaging in them. In response to these factors, I found that special education administrators use their discretion to build relationships with parents, negotiate compromises with parents, and build district programs, to avoid due process hearings.

My study examines the factors that influence the decision-making practices of special education administrators. I use the theoretical framework of street-level bureaucracy to study how much discretion special education administrators have and how they use their discretion to resolve disputes. Three main theoretical principles guide my discussion of the findings: (a) managing clientele, (b) limitation of access and demand, and (c) ambiguity of policy (Lipsky, 2010). I utilized a qualitative cross-case study to collect and analyze interview data on eight special education administrators working in high performing and low performing districts across the state of Connecticut.

I organized this section by research question. Under each research question, I report the following: (a) the main findings; (b) how my findings relate to the research; (c) the meaning and importance of the findings, and (d) any unexpected findings. After an analysis of the key findings, I discuss the limitations of my research. I conclude this section with important implications for policy, practice, and research.

Research Question 1: What Factors (Cost, Time, Effect on Staff and Parent Relationships, Perceived IHO Bias and the Burden of Proof) Influence a Director's Decision-Making throughout Due Process Proceedings?

I found that the factors of cost, time, and the negative effect on staff and parent relationships influence the special education administrators' decision-making by compelling them to settle with families through the PPT process or through mediation. This finding is consistent with prior research, which concluded that due process procedures are costly, time-consuming measures that often lead to diminished relationships with parents (Pudelski, 2013; Mueller, 2009; Pasachoff, 2013). This finding is important because it shows how these factors shape the decision-making of special education administrators. One implication is that the more expensive, time-consuming, and contentious a dispute becomes, the more likely it is that special education administrators will attempt to resolve the dispute in mediation. The fact that these factors influence decision-making may contribute to a steady increase in the requests for mediation. Furthermore, settling in mediation may have the result of increasing expensive special education programming due to outplacing students to private special education facilities.

A second key finding is that special education administrators perceive the burden of proof standard as placing an unfair encumbrance on the defending district. This finding supports concerns raised in the literature. For instance, Yell et al. (2009) reported the school district's offer of FAPE would be assumed to be deficient during due process hearings unless the school district could prove that it was appropriate; thus, placing an unfair burden on the district. Similarly, my research suggests that special education administrators are more inclined to settle disputes in mediation due to the perception that they will be at a disadvantage during a due

process hearing. The finding also suggests that the total mediations per year have been steadily increasing because of this perceived disadvantage.

Finally, the data reveal that the perceived bias of IHOs appears to diminish the confidence participants feel about their chances of winning a due process case. As a result, participants reported that they are more inclined to settle in mediation if they learn that a hearing officer is more disposed to side with the parents. Conversely, participants communicated that they would be more likely to go to a hearing if assigned an IHO with a history of district-friendly decisions. While not directly related to these results, research shows that courts do not hold IHOs to the same appearance of impropriety (i.e., ethical standards) as they do with federal judges. Research also shows that the prior experience of IHOs may shape their interpretation of facts during a hearing (Zirkel, 2013; Maher & Zirkel, 2007). While this study did not examine how the training and experience of IHOs influences their decision, it did reveal that special education administrators believe some IHOs show bias either in favor or against the school district. This perceived bias influences the special education administrators' decision to either settle in mediation or seek a due process hearing.

My research shows that the aforementioned factors shape special education administrators' decision-making. When cost, time and rancor increase, it is more likely that special education administrators settle disputes in mediation. When these factors are viewed as a whole, the influence they have on decision-making appears even more significant. For even if special education administrators decide that the cost, the time, and the contentious nature of litigation was not enough to dissuade them from pursuing a due process hearing, I conclude that they would still be daunted by policy factors they perceive as inherently unfair. See Figure 3 below.

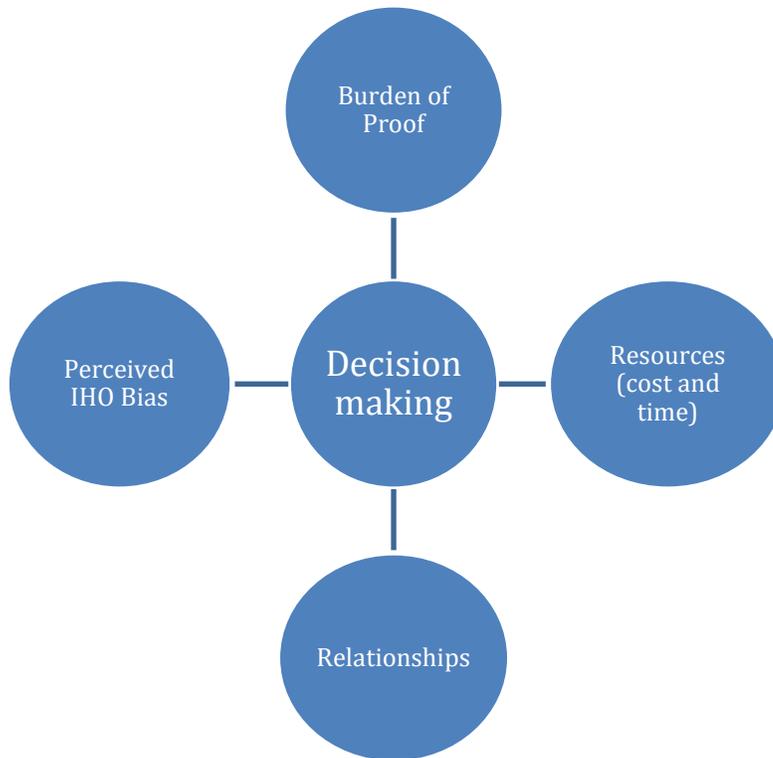


Figure 3. The factors that shape decision-making practices of participants.

The factors mentioned above create contexts within which participants make decisions. Lipsky (2010) writes that street-level bureaucrats “operate in an environment that conditions the way they perceive problems and frame solutions to them” (p.27). This statement is operational for my analysis in the following ways: a) Participants distribute limited resources (i.e., cost and time) to the public; b) Participants maintain positive relationships with families to maintain control of outcomes and procedures, and c) Participants work under conflicting policy goals (i.e., burden of proof and the perceived bias of IHOs). Consequently, participants require discretion to facilitate the resolution of disputes and to deliver special education programming to students.

Research Question 2: How Much Discretion does a Special Education Administrator Have When Working with Families to Resolve Disputes?

I found that all participants have complete discretion during PPT meetings and during the early stages of the dispute resolution process. I also found that as the dispute becomes ever more expensive, contentious, and/or public, six of eight participants reported less independent discretion and more collaborative decision-making with administrative teams. This finding is important because it highlights how the use of discretion is essential to the work of special education administrators who must comply with all state and federal special education guidelines while meeting the needs of students. Dispute resolution procedures grant parents due process rights when they disagree with the districts' offer of FAPE. When these disagreements occur, special education administrators use their discretion to resolve disputes. As mentioned earlier in my analysis, I define discretion as follows: "a) the decision maker's freedom to distinguish between two or more courses of action; and b) the freedom to decide whether through rules or one's judgment, to act or not to act" (Carrington, 2005, p.143).

Lipsky (2010) noted that public service workers have discretion when delivering goods and services to the public. Due to a finite amount of goods and services, public service workers use their discretion to meet demand by allocating limited resources and managing clientele (Weatherly & Lipsky, 1977). The authors conclude that discretion is necessary for those charged with delivering services to the public. My research supports this conclusion. I found that, faced with a limited amount of educational resources (e.g., money and time), special education administrators implement special education policy while attempting to meet the expectations of parents. This finding is important because it demonstrates how special education policy necessitates the use of discretion. For instance, students eligible for special education are entitled

to a free appropriate public education at no cost; however, special education administrators work within limited school budgets to meet the needs of students. For special education administrators, there are cost restrictions. Consequently, even when complying with state and federally mandated special education guidelines and regulations, special education administrators need discretion to program for students, meet the needs of parents, and avoid due process procedures. I will address the importance of this conclusion further under Research Question 4.

Research also shows that administrative actions to decrease policy ambiguity, such as clarity of guidance, influence a public service worker's use of discretion (May, Winter, & Sorenson, 2006). My research supports this finding. I found that six of eight participants' use of discretion decreased as administrative involvement, in the form of collaborative decision-making, increased. Interestingly, and distinct from previous research, participants reported that their administrative team encouraged them to use discretion to resolve disputes. Discretion's functionality appears to be due to policy ambiguity around the idea of FAPE. Most disputes occur due to disagreements about what constitutes an "appropriate" education (Zirkel, 2013; Wagner & Katsiyannis, 2010). Special education administrators need discretion to resolve disputes and to avoid due process hearings either before they occur or in the early stages of the dispute resolution process. As a result, discretion serves an important function for special education administrators. While not directly gleaned from the research, I infer that the increase in due process complaints appears to be influenced by the factors (e.g., cost, time, etc...), as well as the special education administrator's use of mediation to resolve disputes. .

Research Question 3: How do Special education Administrators Use Discretion in Response to the Risk of Due Process Hearings?

My findings show that special education administrators perceive due process hearings to be costly, time-consuming endeavors that damage relationships with parents. Furthermore, participants reported that the burden of proof and the perceived bias of IHOs position school districts at a disadvantage. I also found that special education administrators reported having “complete” discretion during the early stages of dispute resolution. In response to the factors mentioned above, I found that special education administrators use their discretion to avoid due process hearings by employing three discretionary strategies: (a) building relationships with parents, (b) negotiating compromises with parents, and (c) improving district programs. When these actions fail to address parent concerns, participants described settling disputes with families by making a calculated business decision, which I describe as a cost/benefit analysis.

My findings are supported by the research examining the use of discretion by public service workers. For instance, Fineman (1998) found that environmental agency inspectors used discretionary strategies, such as “persuasion” and “bluff,” to force clients to comply with environmental regulations. Fineman reported that participants used discretion in this way to avoid a criminal justice system they described as “laborious and fickle” (p.959). Similar to Fineman, I found that special education administrators adopted discretionary strategies to manage clients and to avoid a due process system they perceive as flawed. While Fineman stated that participants reported using their discretion to force compliance, participants in my study used discretionary strategies to build relationships with parents by meeting with them individually, by listening to their concerns, and by engaging them in decision making.

I also found that special education administrators responded to factors by negotiating compromises with parents to avoid due process procedures. Special education administrators use these discretionary practices in response to a policy viewed as “unfair” and “favoring the families.” This finding is important because it shows that special education administrators do not have faith in a policy that was designed to settle disputes equitably. As a result, deals are made to avoid a policy mechanism that is not trusted. These deals provide programming and services above what the district had deemed appropriate. This topic will be addressed below in the Implications section.

Additionally, my findings are in accord with those of Hehir (1990), who found that special education directors used discretion by “cutting deals” with parents to avoid due process disputes. He found that the factors of cost and unpredictable outcomes influenced their decision-making by making them more likely to agree with the parent’s requests.

Examined through the SLB framework, these findings demonstrate how participants appear to manage clientele through “client processing procedures.” Lipsky (2010) writes, “Interactions with clients are ordinarily structured so that street-level bureaucrats control their content, timing, and pace” (p.120). Similarly, special education administrators reported managing parent expectations through the strategies reported above. Failure to effectively manage parents through these strategies risks exposing the parent-district relationship to unpredictable due process procedures, which have been determined to be costly, time-consuming, and contentious. The strategies mentioned above are important in managing clientele and avoiding the loss of control associated with due process. Additional factors influencing the street-level bureaucrat’s discretion are the client’s access to resources and the structure of social service agencies (Lipsky, 2010).

Finally, participants reported that when negotiations between parents and the district reach an impasse, they undertake a cost/benefit analysis of the situation when negotiating an outcome. Lipsky (2010) wrote, “Public policy always requires consideration of the tradeoffs involved in providing additional resources for added benefits and incurring additional costs” (p.38). Viewed through the street-level bureaucracy framework, cost-benefit analyses arise when demand outpaces supply. In the case of due process, participants reported that the costs associated with potentially losing a hearing are greater than the benefits of winning a hearing. Since there is not enough money and time available to counter every due process request, and tolerance for the impact these hearings have on staff and parent relationships remains low, participants reported that they are more inclined to settle dispute with families in mediation.

Research Question 4: How do the Local District Factors of Socioeconomic Status and Administrative Support Shape the Administrator's Use of Discretion?

Socioeconomic status. I found that the socioeconomic status of parents shapes the special education administrator’s use of discretion. Participants reported that parents from higher socioeconomic backgrounds with access to financial and informational resources (i.e., knowledge of their special education rights and the available services) originate the majority of disputes, compelling special education administrators to settle in mediation. The data reveal that, in most circumstances, families use their resources to fund advocates and attorneys. By doing so, wealthier parents use the due process system to acquire their desired special education programming at a higher frequency than do parents of less wealthy children.

Three additional findings emerged when I compared high performing districts with low performing districts: (a) participants in higher performing districts reported feeling pressure from private special education schools; (b) participants in higher performing districts reported greater

parent involvement, and (c) lower income families in lower performing districts rely on free legal aid to compel districts to meet their demands. The SLB theoretical framework clarifies the socioeconomic contexts in which client-bureaucrat relationship changes and is important in the interpretation of my findings.

Lipsky (2010) writes that most clients of SLBs are dependent on the street-level bureaucrat to deliver services (e.g., food stamps). He refers to this relationship as “non-voluntary,” meaning that they cannot receive services from a different agent. Consequently, clients are beholden to the SLB for services. As a result, a power imbalance exists. These clients tend to be poor and encounter SLBs in isolation. However, the relationship changes when street-level bureaucrats confront wealthy clients who have access to resources and can seek assistance from professionals. These individuals have the option of seeking services from multiple sources (e.g., public versus private education). My findings appear to be commensurate with this framework, as participants reported that wealthy parents use their resources and organizing power to pressure special education administrators to meet their demands. See Figure 4 below.

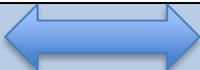
<u>Poor</u>		<u>Wealthy</u>
Non-Voluntary		Voluntary
Isolated		Organized
Underfunded		Funded
Free legal aid		Private Attorney

Figure 4. Characteristics of poor and wealthy clients.

My findings support the research that examined the relationship between socioeconomic status and due process procedures. For instance, research demonstrates that parents with financial resources are more likely to utilize the services of attorneys when compared to parents with low-to-moderate income (Opuda, 1997). Pasachoff (2011) reports that wealthier parents utilize due process procedures at higher levels than less privileged parents. These findings are important

because it implies that wealthy families take advantage of dispute resolution procedures at higher levels, thereby, receiving a greater portion of the available special education services. By investing their resources in attorneys and advocates and requesting mediation, wealthier families appear to force special education administrators to settle disputes in mediation. Whether the services students receive through mediated agreements are superior is debatable and discussed below in the Implications section.

Another factor found in high performing districts is the presence of private special education facilities. Participants reported that wealthier parents enlist attorneys and advocates who use the mediation process to secure funding for private placements. Participants believe that the educational programming provided is not superior to that which is offered in public school; yet, stakeholders reportedly believe it to be so. In response to the pressure from private schools, participants use discretion to build programs that can compete with the services they offer.

This finding supports the work of Hehir (1990) who reported that parents use due process to secure placement in private special education facilities. He also found that districts developed special education programs in response to private special education schools. This finding is important because it shows that special education administrators feel pressure to send students to special programs that may not provide superior services even though they have invested a great deal of resources into their own programs. This finding also exposes an inequitable distribution of services. My findings show that wealthy parents in high performing districts have access to superior services and use their social capital to secure additional resources. Several Supreme Court decisions have made it easier for parents to receive reimbursement for private school placement.

In *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass* (1985), the Supreme Court determined that a parent was entitled to receive reimbursement for private school placement if the LEA's offer of FAPE was not appropriate and the placement in the private school was appropriate under the act. Strengthening the Burlington decision, the *Florence v. Carter* decision concluded that private special education facilities do not have to be state-approved. Writing for the majority, Justice O'Connor penned that IDEA's state-approved language applies only to school districts that place a student in a private school as an offer of FAPE. However, when a student is denied FAPE, parents may place a child in a non-approved facility and receive reimbursement. Finally, the *Forest Grove School District v. T.A.* decision allowed the plaintiff to receive reimbursement for a private school placement even though the student did not receive services through the public school. These seminal Supreme Court cases appear to provide the legal basis for parents to seek reimbursement of private special education placements.

Another important finding suggests that parents in high performing districts reported a greater level of parent involvement. Participants discussed how parents attended workshops and after school meetings, and have high expectations for their students. While not overtly stated, participants implied that this level of involvement translated into more special education advocacy and more requests for due process. While parental involvement has been correlated with improved outcomes for students (McNeal, 1999; Fan & Williams, 2009), I found that parental involvement of affluent families also appears to be correlated with higher levels of due process requests. This finding is important because it suggests that special education directors in high performing districts will experience high levels of parental engagement and high levels of due process requests.

Finally, I found that participants in low performing districts receive complaints from parents represented by free legal aid rather than from private attorneys and advocates. Parents utilizing free legal aid generally ask for changes to existing programs and services. Consequently, participants are more likely to work with legal aid attorneys to resolve disputes without feeling the pressure of mediation. Participants also reported seeing an increase in the number of attorneys working with poor families. This finding offers insight into current research on the appropriateness of public versus private enforcement of legal statutes, which I discuss below.

Pasachoff (2011) argues that IDEA relies heavily on parents to ensure the school district offers FAPE. Relying on this enforcement mechanism leads to a disparity in the allocation of resources, as wealthier parents use due process procedures at higher frequencies than poor families. Responding to this trend, researchers have argued for increased free legal assistance for poor families to redistribute services to poor families (Hyman, Rivkin, & Rosenbaum, 2011). My finding is relevant because it demonstrates how wealthy families take advantage of the policy mechanism of due process procedures to secure desired programming. Conversely, by using legal aid and filing less due process complaints, poor families appear to avail themselves to fewer services. The increase in legal aid attorneys at PPT meetings might be an attempt to distribute special education services equitably. While this may be true, it is important to consider that when a parent files a due process request, it does not mean that a district's offer of FAPE is not appropriate; rather, it indicates the family disagrees with the district's offer. Special education administrators work to comply with state and federal guidelines that stipulate IDEA requirements. As discussed earlier, participants in high performing districts reported the highest frequency of due process complaints. We should not assume that these complaints are due to a

violation of FAPE; rather, I believe this phenomenon is due to the accretion of wealth and resources in certain families. It appears that social service agencies recognize this fact and seek to balance this discrepancy by making free legal aid available to lower income families.

Administrative support. I found that collaborative, trusting administrative teams support the participants' use of discretion. Participants unanimously reported that their administrative team engendered feelings of trust, as well as a spirit of collaboration, that supported decision-making and their use of discretion. Two participants, each with over 20 years of experience in their respective district, report less reliance on their administrative team.

Summey (2017) examined the institutional arrangements that support the work of special education administrators. One important finding is that collaboration and trust are essential factors that support their work. Summey found that special education administrators reported "ease of access" when describing their relationships with administration. My findings concur with those of Summey in this regard. I found that, for six of the eight participants interviewed, collaboration and trust are essential in supporting the special education administrators' use of discretion. I found this to be an interesting divergence from the literature, which examines how administrative control seeks to limit the street-level bureaucrats' use of discretion (Taylor, 2007; Anagnostopoulos, 2003). In contrast, participants reported that cabinet-level school administrators trust their decision-making and expect them to use discretionary strategies when working with the public.

Limitations

This study examines the decision-making practices of special education administrators working within districts that serve students from different socio-economic backgrounds. This research is limited to the experience of a small purposive sample of special education

administrators working in the State of Connecticut; therefore, it is not easily generalizable.

Additionally, the results cannot support causal relationships as my research relies on the opinions and experience of special education administrators.

While my literature review informed my research questions and research design, my experience as a special education director in Connecticut also influenced this study. For instance, conversations with other special education directors helped me identify certain factors as important areas of study. While my experience as a special education director corresponded with the patterns and themes uncovered by my research, I reported only the data uncovered by the research. To maintain objectivity, I strictly followed my research protocol throughout this study.

Another limitation is that this research does not examine due process proceedings from the perspective of the parent; thus, I did not study an important viewpoint. Finally, this research focuses on the factors and district contexts that influences decision-making. It does not examine the inter- and intra-personal factors that influence the decision-making of special education administrators.

Implications

Policy

Connecticut legislators should consider that special education administrators may lack faith in the due process system. My findings revealed that participants do not believe due process hearings are an efficacious method for resolving disputes. Due to this perception, participants reported settling disputes in mediation. Based on my findings, more administrators might use the due process system if policy makers reduced ambiguity surrounding the definition of FAPE. As indicated in the my literature review, special education directors are responsible for developing IEPs that comply with all state and federal guidelines; yet, even when ensuring these guidelines

have been met, participants reported feeling uncertain about the outcomes of a due process hearing.

Another point policy makers should consider is limiting the number of days a hearing may last. This might have the effect of reducing the cost and time commitment for a hearing, thus, making it more likely for a district to use due process hearings to resolve disputes.

Additionally, policy makers should consider allowing mediators or an impartial arbiter to provide guidance to the IHO concerning the merits of the case. This might motivate participants to make sincere efforts to arrive at an agreement, rather than using mediation and the threat of due process to compel a district to settle.

Finally, policy makers should examine how the burden of proof motivates special education administrators to settle due process requests in mediation. Given that the majority of due process requests originate with wealthier parents in high performing districts, legislators should consider if this is a necessary provision. My findings indicate that participants view wealthier families as the primary beneficiaries of this policy; however, this does not seem to be caused by inadequate services, as the majority of due process requests originate in affluent, high-performing districts. Connecticut might expand the availability of free legal services to lower income families to ensure that financial resources do not limit access to due process relief, but I fear that this would exacerbate the problem by increasing the legal and administrative costs associated with due process.

Practice

My research indicated that participants use discretion to build relationships with parents and negotiate compromises. Working with families to resolve conflict is a vital function of the special education administrator. Administrative training programs should use the results of my

research to ensure that future administrators receive adequate training in the areas of conflict resolution and negotiation.

My research revealed that participants value the support of colleagues. While experience appeared to shape the level of support participant's value, school districts should consider how their administrative teams support the decision-making of special education administrators. School district leaders should ensure that administrative teams establish collaborative relationships to support special education administrators.

Research

My research examined five factors that influence decision-making practices of special education administrators. Participants reported they often agree to provide disputed services and programming, through the mediation process, in order to avoid due process hearings. Data from the State Department of Education website illustrate the extent to which school districts settle in mediation. According to the website⁵, in 2015 there were 245 hearing decisions. Of the 245 hearing decisions, only seven were fully adjudicated, indicating that almost 97% of due process requests were settled at some point before a fully adjudicated hearing. Future researchers should explore how utilizing mediation in response to due process requests might drive up special education expenditures by setting precedent, thus encouraging other families to use due process procedures to obtain desired services. More research is needed to examine the association between mediated settlements and special education expenditures.

Researchers should also examine long-term outcomes for students placed in private special education facilities. This is important because of the financial resources required to place

⁵ Data obtained from the Connecticut State department of Education website:
<http://portal.ct.gov/SDE/Special-Education/Special-Education-Hearing-Decisions/2014-2015>

students at these schools. Stakeholders should know whether student outcomes are significantly better than the outcomes for students educated in public special education programs.

I also suggest researching the interpersonal and intrapersonal factors of special education administrators – such as, reflective listening and mindset – to determine if these factors contribute to the administrator’s positive or negative perceptions of due process hearings and/or parent-district relationships. College and university administrative programs should consider explicit training in negotiation and interpersonal communication. My research indicates that special education administrators need these skills to resolve disputes with families.

Finally, the *Andrew F. v. Douglas County School District* decision appears to raise the threshold for establishing FAPE. Researchers should examine the extent to which this ruling helps to clarify the general understanding of FAPE and the impact this decision has on IEP development and implementation. It is unknown how this ruling will affect future court cases, especially for high-performing districts with a high numbers of due process hearings.

In summary, my research adds a voice to the limited research examining the decision-making practices of special education administrators. I found the special education administrators who participated in this study have unique job responsibilities that include more than simply complying with special education law: They act as street-level bureaucrats distributing finite resources to the public. Working within a limited budget, they exercise their decision-making powers to comply with special education legal mandates while providing free appropriate public education services, at no cost, to families. Adding complexity to their decision-making, court cases have made it easier for parents to seek reimbursement for private school placements. Furthermore, participating special education administrators view the burden of proof as creating an imbalance in favor of families seeking private school placements.

In response to these circumstances, participants reported developing common strategies that help them to avoid the unpredictability of a due process hearing. These strategies appear to have become part of a de facto policy that is much more than mere compliance with regulations; rather, it is a fluid policy of negotiation, compromise and relationship building, one that is shaped by ambiguous legal standards, socioeconomic factors, and limited resources. This topic is important because the decision-making of special education administrators has a direct effect on student programming and parent satisfaction. These decisions also affect the budgetary expenditures of school districts at a time when school districts feel public pressure to reduce expenditures.

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Appendix A

Vignette

Jim Leonard is a director of special education in a large suburban 9-12 high school district. The superintendent informs Jim that Larry Barnes, the parent of an 8th grade student in neighboring Lincoln K-8 elementary school, requests a meeting with him to discuss the needs of his son who will attend high school next year. At the meeting, Jim learns that Mr. Barnes has asked the district to hire a one-to-one teacher, a one-to-one aide, and a private group of related service providers to work with his son. At the meeting, Mr. Barnes stated, "I will do anything for my son. I am determined, thorough, and will utilize my attorney should you choose to ignore my request." Mr. Barnes tells Jim that he has filed five due process hearing requests over the last six years and has an attorney on retainer.

After the meeting, the superintendent reminds Jim of a case from several years ago when the district lost a due process hearing that resulted in a student's residential placement in a facility out of state. The superintendent recounted:

What made this particular case unique was that, several years earlier, the family lost in due process on the same issue. The previous ruling motivated us to work hard to hire and train staff and to meet the needs of their child. We believed that if we followed the same IEP and offered the same program as that offered in the last district, then we would win the case. We were wrong. The new hearing officer ruled in favor of the family. The loss of this case had been devastating for the team. Twenty days of contentious testimony had damaged the relationship between the family and the school district. We felt very confident that appropriate services and supports were in place. After losing the hearing, the district had to

Appendix A (continued)

Vignette

pay the parent's attorney's fees on top of the tuition, which was over \$200,000 per year.

After the conversation, Jim decided to call Lincoln's director of special education to learn about this student and his family. The director told Jim that Mr. Barnes sought out specialists from all over the country to work with his son. Specialists in the area counseling, physical therapy, occupational therapy, and speech therapy worked with him both in and out of the school setting. When he entered kindergarten, Mr. Barnes sued the district because it did not have the services and supports he demanded. The district did not agree with the need for this level of service so he filed a due process request and petitioned Lincoln's school board for the services. Furthermore, Larry's attorney had a reputation among school personnel for being extremely confrontational and was not inclined to settle for anything less than what his client demanded.

Vignette QuestionsQuestions:

- 1) What are the main issues facing Jim and the superintendent?
- 2) How might these issues influence Jim's decision making?
- 3) What administrative structures would help or hinder Jim's ability to navigate this situation?
- 4) How should the district resolve this situation?
- 5) Discuss how the case study highlights strengths and/or weaknesses in special education law and the due process rights afforded to students and families.

Appendix B

Interview Protocol

Interview Protocol:
The Special Education Administrator's
Experience with Due Process Proceedings

<u>Time of Interview:</u>	
<u>Date:</u>	
<u>Place:</u>	
<u>Interviewer:</u>	
<u>Interviewee:</u>	
<u>Position of Interviewee:</u>	

Project Description

The purpose of this qualitative cross-case study is to learn more about the experience of individuals charged with the supervision of special education programs who have participated in dispute resolution proceedings. Participants for this study were chosen based on two criteria: a) Participants have experience with the research question, and b) Participants are responsible for making fiscal decisions regarding the placement and programming of students receiving IEP services. Participants have consented to one 20-minute phone interview, one 30-minute in-person interview and one 60-minute in-person interview. For the second interview, the researcher will ask each participant to respond to a vignette. The third interview asks participants to respond to fourteen open-ended questions utilizing a standardized format. Notes will be taken throughout. Each interview will be digitally recorded in a distraction-free environment that is comfortable for the participant. After the interviews have been completed, the researcher will conduct a cross-

Appendix B (continued)

Interview Protocol

case analysis of the data by noting patterns or themes and coding these as they emerge. All responses will be kept confidential.

Phone Interview Questions

1. Tell me about your educational background.
2. Tell me about your work history.
3. Tell me about your motivation to enter the field of special education.
4. What training or past experience have helped you become an effective special education administrator?
5. Tell me about your current responsibilities.
6. Tell me about the families and students in your district.

In-Person Interview Questions

1. Tell me about the PPT process. How do families and the school develop the IEP?
2. What happens when there are disagreements during the process and things don't work out?
3. It is important for me to understand your unique perspective. Take me through the decision-making process involved with two due process hearings that you have experienced.
 - a. How did the situation begin?
 - b. Who was involved?
 - c. Please discuss your thinking around the following:
 - i. Was there a resolution meeting?
 - ii. Was there a mediation?
 - d. When it came time to the due process hearing, please discuss the factors that influenced your decision making.

Appendix B (continued)

Interview Protocol

- e. Did this case have an effect on your current decision-making? Explain.
4. I am going to read a two-part definition of the word "discretion:" a) the decision maker's freedom to distinguish between two or more courses of action; and b) the freedom to decide whether through rules or one's judgment, to act or not to act.
 - a. How much discretion do you have while dispensing with the responsibilities of your job?
 - b. How have you used discretion to resolve disputes at contentious PPT meetings?
 - c. How have you used discretion to resolve disputes during dispute resolution procedures?
5. Does the burden of proof influence your decision making? Explain.
6. Does the Independent Hearing Officer assigned to your case influence your decision making? Explain.
7. Tell me about the resources that are required to engage in a due process hearing?
 - a. How much time is involved for you?
 - b. How much time is involved for staff?
 - c. How much do they cost?
 - d. How do these factors influence your decision-making?
8. Tell me about the effect due process procedures have on the following:
 - a. Relationships with parents?
 - b. Relationships with staff?
 - c. Educational outcomes for the student?
 - d. Educational programming for other special education students in your district?
 - e. How do these outcomes influence your decision-making?
9. Tell me about the administrative structure of your district.

Appendix B (continued)

Interview Protocol

- a. Is there a chain of command? Explain.
 - b. Do you have regular meetings about special education issues?
 - i. What do they look like?
 - ii. Who attends?
 - iii. How do these meetings influence your decision making?
 - iv. At what point during dispute resolution proceedings is an attorney consulted?
 - c. Is there a protocol that you follow when working with families during disputes?
 - d. Within this administrative structure, how much discretion do you have to make decisions?
10. Tell me about the families in your district. Are there characteristics, such as education, socioeconomic status, and/or community connections that influence your decision making?
11. If applicable, please discuss the similarities and differences between your current position and your experience working in another district.
12. Is due process effective at resolving disputes? Explain.
13. What changes would you make to due process procedures?
14. Thank you for your participation. Is there anything else you would like to say about your experience with dispute resolution procedures?