From the Courtroom to the Classroom

SPECIAL EDUCATION DISPUTES IN THE POST-*ENDREW* ERA

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Special education in American K–12 public schools is an intricate network of accommodations and services designed to meet the needs of students with disabilities that cannot be met in a traditional classroom setting. The body of statutes governing special education has developed over decades of legislation and litigation and currently regulates the administration of services for millions of students nationwide. However, one recent Supreme Court case regarding the level of benefit that special education services must confer on students could drastically shift the way schools and lawmakers alike interpret these statutes.

In this report, I analyze the adjudication of special education disputes in the District of Columbia in light of the 2017 *Endrew F. v. Douglas County School District* decision. I begin with a brief discussion of relevant special education legislation and an overview of how these laws directly affect students, families, and schools. I then examine the effect of the *Endrew* verdict on one urban school district, DC Public Schools, by analyzing relevant hearing documents from formal special education disputes adjudicated over the past five years.

Legislative Background

Children with disabilities have been a historically neglected student demographic in public schools nationwide. Before the 1960s, there were virtually no legal mandates to monitor the quality of education these students were entitled to receive or ensure that they even attended school. To make public education more accessible to these students, Congress began creating educational programs and financing local initiatives to help schools better integrate students with disabilities into the traditional classroom setting. Eventually, the Education for All Handicapped Children Act (EHA) was adopted in 1975 to create incentives for America's public schools to improve the educational experiences of students with disabilities.

While the EHA was not the first federal measure created to support students with disabilities, it is one of the most significant special education laws to date because it was the first piece of legislation to outline schools' substantive and procedural obligations to these students. The EHA also created the framework for federal block grants that is still used today to fund special education at the district and state levels.[1] This financial support ensures that schools receive necessary funding for implementing special education programs while incentivizing them to comply with federal regulations.

Additionally, the EHA developed procedural safeguards for students and their families so that schools were no longer able to make unilateral decisions about a child's education without parental input. This is due to a provision in the act that guarantees students with

disabilities the right to a "free appropriate public education" (FAPE).[2]

When the EHA was reauthorized in 1990, it was renamed the Individuals with Disabilities Education Act (IDEA) and revised to further expand legal protections for students with disabilities.[3] The IDEA was reauthorized in 2004 and is the current overarching statute regulating special education. While both the EHA and the IDEA were subject to a number of revisions in their day, the FAPE provision has remained constant in every subsequent reiteration of the law and is at the heart of special education policy debates and disputes today.

Special Education and Students

To understand the impact of these laws, we must first examine how special education services are implemented and which parties are involved in this process. For a child to receive special education services through their school, they must first be referred for such services and qualify for eligibility under one of the IDEA's 13 disability categories.[4] This referral process may be initiated by a medical professional who alerts the child's parents to a physical or cognitive impairment that will impede the child's academic performance. Teachers may also begin this referral process if a child in their classroom is suspected of having a disability. Referrals are submitted to a school's special education team, in which a group of staff members review the referral and determine which, if any, evaluations are necessary to assess the student's need for special education.

Once a student is deemed eligible for special education under a respective IDEA category, their school will create an Individualized Education Program (IEP). The IEP is a legally binding document detailing how the student's disability impedes their education and what the school will do to help the student progress in light of their circumstances. The IEP essentially serves as a contract between families and schools, outlining any additional services the student will receive and how staff will monitor these services to ensure the student is actually benefiting from their IEP. Because each student has a unique set of needs and circumstances, the IEP creation process rigorously examines the student's current academic standing within the context of their disability. Parents, teachers, medical experts, and legal representatives all play a vital role in crafting IEPs that allow students with disabilities to receive FAPEs.

Special education services are adaptable by nature, which is why IEP prescriptions correspond to a continuum of services rather than a rigid, uniform curriculum. Students change as they progress throughout their education, and their IEPs change with them, adjusting to meet new needs or better complement their academic abilities. For this reason, the IDEA requires schools to reevaluate an IEP at least once every three years to ensure it is still appropriate. Additionally, families or school officials can request new evaluations or IEP meetings at any point during the school year if they believe a child no longer benefits from the services enumerated in their IEP. Requesting evaluations outside of the triennial reevaluation or supplementary amendments to the IEP does not necessarily oblige a school to fulfill these requests; however, the school's special education team is required to review all requests presented to it and consider whether the proposed changes are necessary and appropriate for the student.

IEPs significantly shape students' academic and social development, and the IDEA requires families and schools to work together when developing this document so parents can meaningfully participate in their child's education. Because the meaning of an "appropriate" education is vague, it is not uncommon for parents and school officials to disagree over an IEP. For this reason, the IDEA includes dispute resolution mechanisms to alleviate potential conflicts and preserve good relationships between families and schools. If informal efforts to mitigate conflict are unsuccessful, or if parents still believe a school has failed to maintain its obligations to their student under the IDEA, they may use any formal dispute resolution mechanism to reach an agreement. The most intensive of these is the due process hearing.

Due process hearings are the most adversarial form of dispute resolution available through the IDEA and function similarly to a court proceeding. If an issue cannot be resolved through meetings between schools and families or in mediation with other special education experts, parents can file a due process complaint through their state or local education agency. This results in a formal hearing in which an impartial hearing officer, not affiliated with the school district, will adjudicate the matter at hand.

While both families and school districts can levy due process complaints against one another, families more often act as the petitioner in these proceedings. This report addresses due process hearings in which parents or guardians act as petitioners, bringing complaints against a responding school district.

During a due process hearing, both parties may employ legal counsel to represent them and call witnesses to testify to different aspects of the IEP. Additionally, special education teachers and mental health practitioners often serve as witnesses in due process hearings because they can provide an expert opinion about an IEP or evaluation or speak to the effects of a student's disability on their education.

After the hearing concludes, the hearing officer will release a determination that includes a resolution of the issues in question and an order for restitution if any is required. Hearing officers may order a school to provide a student with compensatory educational services, fund new professional evaluations of the student, or reimburse parents for costs incurred in seeking a private educational placement that better preserved their child's right to a FAPE.

If the petitioner still feels their complaint has not been adequately resolved, they can file additional due process complaints that will result in further hearings, or they can appeal the hearing officer's determination to the court system. Many special education disputes that could not be sufficiently resolved in hearing have been appealed to the courts, which has created a body of local and district precedents that are often cited by hearing officers in subsequent due process hearings.

Relevant Court Cases

Two special education disputes have been heard before the Supreme Court, creating authoritative precedents that guide educators and legal advocates during the IEP creation process. The standards established by these cases have shaped how the IDEA's FAPE provision has been interpreted, giving weight and meaning to what exactly constitutes a FAPE.

Rowley. During the early years of federally mandated special education, Congress was hesitant to clarify just what was required of schools when providing an "appropriate" education to their students with disabilities. As a result, interpreting the FAPE standard was left to the discretion of local school districts and eventually the lower courts, producing a significant variation in standards of rigor for special education programs across the country. Disputes over the quality of education available to students with disabilities intensified, and the Supreme Court heard its first case regarding the FAPE provision in 1982 in *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*.

Amy Rowley, a deaf first grade student, received special education services at her local public elementary school. Rowley's IEP provided her with an FM hearing aid and specialized instruction from a tutor and speech language pathologist for part of the school day. While Rowley was a bright student and consistently performed at or above the level of her nondisabled peers, her parents asserted that she required a full-time sign language interpreter to allow her to succeed fully in the classroom.

Rowley's school district had previously provided her with an interpreter for a short time but determined that the interpreter was of little benefit because Rowley could usually read lips. Her parents disagreed, claiming her in-class performance would improve with a full-time interpreter. It should be noted that providing the full-time interpreter for Rowley would have been a significant expense for the school and that the eight hours of specialized instruction per week that Rowley was already receiving were

at a much lower cost for arguably similar educational benefits. Therefore, the issue at hand was the extent of educational benefit that Rowley's district was obligated to provide for her, according to federal special education legislation.

After presenting this issue in a due process hearing and receiving a determination siding with the school district, Rowley's parents appealed the hearing officer's determination to the New York district and appellate courts. The case eventually reached the Supreme Court and was heard in March 1982. The problem at hand for the Court was to determine what exactly a FAPE required of schools under the IDEA. In a 6–3 decision delivered by Justice William Rehnquist, the Court sided with the Hendrick Hudson Central School District, affirming that the school need not provide Rowley with an interpreter beyond the services she was already receiving. According to the Court, the FAPE requirement of the IDEA had to allow for students to obtain educational benefit from their IEP but did not set a standard for the maximum level of benefit that schools were obligated to confer upon students with disabilities. Per Justice Rehnquist in the majority opinion, it was not in the language of the IDEA that states must "maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children."[5]

In the years following *Rowley*, a number of other special education disputes arose that required further adjudication, many being tried by the circuit courts. In reviewing these disputes, some courts instituted a standard of educational benefit demonstrably higher than that set forth in *Rowley*, but many sided with *Rowley*'s de minimis standard.[6] This states that while all public schools are required to provide students with disabilities a FAPE, they are not required to provide those students with more than some minimal level of educational benefit. While the justices in *Rowley* declined to impose a maximum standard of benefit that IEPs must provide students, interpreting the IDEA's language as a de minimis standard of benefit seemed to require that schools do little to ensure that students with disabilities progressed at all in the educational setting.

Endrew. As FAPE questions became more common at the circuit court level, the Supreme Court heard its second special education case—*Endrew F. v. Douglas County School District*—in 2017.

Endrew was a fifth grade student who received special education services at his local public school. As a student with autism, Endrew struggled in the general education setting prescribed by his IEP. Endrew's parents believed his IEP did not suitably provide him with an appropriate level of educational benefit and was thus denying him his right to a FAPE. They decided to transfer their son to a private school that specialized in educating students with autism and paid for his tuition out of pocket.

When Endrew began improving in his new academic environment, his parents filed a due process complaint seeking reimbursement for his tuition, asserting that his IEP had failed to provide a placement that allowed him to make adequate educational progress. After their initial claim was denied in a due process hearing, this case rose to the district and Tenth Circuit Court of Appeals and was eventually accepted by the Supreme Court.

The question before the Court in *Endrew* expressly concerned the minimal standard of educational benefit that schools must provide through special education services. Endrew was making meager educational progress in the public school setting, and revising his IEP to prescribe a private placement specializing in educating students with autism was well within the school district's power. However, the implication of *Rowley* was that as long as Endrew showed at least some progress in the classroom, nothing in the law required his school district to revise his IEP or find him a more appropriate educational placement.

In a unanimous decision delivered by Chief Justice John Roberts, the Court ruled that the educational benefit standard set forth by *Rowley* was insufficient, stating that a student's IEP must instead be crafted in a way that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[7] While the *Endrew* decision followed *Rowley* in acknowledging that it was not within the jurisdiction of the Court or Congress to determine what maximum educational benefit schools must

confer on students with disabilities, this rejection of *Rowley*'s de minimis standard was widely acknowledged to have raised the bar for special education nationwide.[8] According to the decision, "a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. . . . The IDEA demands more."[9] If this decision improved the standard of educational benefit that schools must provide students with disabilities, as the verdict suggests and education researchers speculate, this shift ought to be reflected in every aspect of IEP creation and implementation, including due process hearing adjudication.

National Due Process Hearing Trends

Fully adjudicated due process hearings are rare for most school districts, and the majority of due process complaints filed each year will be resolved before a hearing through mediation. Nationally, fully adjudicated hearings are conducted at a rate of 2.6 hearings per 10,000 children age 3–21.[10] However, the decisions that result from these hearings, by shaping the standards used in IEP formation and implementation, affect the nearly 14 percent of all public school students who use some form of special education service.[11]

All 50 states and the District of Columbia have education agencies that employ impartial hearing officers to conduct due process hearings. The distribution of due process hearings varies greatly across the country, and only a handful of states are responsible for the majority of hearings that are fully adjudicated in a given year. During a five-year analysis of all due process hearings conducted in the United States from 2011 to 2016, five states—California, Massachusetts, New Jersey, New York, and Pennsylvania—and the District of Columbia accounted for 90 percent of all hearings.[12]

In fact, DC consistently adjudicates more due process hearings than any other state does, despite having a public school student population of fewer than 100,000 students.[13] The percentage of DC public school students receiving special education services mirrors that of other school districts across the nation, but DC still adjudicates hundreds of hearings each year, at a rate of 47.5 hearings per 10,000 children during the 2018–19 school year.[14]

Longitudinal studies of DC's due process hearings are notably lacking from the literature, and there have been relatively few studies conducted in recent years to examine due process hearing outcomes in larger states.[15] The few studies that have been conducted provide researchers with valuable aggregate data on the status of special education dispute resolution in a number of school districts.

One due process study conducted in 2015 on Texas' public schools found that school districts prevailed at a rate of nearly 79 percent on issues raised at hearings, while parents prevailed on nearly 18 percent of issues, and 3 percent of issues resulted in split decisions partially favoring both parties.[16] When attorney representation was taken into account, parents represented by counsel prevailed on 34 percent of issues, and those without representation on only 12.5 percent of issues.[17] A similarly structured study of due process hearings in Pennsylvania's public schools conducted from 2008 to 2013 found parents and schools to prevail at much more equal rates of 49.2 and 48.2 percent, respectively; however, parents' success fell to 16.3 percent when they were not represented by legal counsel.[18]

Another study of due process hearings conducted from 2006 to 2013 on Massachusetts' public schools also found that districts are more likely to prevail at hearings than parents are, and more so when parents are not represented by counsel.[19] The Massachusetts analysis is one of the most comprehensive studies of its kind and is a unique addition to the existing literature because this analysis also cataloged the types of issues raised at hearings and the rates at which schools and families prevailed on specific issues. Additionally, this study recorded several characteristics of the students involved in these hearings that had previously gone unexamined, such as grade level, educational program placement, and IDEA disability classification. During this eight-year period, the most common issues raised at hearings were those directly related to the substantive provisions of the IDEA, such as IEP development and student placements,

which together accounted for over half of all issues adjudicated at hearings. However, parents prevailed on only 26 percent of IEP-related issues. Note that this study was conducted before the *Endrew* verdict, meaning that these hearing determinations do not account for any revised standard of benefit that could have been established because of the Court's verdict in 2017.

While this study portrays only due process outcomes in Massachusetts over one period, the analysis is incredibly valuable because it highlights the components of special education that are most contentious and therefore most costly at hearing. On average, due process hearings cost school districts about $10,500 per hearing, and this cost nearly doubles if schools are later ordered to reimburse parents for their cost of counsel.[20] Furthermore, these costs do not include any restitution ordered at hearing, such as compensation for a private placement, authorization to obtain additional evaluations, or compensatory education to make up for any hours of academic instruction lost.

In addition to the financial burden of hearings, due process hearings can significantly strain relationships between families and school staff. Settling issues before they require adjudication can save both parties a great deal of time, money, and emotional distress. Further study of the issues raised at hearings can provide researchers with a more comprehensive picture of the special education landscape of a respective district and areas in which special education practitioners need to ensure they are fulfilling their IDEA obligations.

This report analyzes due process hearing outcomes in DC from 2015 to 2019 to provide a portrait of current special education dispute resolution in DC and determine whether the *Endrew* verdict has significantly affected the rate at which parents prevail on issues at hearing. If *Endrew* has truly raised the bar for school districts, this would be reflected in due process hearing outcomes, presumably with more rulings in favor of families seeking a more exhaustive program of services from their child's IEP. There would also likely be more issues explicitly relating to IEPs, placements, and related services raised at hearings, as these are the aspects of special education directly relating to the level of educational benefit a student receives from their FAPE.

Methods

The data analyzed in this report were collected from all publicly available hearing officer determinations posted by DC's Office of the State Superintendent of Education (OSSE).[21] These decisions are available online through the OSSE's Office of Dispute Resolution website. Beginning in January 2015, cases from the 27 months preceding and following the March 2017 *Endrew* verdict were downloaded to a database and coded on a number of factors. Only hearing officer determinations that resulted in a fully adjudicated hearing, listed a parent or guardian as the petitioner, and listed District of Columbia Public Schools or a DC public charter school as a respondent were considered for this report. Final determinations were then coded for the student's primary disability category, the number of issues presented at hearing, the types of issues presented at hearing, and the hearing officer's decision on each issue.

This report did not consider parents' legal representation as a variable because the vast majority of petitioners in these hearings had legal representation. DC employs full-time impartial hearing officers to adjudicate these hearings, and there were six different hearing officers during the period examined.

As an independent researcher, I could not establish a measure of intercoder reliability of my codebook with a group of fellow researchers. Rather than creating an original objective codebook for this dataset, I used the same coding scheme as the Massachusetts researchers did in 2015 to combat any potential inconsistencies in objectivity.[22] I added some slight modifications to tailor the codebook to DC Public Schools, which are recorded below in italics. Issues presented at hearing were coded as follows:

- **Evaluation.** "Evaluation process[es] and procedures for determining areas of need and potential services, including independent education

evaluations and the selection/qualifications of evaluators."

- **Extended School Year Services.** "Special education and related services provided to eligible students beyond the typical 10-month academic year."

- **Identification.** "Eligibility determination for special education services," *including Child Find claims.*

- **IEP.** "Components and development of the IEP, commonly examined to determine the extent to which the IEP was calculated to provide a free appropriate public education in the least restrictive environment."

- **Placement.** "Location of special education services for a student, including services provided in general education settings and specialized settings that will provide the student access to the general education environment to the appropriate extent; includes unilateral placement of student by parent" *and appropriateness of the least restrictive environment.*

- **Procedural Safeguards.** "Procedural protections afforded to students, parents, and schools through federal and state special education laws and regulations; included timelines, parental consent, and [*prior*] written notices," *along with classroom observations of students by educational advocates.*

- **Related Services.** "Developmental, rehabilitative, corrective, and supportive services that are necessary to assist a student in accessing and benefiting from special and general education services; included specialized transportation, occupational therapy, physical therapy, and orientation and mobility services," *along with dedicated aides and compensatory education decisions.*

- **Suspension or Expulsion.** "Removal of a student from the agreed-upon placement due to disciplinary actions; included both in-school and out-of-school suspensions" *and manifestation determination reviews. This did not include issues involving juvenile and adult corrections facilities.*

- **Transition.** "Practices and procedures related to transition planning for secondary students to assist in developing the knowledge, skills, and strategies for accessing and benefiting from post-secondary opportunities such a[s] college, employment, independent living, and community participation."

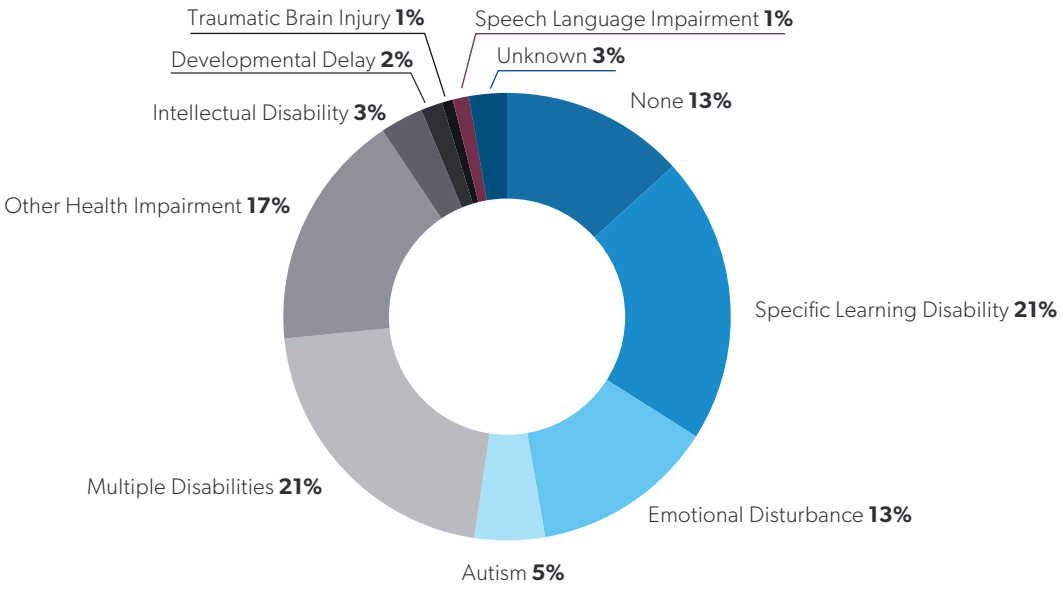
- ***IEP Implementation.*** *Fulfillment of the type and amount of services listed in the IEP.*

- ***Compliance.*** *Compliance with past hearing officer determinations or previous court orders.*

All issues were recorded and coded into a single spreadsheet with their corresponding case number and other identifying information. Issues were then coded for the hearing officer's ruling: either in favor of the petitioner, against the petitioner, or a split decision favoring both petitioner and respondent. Although hearing officers list each issue presented at hearing in their final determination document, they may break longer or more complex issues into sub-issues when writing this determination. Issues were coded as hearing officers interpreted them, so sub-issues that the officer addressed separately were counted as independent issues altogether. Issues in which rulings favored both the school and family and could not be divided into separate sub-issues were coded as split decisions.

In addition to analyzing the descriptive statistics that this dataset yielded, I conducted a difference in means regression analysis using Stata software to determine if the data pre- and post-*Endrew* yielded any statistically significant differences in the rates that either parents or school districts prevailed at hearing.

Figure 1. Primary IDEA Disability Category of Students Pre-*Endrew*



Source: Author's research.

Findings

Of the individual documents available through the OSSE for the 27 months preceding and following *Endrew*, 513 were viable for this study. In the pre-*Endrew* era from January 2015 to March 2017, DC adjudicated 256 due process hearings, with 860 individual issues raised at hearing. In the post-*Endrew* era from April 2017 to June 2019, 257 due process hearings were adjudicated, resulting in 804 individual issues raised at hearings. The most common primary disability categories of students at hearings were multiple disabilities and the specific learning disability category as defined by the IDEA. Figures 1 and 2 represent the primary disability categories of students at hearings.

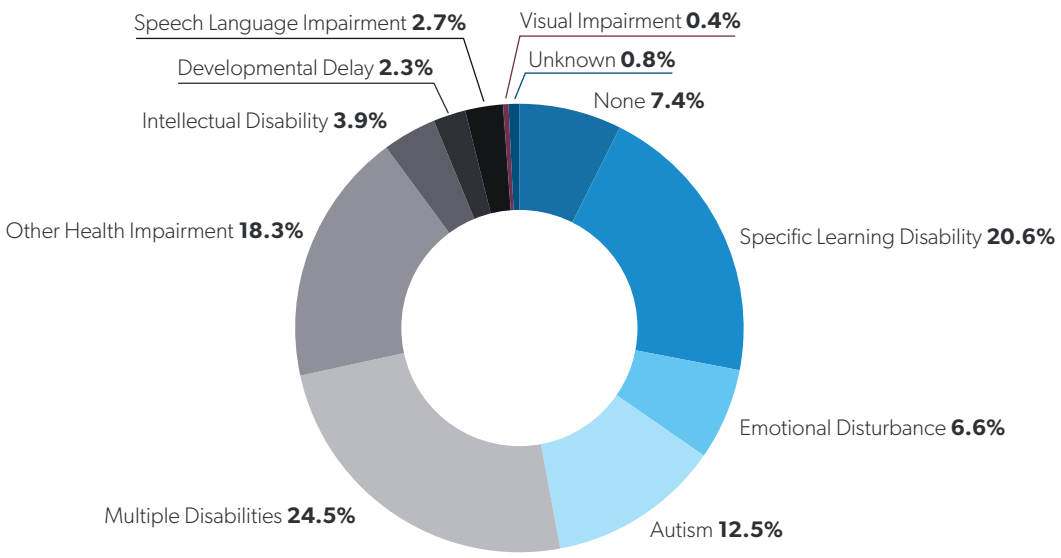
While rates of respective disability categories represented at hearings remained largely uniform between the pre- and post-*Endrew* groups, there was a slight increase in the number of students with autism spectrum disorder represented at hearings in the post-*Endrew* years.

Table 1 reflects the frequency at which each type of issue was presented at hearings. Issues relating to students' IEPs, placements, and evaluations were the most commonly raised at hearings, comprising more than 65 percent of all issues raised at hearings. Issues of compliance and extended school year services were the most infrequent at hearings.

The Stata analysis revealed no statistically significant difference in means between pre- and post-*Endrew* due process hearings. Before the *Endrew* decision, on average, the likelihood that a petitioner would prevail against the school district was 49.8 percent (±2.6). After the *Endrew* decision, the likelihood the petitioner prevailed decreased to 47.8 percent (±2.5).

A closer examination of the rates at which schools and families prevailed on each issue type is provided in Tables 2 and 3. There was little variation in rates of parents prevailing at hearings for IEPs and evaluation between the pre- and post-*Endrew* groups. In the post-*Endrew* months, the rate at which schools prevailed on issues of student placement increased nearly 15 percent. Across the data, families are noticeably more likely to prevail on issues of disciplinary infractions than schools are.

Figure 2. Primary IDEA Disability Category of Students Post-*Endrew*



Source: Author's research.

Table 1. Issues Raised in Due Process Hearings

Issues	Total Number (Percentage)	Pre-*Endrew*	Post-*Endrew*
Evaluation	303 (18.2)	156 (18.1)	147 (18.3)
Extended School Year Services	12 (0.7)	4 (0.5)	8 (1.0)
Identification	70 (4.2)	42 (4.9)	28 (3.5)
IEP	469 (28.2)	223 (25.9)	246 (30.6)
Placement	316 (19.0)	168 (19.5)	148 (18.4)
Procedural Safeguards	243 (14.6)	130 (15.1)	113 (14.1)
Related Services	39 (2.3)	19 (2.2)	20 (2.5)
Disciplinary	59 (3.5)	31 (3.6)	28 (3.5)
Transition	12 (0.7)	10 (1.2)	2 (0.25)
IEP Implementation	127 (7.6)	71 (8.3)	56 (7.0)
Compliance	14 (0.8)	6 (0.7)	8 (1.0)
Total Issues	**1,664**	**860**	**804**

Source: Author's research.

Table 2. Pre-*Endrew* Prevailing Party by Issue Type

Issue	Total Number	Prevailing Party Number (Percentage)		
		School District	Parent	Mixed
Evaluation	156	90 (57.7)	65 (41.7)	1 (0.6)
Extended School Year Services	4	2 (50.0)	1 (25.0)	1 (25.0)
Identification	42	21 (50.0)	21 (50.0)	0 (0.0)
IEP	223	100 (44.8)	109 (48.9)	14 (6.3)
Placement	168	75 (44.6)	92 (54.8)	1 (0.6)
Procedural Safeguards	130	75 (57.7)	53 (40.8)	2 (1.5)
Related Services	19	10 (52.6)	9 (47.4)	0 (0.0)
Disciplinary	31	11 (35.5)	20 (64.5)	0 (0.0)
Transition	10	7 (70.0)	3 (30.0)	0 (0.0)
IEP Implementation	71	32 (45.1)	35 (49.3)	4 (5.6)
Compliance	6	4 (66.7)	2 (33.3)	0 (0.0)
Total Issues	**860**	**427 (49.7)**	**410 (47.7)**	**23 (2.7)**

Source: Author's research.

Table 3. Post-*Endrew* Prevailing Party by Issue Type

Issue	Total Number	Prevailing Party Number (Percentage)		
		School District	Parent	Mixed
Evaluation	147	79 (53.7)	66 (44.9)	2 (1.4)
Extended School Year Services	8	4 (50.0)	4 (50.0)	0 (0.0)
Identification	28	11 (39.3)	17 (60.7)	0 (0.0)
IEP	246	117 (47.6)	119 (48.4)	10 (4.1)
Placement	148	88 (59.5)	58 (39.2)	2 (1.4)
Procedural Safeguards	113	79 (69.9)	34 (30.1)	0 (0.0)
Related Services	20	6 (30.0)	14 (70.0)	0 (0.0)
Disciplinary	28	8 (28.6)	20 (71.4)	0 (0.0)
Transition	2	0 (0.0)	2 (100.0)	0 (0.0)
IEP Implementation	56	34 (60.7)	22 (39.3)	0 (0.0)
Compliance	8	3 (37.5)	5 (62.5)	0 (0.0)
Total Issues	**804**	**429 (53.4)**	**361 (45.0)**	**14 (1.7)**

Source: Author's research.

Limitations

Although the DC public school district presents a wealth of data for due process hearing research, this study ultimately reflects dispute resolution in one school district and cannot be generalized to every K–12 public school district. The results from this study capture the special education landscape of DC and highlight issues in which schools and families most disagree on special education services, but these descriptive statistics should not be taken as representative of the nation as a whole.

Furthermore, while the coding scheme from the 2015 Massachusetts study was used in this analysis, without a team of research assistants coding documents together, it is impossible to establish a measure of intercoder reliability. The issuance of split decisions from hearing officers on a number of issues adds a level of difficulty to parsing the final determinations to accurately calculate which sub-issues were ruled in favor of which party, and this process should be noted for future researchers attempting to replicate or conduct similar studies.

Additionally, all the hearing officer determinations used in this report were gathered through the DC OSSE, meaning that potentially identifying information such as student age, grade level, and neighborhood zone was redacted for privacy purposes. This lack of information does not inhibit the statistical analysis but does limit the number of variables that researchers can observe when examining DC due process hearings in general.

Discussion

The *Endrew* verdict does not appear to have had a statistically significant impact on due process adjudication in DC. Nevertheless, the information this report yields on the rates at which families have succeeded at hearings has implications for future due process adjudication and DC special education as a whole.

IEP and placement-related issues are consistently the most prevalent issues raised at hearings, meaning these issues are most likely to create conflict once a child is determined eligible for special education services. Once students enter into a school's special education program, staff members must be vigilant in tracking students' ability levels and thoroughly assessing students' needs to ensure that their special education programming is sufficient. This may also require schools to be more flexible in funding outside evaluations of students, such as independent educational evaluations. Attention to potential IEP and placement conflicts is especially important for DC students presenting with a specific learning disability or multiple disabilities, as these student populations are the most represented at hearings.

The prevalence of alleged procedural safeguard violations and IEP implementation errors at hearings—14.6 and 7.6 percent, respectively—is also concerning because these issues relate closely to preserving and maintaining student records. Although seemingly inconsequential, procedural violations can rise to the level of substantive violations of FAPE if they significantly impede the child's education. Hearing officers order schools to fund hundreds of hours of compensatory education each year to make up for such procedural violations that often could have been avoided. Carefully documenting parental requests for meetings and evaluations and the IDEA timelines invoked when such requests are made can help schools decrease the frequency at which these issues arise, avoiding potential violations and expensive compensatory education payouts altogether.

Disciplinary infractions involving student expulsions and suspensions are another aspect of the data that merits further examination. Although these issues composed only 3.5 percent of the overall dataset, families are nearly two-thirds more likely than schools are to prevail on these matters. A common complaint among families was the insufficiency or complete absence of a manifestation determination review (MDR) meeting. MDR meetings are an important procedural safeguard, as these meetings allow school staff members to examine whether the disciplinary infraction in question was a manifestation of the student's disability. If so, schools are legally obligated to take an entirely different approach to reprimanding that student, and they must provide for the

student to continue receiving special education services if they are to be removed from school for the infraction. Ensuring that every aspect of a student's disciplinary history is carefully recorded and that MDRs are conducted in a timely manner and involve the appropriate school personnel can help mitigate these conflicts before they require adjudication at hearing.

Proper training is crucial for preventing procedural due process violations that evolve into substantive violations of FAPE. While special education teachers often have extensive training on the IDEA's requirements, general education teachers and school administrators must also have a sufficient knowledge of the law to do their part in preventing IDEA and due process violations. Creating professional development opportunities for these staff members that specifically focus on understanding the IDEA and its dispute resolution mechanisms could help address this issue. Schools should also prioritize informing parents of their rights under the IDEA as soon as their child is found eligible for special education services. By ensuring that families are familiar with the IDEA's standards and timelines, schools can help prevent future procedural issues and hold themselves accountable to the law's requirements. Furthermore, this model can help alleviate tensions between schools and families on more contentious IEP issues because schools will be viewed as a resource first instead of an adversary.

Further study of DC's prehearing mitigation processes and due process complaint settlements would be beneficial to both families and schools for examining which strategies most effectively resolve specific issue disputes. This subsection of special education policy research is underdeveloped, but additional research would help parties reach efficient, equitable resolutions while eliminating the financial and emotional stress incurred at hearings.

While this report found no statistically significant disparities between schools and families in DC's due process hearings as a result of *Endrew*, the sheer number of hearings adjudicated by the District each year is concerning and warrants further examination. Subsequent policy prescriptions should aim at decreasing the number of due process hearings adjudicated in a given district over time. The dispute resolution mechanisms embedded in the IDEA are important, and families should have the right to pursue legal action in egregious IDEA violations. But due process hearings impose a significant financial and emotional toll and should be used sparingly. Taking preventative steps to avoid these issues altogether can improve the efficiency of special education implementation and the overall quality of services for students who rely on these supports to succeed.

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Notes

1. US Department of Education, "A History of the Individuals with Disabilities Education Act," November 24, 2020, https://sites.ed.gov/idea/IDEA-History.

2. Individuals with Disabilities Education Act (IDEA), 20 USC § 1400 et seq. (2004).

3. These expansions include adding traumatic brain injury and autism spectrum disorder to the different disability categories recognized under the IDEA and requiring schools to create transition plans for students who age out of the IDEA's special education eligibility parameters.

4. The disability categories include intellectual disability, hearing impairment, deafness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, specific learning disability, deaf-blindness, multiple disabilities, or any other health impairment. Developmental delay is another applicable disability category, but only for children age 3–9.

5. *Board of Education of the Hendrick Hudson School District, Westchester County v. Rowley*, 458 US 176 (1982).

6. Mitchell L. Yell and David F. Bateman, "Free Appropriate Public Education and *Endrew F. v. Douglas County School System* (2017): Implications for Personnel Preparation," *Teacher Education and Special Education* 42, no. 1 (January 2018): 6–17, https://journals.sagepub.com/doi/full/10.1177/0888406417754239.

7. *Endrew F. v. Douglas County School District RE–1*, 580 US (2017).

8. Michael A. Couvillon, Mitchell L. Yell, and Antonis Katsiyannis, "Endrew F. v. Douglas County School District (2017) and Special Education Law: What Teachers and Administrators Need to Know," *Preventing School Failure* 62, no. 4 (May 2018): 289–99, https://doi.org/10.1080/1045988X.2018.1456400.

9. *Endrew F. v. Douglas County School District RE–1*, 580 US (2017).

10. Center for Appropriate Dispute Resolution in Special Education, "IDEA Dispute Resolution Data Summary for: U.S. and Outlying Areas 2008–09 to 2018–19," https://www.cadreworks.org/sites/default/files/resources/National%20IDEA%20Dispute%20Resolution%20Data%20Summary%202018-19%20-%20Final%20Accessible_0.pdf.

11. National Center for Education Statistics, "Students with Disabilities," https://nces.ed.gov/programs/coe/indicator_cgg.asp.

12. Jennifer F. Connolly, Perry A. Zirkel, and Thomas A. Mayes, "State Due Process Hearing Systems Under the IDEA: An Update," *Journal of Disability Policy Studies* 30, no. 3 (March 2019): 156–63, https://journals.sagepub.com/doi/abs/10.1177/1044207319836660.

13. Joseph B. Tulman, Andrew A. Feinstein, and Michele Kule-Korgood, "Are There Too Many Due Process Cases? An Examination of Jurisdictions with Relatively High Rates of Special Education Hearings," *University of the District of Columbia Law Review* 18, no. 2 (2015): https://digitalcommons.law.udc.edu/udclr/vol18/iss2/6/.

14. Center for Appropriate Dispute Resolution in Special Education, "IDEA Dispute Resolution Data Summary for: District of Columbia 2008–09 to 2018–19," https://www.cadreworks.org/sites/default/files/resources/2018-19%20DR%20Data%20Summary%20-%20DC.pdf.

15. For an argument as to how DC's status as the most litigious school district is connected to child welfare programs, see Tulman, Feinstein, and Kule-Korgood, "Are There Too Many Due Process Cases?," 254–60.

16. G. Thomas Schanding et al., "Analysis of Special Education Due Process Hearings in Texas," *SAGE Open* 7, no. 2 (June 2017): https://journals.sagepub.com/doi/full/10.1177/2158244017715057.

17. Schanding et al., "Analysis of Special Education Due Process Hearings in Texas," 5.

18. Kevin Hoagland-Hanson, "Getting Their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania," *University of Pennsylvania Law Review* 163, no. 6 (May 2015): 1805–42, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9488&context=penn_law_review.

19. William H. Blackwell and Vivian V. Blackwell, "A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics," *SAGE Open* 5 no. 1 (March 2015): https://journals.sagepub.com/doi/

full/10.1177/2158244015577669.

20. Sasha Pudelski, *Rethinking Special Education Due Process*, School Superintendents Association, April 2016, https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf.

21. District of Columbia Office of the State Superintendent of Education, "Hearing Officer Determinations," https://osse.dc.gov/service/hearing-officer-determinations.

22. Blackwell and Blackwell, "A Longitudinal Study of Special Education Due Process Hearings in Massachusetts." My additions are written in italics, and the last two categories are original to this study. All other entries (in quotation marks) are exact reproductions of the Massachusetts study.