IDEOLOGICAL AND LEGAL DETERMINANTS OF U.S. COURTS OF APPEALS JUDGES' VOTING IN K-12 IDEA REIMBURSEMENT CASES INVOLVING CHILDREN WITH LEARNING DISABILITIES

by

TARA LESIKAR STEPHENS

DISSERTATION

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Supervising Committee:

Dr. Lewis Wasserman, Supervising Professor
Dr. John Connolly
Dr. James Hardy
Dr. Diane Patrick
Dr. Peggy Semingson

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Dedication

This dissertation is gratefully dedicated to my parents, Richard and Phyllis Lesikar, and my son, Cole Stephens.

Abstract

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Tara Stephens, Ph.D.

The University of Texas at Arlington, 2017

Supervising Professor: Lewis Wasserman

The Individuals with Disabilities Education Act (IDEA) is the seminal federal legislation entitling children with disabilities to a Free Appropriate Public Education (FAPE). The law permits parents who contend their child was denied a FAPE to contest the education offered the child by removing their child to a private school, paying tuition for that education, and then seeking to recover those payments from the district. Under the IDEA, parents may prevail in such proceedings where they show the child was denied a FAPE by the school district, and the private program they selected met the child's special needs. Legislation amending the IDEA in 1997 appeared to make it more difficult for parents to recover tuition mainly because of procedural bars placed in their path by Congress.

This study examined the influence of: (1) judges' political ideology as measured by party-of-the-appointing president and DW-nominate scores and (2) legal precedent, as measured by voting which occurred before or after the 1997 IDEA amendments, on judges' voting in favor of, or against the parents who sought the reimbursement remedy in cases decided between 1975

and 2016 at the United States Courts of Appeals in cases involving children classified as having a "learning disability." A total of 219 votes, 94 from Democratic appointees and 125 from Republican appointees, were analyzed in this study, using binary logistic regression as the main statistical tool.

Results for the entire group of 219 individual votes revealed that: (1) ideology, as determined by party-of -appointing president, is an effective predictor of judges' voting in K-12 IDEA tuition reimbursement cases decided at the U.S. Courts of Appeals when all other variables are held constant … the odds of a Democrat-appointed U.S. Court of Appeals judge voting in favor of the parents are significantly greater than the odds of a Republican-appointed U.S. Court of Appeals judge voting in favor of the plaintiff in these cases; (2) ideology, as determined by judges' DW-Nominate score, a continuous variable running from -1 (most liberal) to + 1 (most conservative), is an effective predictor of judges' voting in K-12 IDEA tuition reimbursement cases at the U.S. Courts of Appeals when all other variables are held constant… the odds of a U.S. Court of Appeals judge with a DW-Nominate score below 0 (liberal) voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge with a DW-Nominate score above 0 (conservative) voting for the plaintiff in these cases; (3) pro-parent and pro-school district voting before and after the IDEA amendments did not differ significantly from each other.

These results suggest that ideology is an important factor influencing courts of appeals judges' voting across K-12 IDEA tuition reimbursement cases where the needs of learning disabled children are in issue. The limitations of this study were discussed and suggestions for future research proposed.

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Chapter 1

Introduction

This study investigates (1) U.S. courts of appeals judges' political ideology and (2) legal developments, including seminal U.S. Supreme Court decisions' and Congressional amendments to the Individuals with Disabilities Education Act ("IDEA"), on judges' voting in K-12 special education cases involving children with learning disabilities, arising between 1975- 2016, using binary logistic regression as the primary statistical tool.

The United States (U.S.) public schools serve approximately 6.5 million students under the Individuals with Disabilities Education Act (IDEA) with 35% of those students identified as having specific learning disabilities (U.S. Department of Education, 2016). Before 1975, when Congress enacted the Education for All Handicapped Children Act (EAHCA), renamed the Individuals with Disabilities Education Act in 1990, disabled students' rights had not been clearly delineated in public school settings. Conditions for these students were often the lowest they could be, cheating many disabled students of an education (U.S. Department of Education, 2010) while dishonoring their potential and value to society.

In the past 41 years, through the evolution of federal special education statutory and common law-like interpretation of federal requirements, disabled students' rights are now protected through the IDEA, among other laws, which requires every child with a disability to be identified and provided a Free and Appropriate Public Education (FAPE). However, due to the individual needs and circumstances surrounding each student and ambiguities in IDEA's requirements, the courts are often needed to resolve a myriad of disputes such as identification or the meaning of an appropriate education. So, while the laws are in place, the pathway for some

disabled students is not always clear. The lack of clarity in IDEA's requirements sometimes results in disputes between parents and the public schools ultimately leaving the decision regarding their educational services to judicial discretion.

A common source of dispute between parents and schools for students with specific learning disabilities is the appropriateness of the educational program proposed for their child. At times, parents feel that a private school or other educationally related services not provided by the local education agency (LEA) will better serve their child's unique needs than the program offered by the LEA. As a result, parents sometimes expend private funds for educational services unilaterally and later request the LEA to reimburse the tuition or fees paid to the private providers. IDEA contains special procedures for addressing these disputes, which start with an administrative hearing officer operating with authority from a state education department within rules emanating from the IDEA and, if the dispute continues, may result in litigation in federal or state courts. Parents who find themselves in this situation often have invested significant time and money, wanting the best education for their child; whether the parents prevail requires judges to apply standards incorporated into Congress's legislative scheme.

In the earlier years of EAHCA, the task for judicial decisions on tuition reimbursement cases certainly required greater judicial discretion than needed today, since until IDEA-1997, the statute did not contain special rules as to when reimbursement was appropriate; however, although the 1997 amendments and the ongoing common law-like developments resulted in clearer guidelines, the use of discretion is still a necessary part of making tuition reimbursement decisions, due to the uniqueness of circumstances surrounding each case. Plaintiffs and defendants in cases such as these are often unaware of the breadth of power judges hold in

determining the fate of their case, notwithstanding what they believe to be IDEA's clear mandates. Such broad discretion may bring to the fore a judge's personal beliefs and political inclinations.

Although the influence of law and ideology has been studied in such contexts as civil rights cases involving race and religious rights (Cox & Miles, 2008; Scherer, 2001; Singer, Miller, & Jehle, 2006; Sisk & Heise, 2012; Weinshall-Margel, 2008), no researchers have investigated these influences in the context of judges' decision making in IDEA special education reimbursement disputes. This study is designed to fill this gap in the literature. Additionally, with 35% of the approximate 6.5 million special education students being identified as having a specific learning disability (U.S. Department of Education, 2016), the findings on how the U.S. Courts of Appeals interact with learning disabled student cases will bring insight into the fulfillment of serving this student population. Therefore, the purpose of this study is to explore how appellate judicial ideology and the 1997 IDEA amendments predict the outcome of K-12 learning disabled tuition reimbursement cases during the years 1975-2016.

The following questions guide the present study:

I. Law

1. What influence do the 1997 IDEA amendments exert in cases involving IDEA tuition reimbursement claims for students with learning disabilities?

II. Ideology

2. Does U.S. Courts of Appeals judges' political ideology [as measured by party of the appointing president or DW-Nominate scores] affect their voting in whether to award

tuition reimbursement under the IDEA in cases involving students with learning disabilities?

3. Are there differences in the power of party-of appointing-president [Republican or Democrat] and DW-Nominate scores [a continuous measure of political conservatism and liberalism], in predicting whether courts of appeals judges' award tuition reimbursement in IDEA cases involving students with learning disabilities?

Chapter 2

Literature Review

This chapter begins with an overview of IDEA, how students qualify for special education services, and the basic requirements schools must follow to develop an individualized program to meet student needs. Next, possible responses are outlined for when it is suspected that the public agency failed to provide a student with an appropriate program, along with the progression cases follow through the court system. Background information on learning disabilities, the most prevalent disability, is covered and then the chapter narrows into a description of tuition reimbursement law. Last, consideration of the potential relationship between judicial ideology and judicial decisions is raised.

IDEA Background

In 1975, the Congress enacted the Education for All Handicapped Children Act (EAHCA), Public Law 94-142, to meet the needs and protect the rights of students with disabilities. Prior to the Act, the educational outlook for students with disabilities was dismal and largely overlooked. According to the U.S. Department of Education (2010), "In 1970, U.S. schools educated only one in five children with disabilities, and many states had laws excluding certain students from school, including children who were deaf, blind, emotionally disturbed, or mentally retarded" (p. 3). Many students with severe disabilities lived in state institutions with educational care that was often limited to accommodating the student, as opposed to providing interventions to help them improve (U.S. Department of Education, 2005). These conditions left disabled students grossly disadvantaged and deprived of educational services, in sharp contrast to the educational privileges their non-disabled peers enjoyed.

In response to the educational needs of students with disabilities, the federal government, alongside family associations, began establishing practices for students with disabilities in the 1950s and 1960s (U.S. Department of Education, 2010). Some of these initiatives included: the Training of Professional Personnel Act of 1959, which included educational leadership training for mentally retarded students; the Teachers of the Deaf Act of 1961, which provided deaf and hard of hearing students accessible films; the 1965 Elementary and Secondary Act along with the State Schools Act, which generated grant support for students with disabilities; and the Handicapped Children's Early Education Assistance Act of 1968, which supported Head Start enrollment initiatives for children with disabilities (U.S. Department of Education, 2010). However, it was not until after the landmark court cases, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth* (1972) and *Mills v. Board of Educ.* (1972) were filed that a strong nation-wide effort took hold to translate these precedents into legislation.

In 1971, the *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* brought the first right-to-education suit in the country, to overturn that Pennsylvania law and secure a quality education for all children. The case quickly settled before the U.S. District Court for the Eastern District of Pennsylvania, resulting in a consent decree in which the state agreed to provide a free public education for children with mental retardation. The Court's decree laid the foundation for the establishment of the right to an education for all children with disabilities. That case also established the standard that each child must be offered an individualized education and that children should be placed in the least restrictive environment possible.

Mills (1972) was a class action suit that was brought in the U.S. District Court for the District of Columbia on behalf of seven children and other similarly situated students who resided in the District of Columbia. The students in the plaintiff class had been identified as having behavioral problems or being mentally retarded, emotionally disturbed, and/or hyperactive. All of the students had been excluded from school or denied educational services that would have addressed the needs that arose from their identified disabilities. The parents and guardians of the students successfully filed suit, arguing that the failure of the school board in the District of Columbia to provide them with a public school education constituted a denial of their right to an education.

In a detailed and nuanced decision, the court first made clear that the deprivation suffered by the children clearly violated their right to a public school education under the laws of the District of Columbia. Quoting from *Brown v. Board of Education of Topeka* (1954), the court likened the treatment of the plaintiff students to the segregation outlawed by the Supreme Court in *Brown.* The court reasoned that because the children would have been entitled under the school code in the District of Columbia to attend free public schools, each child had a right to such an education. The court explained that the school board's failure to meet its mandate could not be excused by its argument that there were insufficient funds available to pay for the services that the children needed. Instead, the court was of the opinion that the board's duty to educate the children had to outweigh its interest in preserving its resources. The court added that if there were not enough funds available to provide all of the needed programming, then the board had to do its best to apportion the monies in such a way as to ensure that no child was denied the opportunity to benefit from a public school education.

In sum, the court pointed out that the inadequacies present in the school system, whether caused by insufficient funding or poor administration, could not be allowed to impact more heavily on students with disabilities. To this end, the court ordered the board to adopt a detailed remedial plan in order to ensure that the children received their right to equal protection under the law. The court-ordered comprehensive remedial plan included many elements that eventually made their way into the EAHCA/IDEA. Among these provisions, the court order included a provision mandating a free public education for each child with a disability, documentation delineating the individual special education services that would be necessary for each child who was identified as having a disability, the development of due process procedures when students faced suspensions or expulsions from school, the creation of procedures that granted parents the right to challenge the system if they disagreed with any aspect of the placement of their children, and a requirement that children suspected of having disabilities be identified and evaluated.

Following these cases, Congress initiated an investigation into the education of students with disabilities in the United States and discovered that close to three million handicapped children were denied an education or provided an inappropriate education (Wright, 2010). These events led to the establishment of the EAHCA, guaranteeing each disabled child a free appropriate public education (FAPE). In subsequent years, the Act has evolved and was refined through multiple amendments along with common law. The 1990 modifications included a name change to the Individuals with Disabilities Education Act (IDEA) (U.S. Office of Special Education Programs, 2000). The last amendments took place in 2004, and therefore the act is now named the Individuals with Disabilities Education Act of 2004.

IDEA serves as a source of federal funding to states for the education of disabled students. States must adhere to or surpass the requirements stated in the Act to receive funding. The primary goals of the IDEA are to provide a FAPE to students with disabilities and to protect the due process rights of students and their parents. In order to receive special educational services, students must first be identified as a student with disability.

Qualifying for special education services. Students age three to 21 must meet two qualifying criteria in order to be eligible to receive special education and/or related services: 1) The student must be identified as having at least one of the 13 possible disability classifications and 2) as a result of the disability, the student must be in need of special education or related services (20 U.S.C. § 1401, 3, A, ii, 2006). The 13 disabilities are as follows (34 C.F.R. § 300.7, c, 1-c, 13):

1. Specific learning disabilities (SLD)
2. Speech or language impairments
3. Intellectual disability
4. Emotional disturbance
5. Hearing impairment
6. Orthopedic impairment
7. Other health impairment
8. Visual impairment
9. Multiple disabilities
10. Deaf-blindness
11. Autism

12. Traumatic brain injury

13. Developmental delay

To determine if a child has a qualifying disability, a request for an initial evaluation may be made by a parent of the child, a state educational agency, other state agency, or the local educational agency (IDEA, 2004). Upon receiving parental consent, unless otherwise agreed upon between the parent and the local educational agency, the evaluation must occur within 60 days in order to facilitate timely identification of students in need of services (IDEA, 2004).

Child find. The IDEA places the responsibility for locating all children with disabilities in the state to ensure that all students with disabilities are receiving educational services according to their individual needs. Recognizing the importance of early identification and intervention, the Act specifies that the requirement of locating students with disabilities includes infants (20 U.S.C. 1431, a). The search must include disabled children who attend private, religious, primary, and secondary schools (20 U.S.C. 1412, a, 10). The act states: (20 U.S.C. 1412 a, 3, A):

> All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. (*Regional School Dist. No. 9 Board of Educ. v. Mr. and Mrs. M., 2009).*

Individualized Education Program (IEP). Once a student qualifies for special education services under IDEA 2004, an IEP is developed articulating how the school's educational program will address the student's individual needs and monitor the results of the educational program offered. The IEP must be in place for the student at the beginning of the year upon qualifying for special education services (20 U.S.C. § 1414, d, 4, A, ii). The IEP Team, which consists of the parents of the child with the disability, one regular education teacher or special education teacher, a knowledgeable representative of the LEA (typically an administrator), an individual who is capable of interpreting the evaluation results, other qualified individuals at the discretion of the parents or agency, and the child with the disability, when appropriate, collaboratively construct the plan (IDEA, 2004).

IDEA provides a specific framework for the IEP, which includes key criteria necessary for the development of a comprehensive, effective, and measurable plan. The IEP Team must consider:

> (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial evaluation or most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child. (20 USC 1414, Sec614d3A)

Annual meetings, at a minimum, must be held to ensure that the IEP meets the student's needs, adapting the plan deemed appropriate (20 U.S.C. § 1414, d, 4, A, ii).

The IEP begins with the student's current level of function and academic performance setting forth measurable goals. The plan specifies the extent, if any, to which the disabled student will not be included in a regular, nondisabled classroom and if any accommodations are needed

to support the student in the school's "mainstream" environment, which is referred to as the least restrictive environment (LRE) (34 C.F.R. § 300.550, b). Any initiative by the local educational agency (LEA) to change the IEP or determination by the LEA that it is unnecessary to change the identification, evaluation or placement of the student (upon, for example, a parental request) must be stated in a written notice (20 U.S.C. § 1415, b, 3). In total, the IEP is a collaboratively designed roadmap of how the school's program will provide a FAPE for the student. The IEP's design, campus implementation, and parental support all play roles in the effectiveness of the plan's fruition, and are each critical to providing a FAPE.

Least restrictive environment. IDEA requires students to be placed in the least restrictive environment. The statute specifies that:

> to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(5)(B)

Programs that have not appropriately considered the LRE for disabled students are in violation of a FAPE.

FAPE. The cornerstone of IDEA is its provision to provide each disabled student a FAPE. IDEA defines a FAPE as:

> special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d). (20 U.S.C. 1401, Sec. 602, Definitions)

In addition to IDEA's express language, case rulings continue to shape the definition of a FAPE under the IDEA.

In the landmark case, *Board of Educ. v. Rowley* (1982*)*, the ruling helps clarify what is considered an "appropriate" education. In the case, the parents of a deaf elementary school child, who advanced readily to higher grade levels, felt their child would benefit if the school district provided a sign-language interpreter in the classroom. The school district argued that the student was performing well without the interpreter and, therefore, it was unnecessary. Supreme Court, Justice Rehnquist, held that a FAPE "is satisfied when [the] state provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction" *(Board of Educ. v. Rowley*, 1982*)* and that the lower courts should not have concluded that the Act requires provision of a sign language interpreter. The ruling went on to state that a FAPE did not require a school to maximize the potential of disabled students, but refused to attempt to establish a single FAPE satisfaction test that could apply to all students who are served under the IDEA. The Court, thus, reversed the decision rendered by the Second Circuit and remanded the case for further proceeding consistent with its opinion. *Rowley's* core principle is that as long as some meaningful educational benefit is provided, a

FAPE has been satisfied. The Rowley decision provided assistance to lower courts in establishing a baseline for determining how much educational benefit is necessary to satisfy a FAPE for disabled students and is often used in other cases to help determine if a FAPE has been satisfied (*M.H. and E.K. v. NY. Board of Educ., 2012*; *O.S. v. Fairfax County School Board, 2015*).

Nevertheless, ambiguities remain as to the quantity of educational benefits which are required to satisfy the Act's FAPE. This has led to some confusion in applying the *Rowley* standard. The U.S. Supreme Court has recently agreed to review a case in order to further explain the meaning of a FAPE; it will be decided during the October, 2016 Term. In *Endrew F. v. Douglas County School District RE-1 (10th Cir. 2015)*, the parents argued that their child with autism did not make measurable progress on his IEP goals, and that the school failed to address his worsening behavior problems. The parents advocated for a heightened "meaningful educational benefit" FAPE standard. On December 22, 2015, after an adverse decision from a federal appeals court, the parents requested that the Supreme Court resolve their educational benefit question. On September 29, 2016, the Supreme Court agreed to hear the case. It should be decided before June, 2017.

Up until now, schools and courts have relied on the *Rowley* standard to evaluate the adequacy of FAPE provided to students. Requiring only minimal progress, the *Rowley* standard sets low expectations for students with disabilities, which is not in compliance with Congresses "goal of educating all U.S. citizens to reach their full potential" (Davison, 2016, p. 2). Davison (2016) highlights that the minimal standard set by *Rowley* results in a clash between parents who desire their children to reach their highest potential and educators who are striving to only

achieve minimal progress. It is hoped by advocates of students with disabilities that the upcoming 2017 *Endrew* decision will include a new standard with higher expectations of disabled students' educational experiences.

Remedies for FAPE violations. When a student is denied a FAPE, there are various remedies for curing the IDEA violation depending on the circumstances of the case. Remedies are considered on a case-by-case basis and typically include modifying the IEP along with compensatory educational services or tuition reimbursement, depending upon each case's balance of equities. It is also possible that modification of the IEP is the only remedy required.

Agreed-to IEP changes. If the LEA and parents agree that the student's educational plan needs to be modified, then the changes may be made to the IEP document:

> In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP…Changes to the IEP may be made either by the entire IEP Team or…by amending the IEP rather than redrafting the entire IEP. Upon Request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated. (20 U.S.C. 1414, Sec6143D,F)

This remedy does not typically involve litigation, although the parties may agree to this kind of change after legal proceedings have commenced.

Compensatory education. One commonly sought remedy for FAPE failures is compensatory education. Provisions for the compensatory education remedy are not explicitly

stated within IDEA; rather, they are judicially-created and may include small group instruction, summer educational programs, tutoring, or physical and occupational therapy (Gopal, 2004):

> Compensatory education, which a district court is authorized to grant as a remedy, under the Individuals with Disabilities Education Act (IDEA), for a school district's failure to provide a child, who is identified as having special needs, with a free appropriate public education (FAPE), aims to place disabled children in the same position they would have occupied but for the school district's violations of IDEA, by providing the educational services children should have received in the first instance. (*Mr. G.L. v. Ligonier Valley Sch. Dist*., 2015)

The duration of compensatory education should be "for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem" (*D.F. v. Collingswood Board of Educ.,* 2012). A typical scenario for compensatory education awards is one where the school district has failed to furnish required services under an agreed-to IEP, and then makes up for the unfulfilled services promise more or less equal to the services which were denied.

Parent unilateral placement. Placement of a child in a private school without consent from the public agency is referred to as a unilateral placement and occurs when a parent believes that the LEA failed to provide their child a FAPE. These scenarios typically arise where the student was enrolled in the LEA, but the parent unilaterally removed the child from the LEA and placed in a private school in order to meet the child's needs, which the LEA allegedly failed to do. In these scenarios, the parent requests the public agency to provide reimbursement for the private school tuition. In order to qualify for tuition reimbursement, the parent's placement must

be appropriate, and the balance of equities, or the supporting factors, must be in the parent's favor.

Reimbursement. For the first 10 years EAHCA was in effect, tuition reimbursement court decisions relied on interpretations of the law based on equitable considerations. In 1985 and in 1993, the Supreme Court rendered important rulings in two landmark cases concerning when children who are denied a FAPE and privately placed may be entitled to tuition reimbursement. In *Burlington v. Dep't of Educ.* (1985), the court ruled that parents are not barred from tuition reimbursement solely because they made a unilateral placement of child in private school during review of IEP. However, in order to qualify for tuition reimbursement, the court must have found the placement to be appropriate and the public school's IEP as inappropriate (*Burlington v. Dep't of Educ.*, 1985). *In Florence v. Carter (1993)*, the court ruled that the private school does not have to be at a state approved school to be considered an appropriate placement. Additionally, the court found that if the private school tuition is found to be unreasonable, then full tuition reimbursement is not required (IDEA, 2004).

Burlington. In *Burlington* (1985), the U.S. Supreme Court Justice Rehnquist held that the court has the power to order schools to reimburse parents for private school tuition if it was determined that the placement was appropriate. Even if the parents changed the student's placement during the pendency of proceedings, the parent is still eligible for reimbursement. In total, the Burlington case established the three-pronged test for tuition reimbursement award decisions: 1) that a FAPE was denied to the student according to IDEA, 2) the private placement was appropriate, and 3) the balance of equities was in favor of the parent (Mayes & Zirkel,

2001), which continues to serve as the basic structure for tuition reimbursement judicial decisions.

The case surrounded a student who started having significant difficulty in school in the first grade and qualified for special education services as a student with learning disabilities. Having high intelligence along with significant learning disabilities, the parents of the child and the public school struggled to agree on an appropriate program to meet his needs. Prior to the student's fourth grade year, the school proposed a new IEP, which revolved around a highly structured program with six students. Rejecting the plan, the father appealed through the Massachusetts Department of Education's Bureau of Special Education Appeals procedures, prompting a hearing. Around this time, the specialists at a hospital concluded that due to the student's severe learning disabilities, the best education placement for the child would be in a private school for students that specialized in teaching students with learning disabilities. The hearing officer agreed with this placement and ordered the Town of Burlington, Massachusetts to pay for placement at the private school along with transportation. Burlington then appealed the case to a district court, where the judge overturned the hearing officer's decision finding that the parents' unilateral placement of the child in private school did not comply with IDEA guidelines, as it changed his placement during the pendency of proceedings. The district court ordered the parents to reimburse the school for money paid, and the parents appealed.

The case centered on consideration of the change of placement by the parents during the pendency of proceedings. The court determined that a parent's unilateral placement of student in a private school does not bar them from receiving reimbursement. The case was remanded back to the district court; however, it was recommended that upon remand, the parent's willingness to

work with the school district in resolving the disagreement should be considered. Defining three key areas of tuition reimbursement decisions, the three-pronged decision factors, opening up consideration of reimbursement even if the parents change placement during proceedings, and placing an emphasis on the balance of equities, *Burlington* provided much needed structure to guide judicial decisions.

Carter. Florence County School District v. Carter (1993) added to *Burlington* through the ruling that placement at a private school that does not align with IDEA's definition of a "free appropriate public education" does not bar the public agency from providing tuition reimbursement when the public agency failed to provide a FAPE and the private school provides adequate educational benefit to the student. In the case, a student was identified as having learning disabilities in the ninth grade. The school proposed an IEP, which aimed for only four months or progress within a school year. Displeased with the proposal, the parents requested a hearing in which the hearing officer concluded that the IEP was adequate. The parents enrolled their child in a private school and filed a suit under the claim that the school failed to provide a FAPE to the student.

The District Court agreed with the parents, and upon appeal to the court of appeals by the district, the higher court also agreed with the parents, clarifying that the act's definition of a proper program only applies to public school systems and not private school placements. As the case escalated yet further to the U.S. Supreme Court, the district and court of appeals rulings were affirmed, finding that denying tuition reimbursement to a family who sought a private education due to the public school's inability to provide a FAPE would contradict the intent of the IDEA to provide a free and appropriate education.

The case also addressed the school district's assertion that the private school was not a state approved school. However, the Supreme Court highlighted that it would have been impossible for the parents to have known whether or not the school was approved or not approved, as the system in place in South Carolina was to approve schools on a case-by-case basis. Therefore, there was not a list that the parents could have referred to in their selection of a private school. It was noted that the state's system for approving schools relied on the cooperation between the school officials, which was unlikely in cases where the two parties are in disagreement for the need for private placement.

Forest Grove. In the landmark case, *Forest Grove School District v. T.A.* (2009), the United States Supreme Court held that even when students did not previously receive special education services through a public school, if the school did not provide a free appropriate public education and the private placement was appropriate, tuition reimbursement is a viable remedy under the IDEA.

After a private specialist diagnosed respondent with learning disabilities, his parents unilaterally removed him from petitioner public school district (School District), enrolled him in a private academy, and requested an administrative hearing on his eligibility for special education services under the Individuals with Disabilities Education Act (IDEA), 20 U. S. C. §1400 et seq. The School District found respondent ineligible for such services and declined to offer him an individualized education program (IEP). Concluding that the School District had failed to provide respondent a "free appropriate public education" as required by IDEA, §1412(a)(1)(A), and that respondent's private-school placement was appropriate, the hearing officer ordered the School District to reimburse his parents for his private school tuition. The

District Court set aside the award, holding that the IDEA Amendments of 1997 (Amendments) categorically bar reimbursement unless a child has "previously received special education or related services under the [school's] authority" §1412(a)(10)(C)(ii). Reversing, the Ninth Circuit concluded that the Amendments did not diminish the authority of courts to grant reimbursement as "appropriate" relief pursuant to §1415(i)(2)(C)(iii). See *School Comm. of Burlington v. Department of Ed. of Mass*., 471 U. S. 359, 370. The Supreme Court held that IDEA authorizes reimbursement for private special-education services when a public school fails to provide a FAPE and the private school placement is appropriate, *regardless of whether the child previously received special-education services through the public school*. Pp. 6–17. (a)

In reliance on *Burlington and Florence County School Dist. Four v. Carter*, 510 U. S. 7, that §1415(i)(2)(C)(iii) authorizes courts to reimburse parents for the cost of private-school tuition when a school district fails to provide a child a FAPE and the private-school placement is appropriate. The *Forest Grove* Court observed the fact that *Burlington* and *Carter* involved the deficiency of a proposed IEP does not distinguish this case, nor does the fact that the children in *Burlington* and *Carter* had previously received special-education services; the Court's decision in those cases depended on the Act's language and *purpose* rather than the particular facts involved. The majority in *Forest Grove* asserted that the reasoning of *Burlington* and *Carter* applies unless the 1997 Amendments require a different result (*Forest Grove School District. v. T.A*., 2009, Pp. 6-8).

The Court concluded that the 1997 Amendments do not impose a categorical bar to reimbursement. The Amendments made no change to the central purpose of IDEA or the text of §1415(i)(2)(C)(iii). Because Congress is presumed to be aware of, and to adopt, a judicial

interpretation of a statute when it reenacts that law without change, this Court will continue to read §1415(i)(2)(C)(iii) to authorize reimbursement absent a clear indication that Congress intended to repeal the provision or abrogate *Burlington* and *Carter*.

The Court found unpersuasive the School District's argument that §1412(a)(10)(C)(ii) limits reimbursement to children who have previously received public special education services. This is not supported by IDEA's text, as the 1997 Amendments do not expressly prohibit reimbursement in this case and the School District offers no evidence that Congress intended to supersede *Burlington* and *Carter*; it is at odds with IDEA's remedial purpose of "ensur[ing] that all children with disabilities have available to them a [FAPE] that emphasizes special education . . . designed to meet their unique needs . . ." §1400(d)(1)(A). As a provision, this would produce a rule bordering on the irrational by providing a remedy when a school offers a child inadequate special education services, but leaving parents remediless when the school unreasonably denies access to such services altogether.

The School District's argument that any conditions on accepting IDEA funds must be stated unambiguously is clearly satisfied here, as States have been on notice at least since *Burlington* that IDEA authorizes courts to order reimbursement. The School District's claims that respondent's reading will impose a heavy financial burden on public schools and encourage parents to enroll their children in private school without first trying to cooperate with public school authorities are also unpersuasive in light of the restrictions on reimbursement awards identified in *Burlington*, and the fact that parents unilaterally change their child's placement at their own financial risk. See, e.g., *Carter*, 523 F. 3d 1078, affirmed 510 U. S., at 15. Pp. 15–16.

Limitations on tuition reimbursement. IDEA now expressly limits the ability of parents to obtain reimbursement for unilateral placements. Perhaps the most important limitation is where a FAPE is offered to the child, no reimbursement may be imposed on the school district: "If the [public] agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility" the LEA is not required to pay for the cost of the private education (20 USC, 1412, Sec. 612, a.10.c). Second, if the parents did not notify the LEA of their decision to remove their child from the public school at the last IEP meeting or in writing 10 business days prior to removal, then the amount of reimbursement might be reduced or denied (IDEA, 2004). The notice requirement is intended to give the LEA an opportunity to correct errors it may have made in a student's programming.

If the public agency notified the parent of intent to evaluate the child along with a reasonable and appropriate explanation of the purpose for evaluation and the parent rejected the evaluation, then tuition reimbursement might be reduced or denied unless the school prevented the parents from receiving the notice (IDEA, 2004). Lastly, if the parent fails to respond to a consent request, refuses special education and related services or actions taken by the parent were unreasonable, then "the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child" (20 U.S.C. 1414 § 614, a.1.D; 20 U.S.C., 1412 § 612, a.10.C.iii.III) and, therefore, tuition reimbursement might be reduced or denied.

A public school's failure to follow the exact procedures as outline in IDEA does not automatically constitute a denial of FAPE such as in the case *J.L. v. Mercer Island School District (2010)*. In the case, the parents claimed that the school failed to follow proper

procedures by holding an IEP pre-meeting without the parents present, as well as not specifying teaching methodologies or minutes of instruction in the IEP. The court addressed the procedural concerns of the IEP pre-meeting and failure to specify minutes in the IEP, confirming that they were violations; however, the court stated that "not every procedural violation results in the denial of a free appropriate public education" (592 F.3d 938, p. 13). Therefore, the judgement was in favor of the school district as it was determined that the student was not denied a FAPE.

1997 IDEA amendments. Prior to the 1997 IDEA amendments, for students who were placed unilaterally by their parents in private schools, tuition reimbursement decisions were based on the proper or "appropriate" placement of the students (20 U.S.C. § 1415(i)(2)(C)(iii). Landmark cases, such as *Burlington* and *Carter*, provided substantial footing for tuition reimbursement decision-making; but in the process, equitable gaps were created, which tended to favor parental wins. In response, the 1997 IDEA amendments provided guidelines for decisions with particular emphasis on parent procedural requirements (National Information Center for children and Youth with Disabilities [NICHCY], 1998). The verbiage added to the IDEA provided more balance between parents and public school, especially in requiring the parents to be open about their concerns and giving adequate notice to the school district prior to the removal of a child to a private setting.

The 1997 IDEA amendments added several, specific qualifying criteria for determining eligibility for tuition reimbursement, most of which surrounded parent procedural provisions. First, the amendments established that if a public agency fails to provide a FAPE, then it might be required to provide tuition reimbursement for private schooling for the student (National Information Center for Children and Youth with Disabilities [NICHCY], 1998). The

amendments then proceeded, stating the requirement of the parent to notify the public agency of their intent to place their child in a private school. Parents are asked to notify the school in two ways: 1) by stating their intent to move the child to a private school in the most recent IEP meeting prior to removal, and 2) by stating their intent to move the child to a private school at the public's expense in a written statement, which is received by the district at least 10 business days prior to the removal (IDEA, 2004; NICHCY, 1998).

The cooperation of the parents in working with the district to develop an appropriate plan for the student is stressed in the 1997 amendments. If the district expresses the intent to complete an evaluation on the student, the Act states that the parent must make the child available for the evaluation (IDEA, 2004; NICHCY, 1998). Additionally, the parent's actions must be reasonable. As with all of the parental procedural requirements added in the amendments, if the parents do not comply with the requirements, tuition reimbursement might be reduced or denied (IDEA, 2004; NICHCY, 1998). Lastly, the 1997 amendments list some exceptions, which might excuse procedural violations: 1) If the parents of the child are illiterate or cannot write in English, this must be taken into consideration when reviewing the parents' compliance with procedural requirements; 2) The public agency cannot interfere with the parents' attempts to provide notification about their decision to place the child in a private school setting; 3) The public agency must ensure that the parents received notice of IDEA's procedural safeguards; 4) If placement within the public school setting places the child at risk for physical or emotional harm, then a different educational placement should be selected, which might require private school placement (IDEA, 2004; NICHCY, 1998).

2004 IDEA amendments. The 2004 IDEA amendments, among other provisions, expanded the LEA's obligation to include infants and toddlers in child find initiatives (U.S. Department of Education, 2005). This is an important factor in tuition reimbursement, as it is critical that public agencies identify and find the students who are in need of services. If this does not occur, parents may be more inclined to unilaterally place their child in a private school. In consideration of tuition reimbursement, if the parents interfered with the public agency's evaluation procedures, their opportunity to be reimbursed might be reduced or eliminated. If the parent contributed to the LEA's failure to provide a FAPE, then their opportunity to be reimbursed might be reduced or eliminated. Additionally, the 1997 and 2004 IDEA amendments further refined IEP requirements, including parent involvement, LRE, as well as clarification on the identification of SLDs (Wright, 1999; Wright, 2006). Although the 2004 amendments included factors which may play a role in tuition reimbursement cases, the amendments did not directly address tuition reimbursement decision criteria as in the 1997 amendments. In summary, the criteria to determine if parents are due tuition reimbursement has developed over time with the inception of EAHCA (IDEA) in 1975 followed by landmark tuition reimbursement court decisions and IDEA amendments.

How Cases Get to Court

If parents conclude the LEA has defaulted in its obligations relative to the identification, evaluation, or placement of their child, they may present a formal written complaint to the LEA (20 U.S.C. 1415, b, 6). Once the complaint has been submitted, the parents are entitled to receive "an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency"

(20 U.S.C. 1415, F, 1, A). Regarding decisions of a hearing officer, decisions are based on whether a FAPE was provided (20 U.S.C. 1415, f, E). Procedural violations may be determined to have caused a failure to provide a FAPE if they prevented a FAPE, interfered with parents' ability to participate in the process, or limited the educational benefits to the child (20 U.S.C. 1415, f, E). If the hearing is held by the local education agency and either of the parties disagrees with the decision, they may appeal to the State educational agency (20 U.S.C. 1415 g, 1) for a review of that decision. Where there is disagreement over the state-level decision and the parties are aggrieved by the outcome, they may then appeal the agency's decision to a state court or a U.S. District Court. (20 U.S.C. 1415 i, 2).

Administrative exhaustion. The IDEA requires parties to exhaust the foregoing state administrative procedures before bringing an IDEA-based complaint to court. Administrative exhaustion provides educational agencies the opportunity to be notified of complaints and a chance to resolve the discrepancy without going to court. On this issue, Wasserman (2009) states:

> The rationale for requiring administrative exhaustion before parties may avail themselves of judicial forums is as follows: It prevents courts from interrupting permanently the administrative process, it gives the agency an opportunity to correct its own errors, it ensures that there will be a complete factual record for the court to review, and it prevents the parties from undermining the agency by deliberately flouting the administrative process. (p. 360)

Although the IDEA complaint procedures usually require administrative exhaustion, there are scenarios in which the parents bypass these steps and go straight to court, without

allowing the public agency a chance to remedy the problem. How the courts respond to skipping administrative exhaustion varies. In Wasserman's (2009) analysis of the delineation of administrative exhaustion requirements under the IDEA, he categorizes the cases where exhaustion was required. These include cases where:

> [the parents] claimed their child's high school graduation effectively mooted the need for exhaustion; asserted that their child's treatment by agency personnel caused psychological harm; attempted to relinquish claims under IDEA, arguing that this excused them from exhaustion; removed the child to a private setting and then sought to avoid IDEA exhaustion; failed to request IDEA programming prior to the initiation and exhaustion of due process procedures; alleged unlawful agency policies, but requested individual relief only; claimed that they received insufficient notice regarding the exhaustion requirement; failed to exhaust particular issues during the due process proceedings, though having literally completed that process; asserted in court, claims arising subsequent to IDEA due process proceedings; and attempted enforcement in federal court of settlement agreements entered into outside of a resolution session, or before due process hearing officers. (p. 367)

Following are the categories of cases where exhaustion was primarily excused, although noting that rulings were not always consistent within categories:

> the agency's failure to implement unambiguous IEP requirements; enforcement of final due process hearing orders; monetary damages for past physical injuries: the agency's denial of access to the IDEA's due process procedures; the emergency

> situation exception; untimely due process decisions; status quo or pendency of placement violations; the class action; retaliation for exercise of protected rights; the absence of an IDEA administrative forum to adjudicate the dispute; failure of the SEA to adequately implement IDEA required policies and procedures; parents' independent rights, or lack thereof; parental refusal of the IDEA classification and services exception; and non-FAPE programming and services exception. (Wasserman, 2009, p. 386)

In summary, when parents make rash decisions without sound, concrete justification for avoiding administrative exhaustion, exhaustion was not excused. In contrast, when the public agency contributed to the absence of administrative exhaustion through procedural violations on their side, then exhaustion was typically excused.

District and appellate court review. State educational agency decisions that are contested progress to the federal judicial system starting at the U.S. District Court level. According to Bond and Smith, (2010), "The district courts are the workhorses of the federal judicial system. Approximately 90 percent of federal cases begin and end in the district courts. A single judge presides over the courtroom" (p. 549). If one or more of the parties are aggrieved with the district court decision, they may appeal to the U.S. Court of Appeals. There are 13 courts of appeals, which are called circuits representing different regions on the United States. Once a case reaches the courts of appeal, the three-judge panel reviews the case and the district court decision. Court of appeals panels may rule definitively in favor of one party, or the other or may remand the case or portions of the case back down to the district court.

As conflict patterns emerge over time in the courts of appeals or at the U.S. Supreme Court level, they may inform Congress about the need for changes in the law which may have been overlooked when the laws were originally drafted. This may result in amendments to the law. One example of this is through the *Burlington* and *Carter* tuition reimbursement Supreme Court cases, which informed the inclusion of tuition reimbursement guidelines in the 1997 IDEA amendments.

Learning Disability (LD)

The most prevalent disability among students served under the IDEA is "specific learning disability [SLD]" representing 35% of the special education student population (U.S. Department of Education, 2016). IDEA defines specific learning disability as:

> a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Disorders… [include conditions such as] perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. 1401 § 602, 30, A-C)

The most common learning disabilities are dyslexia, dyscalculia, and dysgraphia (Cortiella & Horowitz, 2014).

Although considerable progress has been made in understanding brain-based disorders, misconceptions and misperceptions of learning disabilities are still prevalent among the general population (Cortiella & Horowitz, 2014). It is known that learning disabilities are commonly shared among family and extended family members (Cortiella & Horowitz, 2014). They can also be the result of traumatic influences during the early stages of brain development before or

during birth, such as alcohol or drug intake during pregnancy or labor difficulties (Cortiella & Horowitz, 2014). Poor nutrition or exposure to toxic substances after birth may also lead to learning disabilities (Cortiella & Horowitz, 2014). Common misconceptions of the cause of learning disabilities include physical disabilities, visual and hearing disabilities, and intellectual disabilities (Cortiella & Horowitz, 2014). However, learning disabilities are more prevalent among people from impoverished backgrounds, which is reasoned to be caused from increased exposure to risk factors during the early stages of brain development (Cortiella & Horowitz, 2014).

Legally, there are three federal laws that protect the rights of individuals with learning disabilities; 1) The IDEA (2004), 2) Section 504 of the Rehabilitation Act of 1973 (Section 504), and 3) The Americans with Disabilities Act (ADA) (Cortiella & Horowitz, 2014). The IDEA ensures students with disabilities aged 3-21 receive a free appropriate public education (FAPE), which meets the individual needs of the student (IDEA, 2004; Cortiella & Horowitz, 2014). The IDEA also provides funding to help cover the extra costs associated with special education to states and local school districts (Cortiella & Horowitz, 2014). Section 504 protects individuals with disabilities from being discriminated against in programs and activities that are federally funded (Cortiella & Horowitz, 2014). Although Section 504 does not fund programs, it can revoke funding for federal programs which are in non-compliance with the law (Cortiella & Horowitz, 2014). Individuals with significant mental or physical disabilities which limit their ability to engage in one or more life activities may receive services under Section 504 (Cortiella & Horowitz, 2014). Students who do not have significant enough disabilities to qualify for services under the IDEA may be eligible for special services under Section 504 (Cortiella &

Horowitz, 2014). Similar to Section 504, the ADA is a civil rights law which protects individuals with disabilities from discrimination who have a physical or mental impairment which limits one or more life activity (Cortiella & Horowitz, 2014). Students with disabilities are also protected by the ADA, as learning is considered to be a life activity (Cortiella & Horowitz, 2014).

Social Science and Judicial Behavior

In a July 4 1980 speech, President Jimmy Carter addressed to the National Association for the Advancement of Colored People (NAACP), stating:

> If you don't listen to anything else I state tonight, I want you to hear the next few words: These Federal judges serve for life. They will be interpreting your rights, the rights of our children, and the rights of our children's children into the next century…I want you to consider very carefully and very seriously how this Nation's future will be affected by the appointment of the next three or four Justices of the United States Supreme Court. (Carter, 1980)

The tone in this statement implies the subjectivity of judicial decisions. This subjectivity is often addressed, whether implicitly or explicitly, through presidential candidates and elected presidents in their judicial appointment preferences. While in office, President Obama's Federal judicial appointments have shifted a once conservative majority of courts of appeals to a now liberal majority among the thirteen circuits (Toobin, 2014). Presidential candidate Donald Trump stated, "I will appoint Supreme Court judges who will be pro-life" (Ertelt, 2016). President Nixon was also transparent in his intent to transform the Supreme Court while campaigning, which he followed through on while in office (Dean, 2014). Although U.S. Supreme Court cases are highly publicized, very few cases reach the Supreme Court. On the other hand, Bonventre and

Hiller (2001) assert, "Virtually every facet of our lives ends up sooner or later at the Court of Appeals. More than that, the Court of Appeals almost always has the last word" (p. 1355). Thus, Court of Appeals' judicial placements carry a great deal of power in courtroom decision-making.

The study of the influence of ideological preferences on judicial voting was first documented by C. Hermann Pritchett in the 1940s after he was intrigued by the reasoning behind a dissenting vote (Epstein, 2016). In the years since Pritchett's initial study, ideological influences on judicial behavior has become a well-known scholarly consideration, and will continue to "hold an important place in the social sciences, history, and, increasingly…law" (Epstein, 2016, p. 2023). Those most interested in judicial behavior are political scientists; however, increasing interests are arising from social scientists, legal historians, law professors, psychologists, and economists (Epstein, 2016).

Attitudinal model. Perhaps the best known ideological theory is the *attitudinal model*. At the U.S. Supreme Court level, this represents the dominant method of studying justices voting behavior (Fischman & Law, 2009; Pinello, 1999). Segal and Spaeth (2002) state that the "attitudinal model holds that the justices base their decisions on the merits on the facts of the case juxtaposed against their personal policy preferences" (p. 312). While the attitudinal model is well-known, the difficulty is in identifying and measuring judges' ideological preferences (Fischman & Law, 2009; Segal & Spaeth, 2002; Yung, 2010). Two common methods for measuring judicial ideology is through *the party of the appointing president* and through the use of *common space scores*, also known as nominate scores (Fischman & Law, 2009).

Party-of-appointing-president. The most commonly used method for identifying a judge's ideology is through the party of the appointing president (Fischman & Law, 2009). This

method not only offers ease in accessibility through open knowledge of president party affiliation, but also has served as a reliable measure of judicial ideology (Pinello, 1999). In Pinello's (1999) meta-analysis of 84 empirical studies on the effectiveness of the party of the appointing president, the results show that the method is a statistically significant consistent predictor of judicial votes and is, therefore, a "dependable measure of ideology" (p. 26).

DW-Nominate. In recent years, a method known as common space scores has gained popularity by scholars interested in ideological influences on judicial voting. In the early 1980s, political scientists Keith Poole and Howard Rosenthal developed a common space score proxy to measure judicial ideology. Poole and Rosenthal experimented and adapted the method starting with D-Nominate and W-Nominate and then ultimately combined both into the DW-Nominate scores (Poole, 1999), which "covers the entire history of Congress since 1789, generating information on nearly every non-unanimous votes and on the preferences of nearly every member of Congress" (Bateman & Lapinski, 2016, p. 1). The scores incorporate presidential ideological measures as well as home state Senatorial ideological measures, resulting in a more robust and precise estimation of judicial ideology. Songer and Ginn (2002) state, "The association between judges' votes and the preferences of home state senators of the President's party is statistically significant" (p. 321). As opposed to the simple label of republican or democrat, common space scores are continuous scores with -1 to 0 being liberal and 0 to 1 being conservative, providing a clearer understanding of where their political preferences fall.

Application to special education. The study of judicial behavior and its relation to court decisions will continue to play an important role in research. Although the majority of related research thus far has surrounded political science, the consideration of ideological influences on

judicial decisions is beginning to spread to other fields (Epstein, 2016). Special education is an emerging area of interest, as the laws for satisfying the educational needs of students with disabilities often require a great deal of judicial discretion due to the generalized nature of wording in the IDEA. Whereas it may be assumed that judicial decisions related to the educational rights of students with disabilities would not fall along lines of ideological preferences, initial studies in this field have suggested otherwise (Zirkel, 2012). Additional research on the influence of ideology on judicial decisions in special education will add to the knowledge and understanding of the fulfillment of educational rights of this special student population.

Chapter 3

Research Methodology

This chapter depicts the design and statistical tools selected for this exploratory study of the relationship between judges' voting, ideology, and law in K-12 learning disabled student tuition reimbursement cases rendered in the United States Courts of Appeals between 1975 and 2016. The model set up party-of the-appointing president and judges' DW-Nominate scores as the ideological predictors and the 1997 IDEA amendments as the legal predictors. Voting, categorized as liberal or conservative, was set-up as the dependent measure. In light of the dichotomous nature of the dependent measure, logistic regression was employed as the principal statistical tool in the model.

Database

The Westlaw databases were used to source IDEA tuition reimbursement decisions made between 1975 and 2016 involving K-12 students with learning disabilities. The following search path was used to retrieve the appellate level cases: "learning disability" & "tuition reimbursement" & "ed law rep." The search results were then reviewed to ensure that the cases included in the database concerned tuition reimbursement and limited to K-12 settings.

In U.S. Court of Appeals, judges sit on three-judge panels. Each judge reviews the record from the lower court, applies the relevant statutory and case law, then makes a decision in favor of the student's parents' receiving a tuition reimbursement award or in favor of the district denying the parents' request for relief. Alternatively, judges can vote to remand the case for further proceedings in the lower court based on errors of law committed in the lower court. Since the focus of this study is on individual voting, each judge's vote was recorded separately in

the database, resulting in three votes per case. Beginning with the judge's name, each database entry includes key identifying case information, beginning with the appellate court circuit number, the date of the case decision, the case name, the citation, and the holdings verbiage.

Judge name. The judge's name was recorded under the variable named JUDGENAME. Typically, only the judge's last name is included in the Westlaw case description. After each judge's last name was identified key background information about the judge was sought. In order to identify ideological indicators, party of the appointing president and DW-Nominate score for judges, it was first necessary to identify each judge's first name. The Federal Judicial Center (FJC) website's (http://www.fjc.gov/history/home.nsf/page/judges.html) Biographical Directory of Federal Judges, 1789-present, was first used to identify the judge's first name. The directory is alphabetical, by judge last names. Using each judge's last name, the correct directory page was selected. Then the judge's last name was located on the list and selected. The judge assignments were reviewed to see if the judge served on an appellate court. If an appellate court assignment was listed on the judge's history, the circuit number of the court was checked to see if it matched the circuit of the case. If the last name and appellate court circuit assignment matched the information provided on the Westlaw case description, then the judge was confirmed to match the record and the first name was added to the database. If the last name was found in the directory more than once, each entry on the FJC's website was selected to check for appellate court assignments. If an appellate court assignment with a matching circuit number was found, then the judge was confirmed to match the record, and the first name was added to the database. If the last name was not listed for the judge on the FJC's website, then Open Jurist Appeals Court directory (http://openjurist.org/us-court/type/appeals-court) was sourced by circuit

number to locate a directory of judges who were assigned to each circuit. If the last name of a judge listed on the directory matched the last name of the judge who was being sought, then the judge was confirmed to match the record, and the first name was added to the database.

Date confirmed by senate. The date the judge was confirmed by senate was needed to find the DW-Nominate scores for the judge, appointing president, and senator/s' DW-Nominate scores in the judge practice state. The variable was named DATECONFBYSEN and was found using the Biographical Directory of Federal Judges found on the FJC website (http://www.fjc.gov/history/home.nsf/page/judges.html). The variable was coded DD-MTH-YY. The date confirmed by senate was also be used to confirm the accuracy of the appointing president's name, as the president's years in office had to coincide with the date the judge was confirmed by senate.

Appointing president's name. The name of the presidents who appointed each judge were used as one way to determine the judge's ideology, as it is theorized that presidents will often choose judges with similar political beliefs. The appointing president variable was named APPOINTPRES and was found using the Biographical Directory of Federal Judges found on the FJC website (http://www.fjc.gov/history/home.nsf/page/judges.html). Presidents appoint judges to each separate court they serve. If a judge served on a district-level court, that president's name was not used for this study, since this study's analysis focused on appellate court cases. Therefore, the president who appointed the judge to the appellate court was used for this variable. If a district-level judge sat in on an appellate court, the president who appointed the judge to his district court position was used for this variable. The president's last name was used to code this variable.

Judge home state. Judges' home state was determined by using the sources described above and coded in a column labeled JUDGEHOMESTATE. This information was later used to derive each judge's DW-NOMINATE scores where senatorial courtesy was a factor in that judge's appointment. This procedure in deriving DW scores is described below.

Circuit number. The appellate court circuit number was included in the database. The circuit number was recorded in number form, except for the cases from the D.C. Circuit, which was recorded as DC. The variable was named CIRCUIT.

Case decision date. The date the judges made the decision on the court case was recorded under the variable name DECISIONDATE. The date was entered as DD-MTH-YY. The database was ordered according to this date from oldest to newest.

Case name. The case name was recorded under the variable name CASENAME. The case name was formatted as listed in the Westlaw database.

Citation. The case citation was recorded under the variable name CITATION. The case name was formatted as listed in the Westlaw database.

Dependent Variables

Judge vote. The binary dependent measure indicating each judge's individual vote was coded with "0" representing a judge's definitive decision to not award tuition reimbursement, in favor of the school district. A judge's definitive decision to award the parents of the student with tuition reimbursement was coded as a "1." Cases which did not have a definitive decision due to a remand were left blank, ensuring that the variable represented absolute votes in either the district's or student's favor. The variable was named JUDGEVOTE. This procedure enabled me

to create a data based comprised of only definitive votes in favor of one party or the other, and model ideology and legal effects over this criterion variable with remands excluded.

A separate variable named JUDGEVOTE2 was created to represent each judge's individual vote along with votes to remand a case. Decisions to not award tuition reimbursement, in favor of the school district, were coded "0." Votes in favor of granting the student tuition reimbursement were coded "1." Decisions to remand a case down to a lower court were treated as wins for the student and also coded "1." This procedure set up a model treating both definitive wins and remands as "liberal," since in both cases the parents will have achieved most if not all of what they wanted.

Independent Variables

Party-of-appointing-president. The appointing president's party affiliation was recorded under the variable name PRESPARTY. This variable represents the judge's party affiliation. The variable was coded "0" for Republican and "1" for Democrat. P-A-P coding served as a proxy for judges' ideological leanings.

DW-Nominate score. The DW-Nominate score was used as a way to determine the judge's ideology, in addition to using the appointing president's ideology. Developed in the 1980s by Keith T. Poole and Howard Rosenthal, the multidimensional scaling application results in an assigned number on a scale of -1 to 1, according to roll-call behavior (Poole & Rosenthal, 1984). Using the date the judge was confirmed by senate, the DW-Nominate database was searched to locate the year the corresponding DW-Nominate scores of the president and relevant senator/s. The president's DW-Nominate score was used to populate the variable, PRESSCORE. Using the judge's home state, the corresponding senator/s' assigned party was compared to the

president's assigned party of the same year. If the parties were the same, the senator/s name and DW-Nominate score was entered into the field in the database under the variables named SEN1NAME, SEN1SCORE, SEN2NAME, and SEN2SCORE. If a senator's party did not match the president's party, his/her name and DW-Nominate score was included in the database. A formula was used to calculate the judge's DW-Nominate score through averaging the DW-Nominate scores, which remained according to the date the judge was confirmed by Senate, the judge's home state, corresponding Senator DW-Nominate scores for those who matched the president's party affiliation. This average was recorded as the variable listed DWSCORE in the database. This procedure enabled the assignment of a DW ideological score for each judge who appeared in the data base.

1997 IDEA amendments. The amendments made to IDEA in 1997, which became effective on June 4, 1997, were used to segment the cases within the study according to the decision date (DECISIONDATE). The variable was named AFTERIDEA1997 and was coded "0" for No, if the case decision date was not after June 4, 1997 or "1" for Yes, if the case decision date was after June 4, 1997.

Data Accuracy

Data entry and coding reliability were verified by doctoral students, co-researchers, a database specialist, and by myself (the primary researcher). Each case and corresponding coding were reviewed at least three times to ensure data entry accuracy, accurate interpretation of holdings, and consistent application of the coding logic. Lastly, descriptive statistics were used to verify coding by checking for missing data and keying errors.

Data Analysis

Descriptive and binary logistic regression statistics were used to conduct this analysis. Descriptive statistics were used to describe the frequency and distribution of the data by variable. Binary logistic regression was selected as the primary statistical test, as it computes the odds that an outcome will occur (Brace, Kemp, & Snelgar, 2012), such as the odds that a Republican or Democrat judge would vote in favor of the school district or the student.

Descriptive analysis. In the forthcoming Chapter 4 descriptive data were organized into eight 2 x 2 cells. They contain the frequencies and percentages associated with each of the conditions described above. This painted a broad picture of the distribution of judge votes, along with a glimpse into effects the independent variables may have had on judges' voting behaviors when inferential statistics were employed. This set the stage for the inferential analyses. These tables are as follows:

Table 4.1 shows the frequency distribution and associated percent of voting among Republican and Democrat appointees' voting in tuition reimbursement cases, which included remands. Table 4.2 shows the frequency distribution and associated percent of voting between Republican and Democratic appointees, according to the party of president who appointed the judge, in voting of tuition reimbursement cases, *excluding remands*, thereby narrowing the liberal vote focus to votes that were definitively in favor of the parents. Votes in favor of the parent were considered liberal votes, and votes in favor of the school district were considered conservative votes.

Table 4.3 reveals the frequency distribution and associated percent of liberal and conservative voting as a function of ideology based on judges' DW-Nominate score in voting of

tuition reimbursement cases, which included remands. The DW-Nominate scale ranges from 1 to -1, with a 1 indicating the most extreme conservative rating and a -1 indicating the most extreme liberal rating. The table is broken down into 10 intervals. Votes in favor of the parent and remands were considered liberal votes, and votes in favor of the school district were considered conservative votes.

Table 4.4 reveals the frequency distribution and associated percent of liberal and conservative voting as a function of judges' DW-Nominate score in voting of tuition reimbursement cases, where remands were excluded. The table is broken down into 10 intervals of five units on either side of the zero [neutral point]. Votes in favor of the parent and remands were considered liberal votes, and votes in favor of the school district were considered conservative votes.

Tables 4.5 and 4.6 collapse the DW intervals depicted in Tables 4.3 and 4.4 into two groups: -1 to 0 as reflecting the liberal side of the ideological continuum and those falling between 0 to 1 considered as coming within the conservative side of the ideological spectrum, thereby allowing a comparison between groups. Table 4.5 summarizes the frequency distribution and associated percent of voting among the judges using the collapsed tables based on DW scores with remands included. Table 4.6 shows the frequency distribution and associated percent of voting among the judges using the collapsed tables based on DW-Nominate scores with remands excluded.

Table 4.7 shows the frequency distribution of liberal and conservative votes, including remands, during the pre-1997 IDEA and post-1997 IDEA amendment [June, 4, 1997] period. Table 4.8

shows the frequency distribution between liberal and conservative votes, excluding remands during the pre- and post-1997 IDEA amendment periods.

Inferential Analysis

Binary logistic regression. The previously described descriptive analysis provided a foundation for the inferential statistics which follow; they hone in on the impact of the independent variables on the odds of judicial voting behaviors leaning toward a liberal or conservative vote.

Table 4.9 shows the results of the logit analysis performed on the judges' votes, coded as liberal or conservative, including remands, as the dependent variable (DV), and ideology (as determined by party of the appointing president) and the 1997 IDEA amendments, indicated by the date June 4, 1997, as the predictor variables. Liberal judge votes include those that were in favor of the student or those which remanded the case for further proceedings. Conservative judge votes include those that were in favor of the school district.

Table 4.10 shows the results of the logit analysis performed with judges' votes, *excluding remands*, as the dependent variable (DV), and ideology (as determined by party of the appointing president) and pre- and post- 1997 IDEA amendments (set by their effective date, June 4, 1997), as the predictor variables. Liberal judge votes include those that were in favor of the student. Conservative judges' votes include those that were in favor of the school district.

Table 4.11 shows the results of the logit analysis performed on judges' votes, coded as liberal or conservative, including remands, as the dependent variable (DV), and ideology (as represented by DW-Nominate scores) and pre- and post- 1997 IDEA amendments (set by their effective date, June 4, 1997) the predictor variables. Votes were categorized as liberal when in

favor of the student or remanded for further proceedings. Conservative judge votes include those that were in favor of the school district. The DW-Nominate scale ranges from 1 to -1, with a 1 indicating the most conservative ideology and a -1 indicating the most liberal ideology. Zero serves as the mid-point between the two.

Table 4.12 shows the results of the logit analysis performed with judges' votes, excluding remands, as the dependent variable (DV), and ideology (as represented by DW-Nominate scores) as the predictor variables. Votes were coded as "liberal" that were in favor of the parent and coded as "conservative" when in favor of the school district. The DW-Nominate scale ranges from 1 to -1, with a 1 indicating the most conservative rating and a -1 indicating the most liberal rating. Zero was the mid-point between the two.

The next chapter examines the results obtained for each of the descriptive and inferential analyses described in this chapter. Those results will help answer the core research questions posed at the outset of this study.

Chapter 4

Results

This chapter reports the results of the descriptive and inferential analyses performed on the data set described in Chapter 3. The goal was to determine the effects of ideology and the 1997 IDEA amendments on U.S. Courts of Appeals judges' voting in tuition reimbursement cases brought under the IDEA.

Two measures of judges' ideology were used: the party of the appointing president, Republican or Democrat, and DW-Nominate scores, a continuous measure that provides a more refined measure of ideology. DW-Nominate scores rate judges' ideology from -1 (most liberal) to +1 (most conservative). The 1997 amendments predictor was bifurcated. One level contained votes made prior to the amendments; the other level contained the votes made after the 1997 amendments.

The dependent measure, judges' votes, were coded using two separate configurations: (1) votes including remands, in which remands were treated as liberal votes, and (2) votes excluding remands, in order to isolate the effects of the predictors when the only votes analyzed were those which revealed definitive wins or losses for the parent in obtaining reimbursement for the educational expenses they undertook on their children's behalf.

Descriptive Data

Descriptive data were organized in 2 x 2 cells containing frequencies and percentages associated with each of the conditions described above. Table 4.1 reveals the frequency distribution and associated percent of voting among Republican and Democrat appointees' in tuition reimbursement cases, which included remands. The treatment of remands as "liberal"

reflects the practical import of such decisions: a remand will often result in a favorable outcome for parents who are seeking tuition reimbursement from the school district either by way of a negotiated settlement or decision in the lower court, and in any case represents an appellate victory for the parents.

Table 4.1 reveals that among the 219 total votes cast, 125 were made by judges appointed by Republican presidents, and 94 were made by judges appointed by Democratic presidents. Among the 94 Democratic judges' votes, 50% were in the liberal direction, and 50% were in the conservative direction. Among the 125 Republican judges' votes, 35% were in the liberal direction, and 65% were in the conservative direction. This reflects an overall 15% difference in liberal voting between Democratic and Republican judge votes.

Table 4.1

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions Involving Students with Learning Disabilities between 1975- 2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing-President**

	Voting		
Party Ideology	Liberal	Conservative	Total
Democrat	47 (50%)	47 (50%)	94 (100%)
Republican	44 (35%)	81 (65%)	125 (100%)
Total	91 (42%)	128 (58%)	219 (100%)

*Votes favoring tuition reimbursement or ordering a remand were treated as liberal.

Table 4.2 reveals the frequency distribution and associated percent of voting between Republican and Democratic appointees, according to the party of president who appointed the

judge, in voting of tuition reimbursement cases, *excluding remands*, thereby narrowing the liberal vote focus to votes that were definitively in favor of the parents. This table reveals that among the 188 total votes cast, 106 were made by Republicans, and 82 were cast by Democrats. Among the 82 Democrat judges' votes, 43% were in the liberal direction, and 57% were in the conservative direction. Among the 106 Republican judge votes, 24% were in the liberal direction, and 76% were in the conservative direction. This reflects an overall 19% difference in liberal voting between Republican and Democratic judges' votes.

Table 4.2

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions between 1975- 2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing-President**

	Voting		
Party Ideology	Liberal	Conservative	Total
Democrat	35 (43%)	47 (57%)	82 (100%)
Republican	25 (24%)	81 (76%)	106 (100%)
Total	60 (32%)	128 (68%)	188 (100%)

* Votes favoring tuition reimbursement were treated as liberal. Remands were excluded from this analysis.

Table 4.3 reveals the frequency distribution and associated percent of liberal and conservative voting as a function of ideology, based on judges' DW-Nominate score, in voting of tuition reimbursement cases, which included remands. The DW-Nominate scale ranges from 1 to -1, with a 1 indicating the most extreme conservative rating, and a -1 indicating the most extreme

liberal rating. The table is broken down into 10 intervals. This table reveals that among the 219 total votes cast, 58% were conservative votes and 42% were liberal.

Table 4.4 reveals the frequency distribution and associated percent of liberal and conservative voting as a function of judges' DW-Nominate score in voting of tuition reimbursement cases, where remands were excluded. The table is broken down into 10 intervals of five units on either side of the zero [neutral point]. This table reveals that among the 188 total votes cast, 68% were conservative votes and 32% were liberal. The voting trends revealed in Tables 3 and 4 indicate an overall tendency of judges with lower DW-Nominate scores to vote more conservatively than judges with higher DW scores.

Table 4.3

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions Involving Students with Learning Disabilities between 1975-2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW-Nominate Scores**

	Voting		
DW-Nominate Scores	Liberal	Conservative	Total
.9 to 1.0	0	0	0
.7 to .899	5 (33%)	10 (67%)	15 (100%)
.5 to .699	13 (48%)	14 (52%)	27 (100%)
.3 to .499	9 (27%)	24 (73%)	33 (100%)
.1 to .299	7 (26%)	20 (74%)	27 (100%)
-.1 to -.299	19 (42%)	26 (58%)	45 (100%)
-.3 to -.499	32 (53%)	28 (47%)	60 (100%)
-.5 to -.699	6 (50%)	6 (50%)	12 (100%)
-.7 to -.899	0	0	0
-.9 to -1.0	0	0	0
Total	91 (42%)	128 (58%)	219 (100%)

* Votes favoring tuition reimbursement and remands were treated as liberal.

Table 4.4

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions Involving Students with Learning Disabilities between 1975- 2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW-Nominate Scores**

	Voting		
DW-Nominate Scores	Liberal	Conservative	Total
.9 to 1.0	0	0	0
.7 to .899	2 (17%)	10 (83%)	12 (100%)
.5 to .699	7 (33%)	14 (67%)	21 (100%)
.3 to .499	5 (17%)	24 (83%)	29 (100%)
.1 to .299	5 (20%)	20 (80%)	25 (100%)
-.1 to -.299	14 (35%)	26 (65%)	40 (100%)
-.3 to -.499	24 (46%)	28 (54%)	52 (100%)
-.5 to -.699	3 (33%)	6 (67%)	9 (100%)
-.7 to -.899	0	0	0
-.9 to -1.0	0	0	0
Total	60 (32%)	128 (68%)	188 (100%)

*Votes favoring tuition reimbursement were treated as liberal. Remands were excluded from this analysis.

Tables 4.5 and 4.6 collapse the DW intervals depicted in Tables 3 and 4 into two groups: -1 to 0 as reflecting the liberal side of the ideological continuum and those falling between 0 to 1 considered as falling within the conservative side of the ideological spectrum, thereby allowing a comparison between each group.

Table 4.5 summarizes the frequency distribution and associated percent of voting among the judges, using the collapsed tables based on DW scores with remands included. Among the liberal DW ideology rated judges' votes, 49% of the votes were in the liberal direction and 51% were in the conservative direction. Among the conservative DW ideology rated judges' votes, 33% were in the liberal direction and 67% were in the conservative direction. This reflects an overall 16% difference in liberal voting between judges rated on the liberal side of the DW continuum, as compared to those who fell on the conservative side of the DW scale. These trends are very similar to the results displayed in Table 4.1, which indicated a 15% difference between Republican and Democratic judge votes, including remands, using the party of the appointing president as the indicator of judges' ideology. This suggests that party of the appointing president and DW-Nominate scores may be similar in their predictive power. This consideration is assessed below when I apply inferential statistics to examine these relationships.

Table 4.5

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions Involving Students with Learning Disabilities between 1975-2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW-Nominate Scores Collapsed Intervals**

	Voting		
DW-Nominate Scores	Liberal	Conservative	Total
-1 to 0	57 (49%)	60 (51%)	117 (100%)
0 to 1	34 (33%)	68 (67%)	102 (100%)
Total	91 (42%)	128 (58%)	219 (100%)

* Votes favoring tuition reimbursement and remands were treated as liberal.

Table 4.6 shows the frequency distribution and associated percent of voting among the judges, using the collapsed tables based on DW-Nominate scores with remands excluded. Among the liberal DW ideology judges' votes, 41% of the votes were in the liberal direction and 59% were in the conservative direction. Among the conservative DW ideology judge votes, 22% of the votes were in the liberal direction and 78% were in the conservative direction. This reflects an overall 16% difference in liberal voting between judges rated on the liberal side of the DW continuum, as compared to those who fell on the conservative side of the DW scale. These trends are very similar to the results displayed in Table 4.2, which indicated a 19% difference between Republican and Democrat judge votes, excluding remands, using the party-of-appointing-president as a proxy for judges' ideology. Again, this suggests a high concordance between the party-of-appointing-president and DW-Nominate scores in their ability to predict the direction of voting in these IDEA tuition reimbursement cases. These relationships were examined more closely in the logit analyses discussed below.

Table 4.6

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions Involving Students with Learning Disabilities between 1975- 2016 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW-Nominate Scores Collapsed Intervals**

	Voting		
DW-Nominate Scores	Liberal	Conservative	Total
-1 to 0	41 (41%)	60 (59%)	101 (100%)
0 to 1	19 (22%)	68 (78%)	87 (100%)
Total	60 (32%)	128 (68%)	188 (100%)

*Votes favoring tuition reimbursement were treated as liberal. Remands were excluded from this analysis.

Table 4.7 shows the frequency distribution of liberal and conservative votes, including remands, during the pre-1997 IDEA and post-1997 IDEA amendment [June, 4, 1997] periods. Prior to the 1997 IDEA amendments, the 72 votes cast were equally divided between liberal pro-parent votes and conservative pro-school district votes in the tuition reimbursement cases under study. After the 1997 IDEA amendments, 37% of the 147 votes cast were in the liberal direction and 63% were cast in the conservative direction. The 13% reduction in liberal pro-parent voting after the 1997 IDEA amendments suggests that the statutory changes impacted parental claims negatively. This proposition was examined below, using logit analysis to test for the significance of these differences.

Table 4.7

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions involving Students with Learning Disabilities between 1975- 2016 in United States Courts of Appeals as a Function of 1997 IDEA amendments**

	Voting		
1997 IDEA Amendments	Liberal	Conservative	Total
Pre-1997 Amendments	36 (50%)	36 (50%)	72 (100%)
Post-1997 Amendments	55 (37%)	92 (63%)	147 (100%)
Total	91 (42%)	128 (57%)	219 (100%)

*Votes favoring tuition reimbursement or ordering a remand were treated as liberal.

Table 4.8 shows the frequency distribution between liberal and conservative votes, excluding remands during the pre- and post-1997 IDEA amendment periods. Prior to the 1997 IDEA amendments, of the 63 votes cast, 43% were in the liberal pro-parent direction and 57% were in the conservative pro-school district direction. In contrast, after the 1997 IDEA amendments, of the 125 votes cast 26% were in the liberal direction and 74% were in the conservative direction. The statistical significance of the 17% reduction in liberal pro-parent voting was tested below using logit analysis.

Table 4.8

*Frequency and Percentage of Liberal-Pro-Parent and Conservative Pro-District Votes Cast in IDEA Tuition Reimbursement Decisions involving Students with Learning Disabilities between 1975-2016 in United States Courts of Appeals as a Function of 1997 IDEA amendments**

	Voting		
1997 IDEA Amendments	Liberal	Conservative	Total
Pre-1997 Amendments	27 (43%)	36 (57%)	63 (100%)
Post-1997 Amendments	33 (26%)	92 (74%)	125 (100%)
Total	60 (32%)	128 (68%)	188 (100%)

* Votes favoring tuition reimbursement were treated as liberal. Remands were excluded from this analysis.

Inferential Analysis

Binary logistic regression. Table 4.9 shows the results of the logit analysis performed on the judges' votes, coded as liberal or conservative, including remands, as the dependent variable (DV), and ideology (as determined by party of the appointing president) and the 1997 IDEA amendments, indicated by the date June 4, 1997, as the predictor variables. Liberal judge votes include those that were definitively in favor of the student or those which ordered a remand for further proceedings. Conservative judge votes include those that were in favor of the school district.

A total of 219 votes were analyzed, and the full model significantly predicted judges' liberal-conservative voting behaviors (omnibus chi-square = 7.871, df = 2, $p < .05$). The model accounted for between 3.5% and 4.8% of the variance in judge voting behaviors, as derived from Cox-Snell and Nagelkerke *R Square* estimate measures, with 86.7% of the conservative pro-

school district votes successfully predicted. However, only 16.5% of the predictions for the liberal pro-parent votes were accurate. Overall, 57.5% of predictions were accurate.

Table 4.9 gives the coefficients, Wald statistic, associated degrees of freedom, and probability values for each of the predictor variables. This shows that only P-A-P-ideology reliably predicted judges' voting behaviors. The associated coefficients reveal that party-of-appointing-president predictor attained significance at the .05 alpha level. Democratic appointees were associated with an increase in the odds of a liberal pro-parent vote by a factor of 1.84 as compared to Republican appointees (95% CI 1.06 and 3.185) with the other variables held constant. The 1997 amendment variable did not attain statistical significance at the .05 alpha level with the "remands included" model.

Table 4.9

Logit Analysis on the Odds of a Liberal Pro-Parent Vote in IDEA Tuition Reimbursement Decisions with Remand Cases Included in the United States Court of Appeals Decided between 1975- 2016 for Students with Learning Disabilities, by Party-of-Appointing-President and Date of Decision [Before or After 1997 Amendments]

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	.608 (.281)	4.700	1	.030	1.837
After 1997	-.512 (.294)	3.030	1	.082	.599
Constant	-.270	1.009	1	.315	.763

*p < .05. ** p < .01

Table 4.10 shows the results of the logit analysis performed with judges' votes, *excluding remands*, as the dependent variable (DV), and ideology (as determined by party of the appointing president) and pre- and post- 1997 IDEA amendments (set by their effective date, June 4, 1997), as the predictor variables.

A total of 188 votes were analyzed, and the full model significantly predicted judges' voting behaviors (omnibus chi-square = 12.93, df = 2, $p < .005$). The model accounted for between 6.6% and 9.3% of the variance in judge voting behaviors, as derived from Cox-Snell and Nagelkerke pseudo R^2 measures, with 86.7% of the conservative pro-school district votes successfully predicted. However, only 18.3% of the predictions for the liberal pro-parent votes were accurate. Overall, 64.9% of predictions were accurate.

Table 4.10 gives coefficients and the Wald statistic and associated degrees of freedom and odds ratios for each of the predictor variables. This analysis shows that both ideology and the 1997 IDEA amendments reliably predicted judges' voting behaviors. The values of the coefficients reveal that ideology, as measured by party-of-appointing-president, was significant at the .01 alpha level as a predictor of voting in IDEA tuition reimbursement cases. The results indicate that Democratic appointees were associated with an increase in the odds of a pro-parent liberal vote as compared with Republican appointees by a factor of 2.45 (95% CI 1.30 and 4.64). Votes that occurred after the effective date of the 1997 IDEA amendments were associated with a decrease in the odds of a liberal pro-parent vote by a factor of .468 (95% CI 0.24 and 0.90). These differences attained significance at the .05 alpha level. Reasons for these differences are explored in the next chapter.

Table 4.10

Logit Analysis on the Odds of a Liberal Pro-Parent Vote in IDEA Tuition Reimbursement Decisions with Remand Cases Excluded in the United States Court of Appeals Decided between 1975- 2016 for Students with Learning Disabilities, by Party-of-Appointing-President and Date of Decision [Before or After 1997 Amendments]

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	.898 (.325)	7.643	1	.006	2.455
After 1997	-.760 (.334)	5.187	1	.023	.468
Constant	-.700	5.348	1	.021	.497

*p < .05. ** p < .01

Table 4.11 shows the results of the logit analysis performed on judges' votes, coded as liberal or conservative, including remands, as the dependent variable (DV), and ideology (as represented by DW-Nominate scores) and pre- and post- 1997 IDEA amendments (set by their effective date, June 4, 1997) as the predictor variables. Votes were categorized as liberal when they were in favor of the student or remanded for further proceedings. Conservative judge votes include those that were in favor of the school district. The DW-Nominate scale ranges from 1 to -1 with a 1, indicating the most conservative ideology, and a -1 indicating the most liberal ideology. Zero serves as the mid-point between the two.

A total of 219 votes were analyzed, and the full model significantly predicted judge voting behaviors (omnibus chi-square = 7.53, df = 2, $p < .05$). The model accounted for between 3.4% and 4.6% of the variance in judges' voting behaviors, as derived from Cox-Snell and

Nagelkerke pseudo-*R Square* measures, with 87.5% of the conservative pro-school district votes successfully predicted. However, only 22% of the predictions for the liberal pro-parent votes were accurate. Overall, 60.3% of predictions were accurate.

Table 4.11 gives coefficients and the Wald statistic and associated degrees of freedom and odds ratios for each of the predictor variables. This shows that ideology as measured by DW-Nominate scores attained significance at the .05 alpha level. The values of the coefficients reveal that each unit increase (for example, from -1 to 0 or from 0 to +1) in DW-Nominate score is associated with a decrease in the odds of a liberal pro-parent vote by a factor of 0.487 (95% CI 0.25 and 0.96). This means the odds of a liberal pro-parent vote are 2.05 times greater for each unit decrease in DW-Nominate scores. The 1997 amendments variable did not reach statistical significance at the .05 alpha level in the DW-Nominate model with the remands included.

Table 4.11

Logit Analysis on the Odds of a Liberal Pro-Parent Vote in IDEA Tuition Reimbursement Decisions with Remand Cases Included in the United States Court of Appeals Decided between 1975-2016 for Students with Learning Disabilities, by DW-Nominate Score and Date of Decision [Before or After 1997 Amendments]

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	-.720 (.347)	4.312	1	.038	.487
After 1997	-.552 (.295)	3.507	1	.061	.576
Constant	.066	.076	1	.783	1.068

*p < .05. ** p < .01

Table 4.12 shows the results of the logit analysis performed with judges' votes, excluding remands, as the dependent variable (DV), and ideology (as represented by DW-Nominate scores) as the predictor variables. Votes were coded as "liberal" that were in favor of the parent and coded as "conservative" when in favor of the school district.

A total of 188 votes were analyzed, and the full model significantly predicted judges' voting behaviors (omnibus chi-square = 13.28, df = 2, $p < .01$. The model accounted for between 6.8% and 9.6% of the variance in judges' voting behaviors, as derived from Cox-Snell and Nagelkerke pseudo-*R Square* measures, with 92.2% of the conservative pro-school district votes successfully predicted. However, only 16.7% of the predictions for the liberal pro-parent votes were accurate. Overall, 68.1% of predictions were accurate.

Table 4.12 gives the coefficients and the Wald statistic and associated degrees of freedom and odds ratios for each of the predictor variables when the remanded cases were excluded. This shows that ideology as measured by DW-Nominate scores attained significance at the .01 alpha level. The values of the coefficients reveal that each unit increase in DW-Nominate score (for example, -1 to 0 and 0 to +1) is associated with a decrease in the odds of a liberal pro-parent vote by a factor of 0.31 (95% CI 0.14 and 0.71). Votes that occurred after the 1997 IDEA amendments were associated with fewer liberal pro-parent votes by a factor of 0.43 (95% CI 0.22 and 0.83), achieving significance at the .01 alpha level with the remands excluded.

Table 4.12

Logit Analysis on the Odds of a Liberal Pro-Parent Vote in IDEA Tuition Reimbursement Decisions with Remand Cases Excluded in the United States Court of Appeals Decided between 1975 -2016 for Students with Learning Disabilities, by DW-Nominate Score and Date of Decision [Before or After 1997 Amendments]

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	-1.169 (.421)	7.709	1	.005	.311
After 1997	-.846 (.337)	6.294	1	.012	.429
Constant	-.184	.492	1	.483	.832

*p < .05. **p < .01

Summary

Descriptive and inferential statistics were used to explore the potential predictive influences of ideological variables, party of the appointing president and DW-Nominate scores, and the 1997 IDEA amendments [pre- and post-June, 4, 1997], on U.S. Courts of Appeals judges' voting in K-12 tuition reimbursement cases for students with learning disabilities. Two dependent measures of voting were selected: (1) those which included remands where remands were categorized as pro-parent votes and (2) judicial votes that excluded remands, thereby isolating the cases with definitive liberal pro-parent wins from votes for the school district.

The logistic regression results revealed that ideology, as measured by the party-of-appointing-president and courts of appeals judges' DW-Nominate scores, performed effectively and similarly in predicting the odds of liberal pro-parent voting in IDEA tuition reimbursement

cases with all other variables held constant. Judges' appointed by Republican presidents and assigned DW-Nominate scores on the conservative side of the ideological spectrum [0 to +1] tended to vote more frequently in favor of the school districts than did their ideological colleagues who were appointed by Democratic presidents and fell on the liberal side of the spectrum [0 to -1]. With both predictors, relatively large effect sizes were associated with these measures.

In the model run with P-A-P and the 1997 amendments with the remanded cases *included* the differences between these periods in voting did not reach significance at the .05 alpha level. When the logit analyses were run with the remanded cases *excluded* from the calculation, the results indicated that differences in parental wins during the post-1997 period compared to the earlier period attained statistical significance at the .01 alpha level.

I attempt to interpret these results in the next chapter, considering the ideological and legal factors which might explain these results.

Chapter 5

Discussion

This study investigated the effects of U.S. Courts of Appeals judges' political ideology, as measured by party of the appointing president and judges' DW-Nominate scores, and legal developments, as measured by the 1997 Amendments to the Individuals with Disabilities Education Act ("IDEA"), on liberal- conservative voting in K-12 IDEA tuition reimbursement cases.

Cases included in the data base arose from decisions issued between1975 and 2016. Judges' votes were classified as "liberal" when they were cast in favor of the parent, and conservative when in favor of the school district. Separate analyses were run for data sets, which included or excluded cases involving votes to remand cases to the district courts for further proceedings. In the data set which included remands, a vote to remand was categorized as pro-parent- liberal. The study used binary logistic regression as its primary inferential statistical tool. This chapter analyzes and discusses results reported in Chapter IV.

Research Question #1

Are party of the appointing president and the 1997 Amendments to the Individuals with Disabilities Education Act ("IDEA") effective predictors of U.S. Courts of Appeals judges' conservative and liberal voting in tuition reimbursement cases brought under the Act?

Remands included. When P-A-P and the 1997 Amendments were set up as independent variables, the model as a whole was successful in predicting the odds of liberal and conservative voting [omnibus chi square=7.871, df=2, $p<.05$] among the 219 votes in the data base, which included the remanded cases. As between the 1997 IDEA amendments variable and the

ideological measure [P-A-P], only P-A-P differentiated liberal and conservative voting at the .05 alpha level, with Democratic appointees' voting more often in favor the parents (that is liberally), than the Republican appointees. This model accounted for between 3.5% and 4.8% of the variance when applying pseudo- R Square measures to the model.

For the P-A-P variable, the results indicated that the predicted odds of a liberal vote were about 1.8 times greater when the vote was cast by a Democratic appointee compared to those made by a Republican appointee with all the other variables held constant.

Mayes and Zirkel's (2001) study of case outcomes for published tuition reimbursement cases between 1978 and 2000 found similar results to mine in the effects of the 1997 IDEA Amendments: they found no "statistically significant change in the outcome distribution of published tuition reimbursement decisions" (p. 357) before and after the 1997 amendments. This suggests that the results of the present study may be valid. However, the Mayes and Zirkel comparisons were based on decisional outcomes, while this study used individual judges' votes as the dependent measure; they included hearing officer decisions as well as district court and courts of appeals results in their data base, while mine employed only courts of appeals cases; and my study included all cases issued between 1975 and 2016, whereas theirs included the period from 1978 to 2000.

Examining different types of cases (for example, those involving students with autism or emotional disabilities) and broadening the number of cases included in the data base might have revealed greater differences in the effect of the 1997 Amendments not apparent in the data base used in this study. That question may be answered in future research.

This model confirms the continuing viability of the P-A-P measure of judges' ideology as a predictor of voting; it extends this research to IDEA tuition reimbursement conflicts. This outcome is consistent with other studies which found that P-A-P is an effective predictor of courts of appeals judges' voting in cases implicating individual civil rights (Sisk & Heise, 2012; Wasserman & Connolly, 2016). Nevertheless, the fact that ideological effects *do* occur in special education disputes is an important finding, since it might be expected that in an area as sensitive as special needs education ideology would play a more limited role than appears to be the case.

The fact that the Amendments did not have a more powerful effect in the P-A-P model might be explained by at least some parents being better educated about what they were required to do prior to making a unilateral change in placement. Thus, for example, they may have been more aware of the requirement to raise objections when IEPs were proposed, and give at least 10 days' notice prior to the child's placement in a private school. Moreover, parents may have become more vigilant about the quality of the programs offered at private schools, based on their awareness that private school program failures might lead to a denial of tuition reimbursement.

Since this study did not allow for determination of what factors might have blunted the pro-school district effects of the 1997 Amendments, such questions might be answered in future studies by analyzing which elements of tuition reimbursement claims and defenses contributed to judges' voting (Edwards & Livermore, 2009). On the claims side, this could include whether judges found a FAPE denial or that the private services were appropriate under the Act. On the defense side, this could include an examination of the effects of notice or lack thereof given by parents at IEP meetings or prior to removing the child to a private setting, for example.

Remands excluded. When this data set, comprised of 188 votes, was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these IDEA tuition reimbursement cases (omnibus chi square=12.93, df=2, p<.005). This model accounted for between 6.6% and 9.3% of the variance, depending on which pseudo-R Square estimate was applied.

In the remands-excluded model, both the 1997 IDEA Amendments variable (p<.05) and the ideological measure [P-A-P] (p<.01) differentiated liberal and conservative voting with Democratic appointees' voting more often in favor the parents than the Republican appointees and judges voting more liberally *before* the 1997 Amendments became effective than thereafter.

For the P-A-P variable, the results indicated that the predicted odds of a liberal vote were 2.46 times greater when cast by Democratic appointees compared to those made by Republican appointees with all other variables held constant. As with the "remands included" data set, this calculation confirms the continuing viability of the P-A-P measure as a predictor.

During the post-1997 period compared to the earlier one, the odds of a liberal vote diminished by a factor of 0.47 with all other variables held constant. Although the more rigorous procedural standards enacted in the 1997 legislation appear to have made it more difficult for parents to prevail in the "remands excluded" model, these results must be interpreted with caution since they exclude a significant number of the judges' votes relative to the remands-included model.

In sum, the results for the model employing the P-A-P and 1997 Amendments variables demonstrated the importance of ideology in courts of appeals judges' voting and extended this research to IDEA tuition reimbursement conflicts. The fact that P-A-P ideological effects *do*

occur in special education disputes should silence any believers that ideology might play a more limited role in voting in cases involving children with disabilities.

This conclusion, however, leaves a question about the appropriateness of treating a remand as a vote categorized as "liberal." Since the remands account for approximately 14% of coded votes, their use must be justified and explained beyond mere model superiority. A remand is by any standard an appellate victory, although not an ultimate victory. Frequently it is the best outcome a plaintiff-appellant can achieve in the appellate court. Accordingly, the appropriate view should be that remands coded as "liberal" is a better way of treating the data than excluding them entirely. Indeed, they represent a definitive win in the U.S. Courts of Appeals in that the plaintiff-parents survived to hold the defendant employer accountable for the alleged IDEA violations.

Research Question #2

Are DW-Nominate Scores and the 1997 Amendments to the Individuals with Disabilities Education Act ("IDEA") effective predictors of U.S. Courts of Appeals judges' conservative and liberal voting in tuition reimbursement cases brought under the Act?

Remands included. When the DW-Nominate and 1997 Amendment predictor set was run with the remands included in the analysis, the model as a whole distinguished between liberal and conservative voting in these IDEA tuition reimbursement cases (omnibus chi square= 7.53, df=2, $p<.05$). This model accounted for between 3.4% and 4.6% of the estimated pseudo R Square variance, depending on which estimate was applied.

In this model, ideology as measured by DW-Nominate scores, attained significance at the .05 alpha level as a predictor of liberal-conservative voting. Each unit increase (going from more

liberal to less liberal) in DW-Nominate Scores was associated with a decrease in the odds of a liberal-pro-parent vote by a factor of .487 with all other variables held constant. Thus, DW-Nominate scores, like the P-A-P, proved to be a robust predictor of ideological voting in these IDEA cases. This result indicates that as to the two ideological measures employed in this study, ideology is clearly impacting how judges vote in these cases. This finding reinforces the comments made in connection with the P-A-P model that even in special needs education litigation, voting reflects ideology "all the way down" (Sisk & Heise, 2012).

The effect of the 1997 Amendments in the DW-Nominate model failed to reach the.05 alpha level of significance when the remands were included.

Remands excluded. When the DW-Nominate and 1997 Amendment predictor set was run with the remands excluded from the analysis, the model as a whole distinguished between liberal and conservative voting in these IDEA tuition reimbursement cases (omnibus chi square= 13.28, df=2, p<.005). This model accounted for between 6.8% and 9.6% of the estimated pseudo R Square variance, depending on which estimate was applied.

In this model, ideology as measured by DW-Nominate scores attained significance at the .01 alpha level as a predictor of liberal-conservative voting. Each unit increase (going from more liberal to less liberal) in DW-Nominate scores was associated with a decrease in the odds of a liberal-pro-parent vote by a factor of .311 with all other variables held constant. Thus, DW-Nominate scores like the P-A-P in the remands excluded model proved to be a robust predictor of ideological voting in these IDEA cases.

In the remands excluded model, the 1997 Amendments in the DW-Nominate model distinguished liberal-conservative voting at the the.05 alpha level of significance (p=.012). The

size of this effect was such that a unit-change from pre-1997 amendments to post-amendment period resulted in a decrease in the predicted odds of a liberal vote by a factor of 0.429 with all other variables held constant. Thus, with the remands excluded in the DW-Nominate model, the 1997 Amendments exerted a robust influence on judges' voting in these cases evidencing significantly greater losses for the parents following the amendments. Although these results suggest important potential effects of the 1997 amendments they must be read with caution as was suggested in connection with the P-A-P model. The exclusion of the remands in this model deleted an important part of the IDEA tuition reimbursement cases and might have distorted the results.

Research Question #3

Are there differences in the power of party-of appointing-president [Republican or Democrat] and DW-Nominate scores [a continuous measure of political conservatism and liberalism], in predicting whether courts of appeals judges' award tuition reimbursement in IDEA cases involving students with learning disabilities?

This study utilized two separate ideological sources: 1) party of the appointing president and 2) DW-Nominate. Each regression was run twice, substituting the different ideological sources, to allow a comparison of their predictive powers on judge votes. Although the DW-Nominate regressions had slightly more significance, no meaningful difference was observed. The literature suggests that the DW-Nominate affords a more nuanced and sensitive analysis of judges' ideological preferences (Songer & Ginn, 2002). This implies that the predictive power of the DW-Nominate should be greater than the party of the appointing president. However, this

study was not consistent with that assertion. Therefore, several implications might be drawn from these results.

To the extent that DW-Nominate is more effective at distinguishing voting behavior compared to the party of the appointing president, its efficacy might be issue specific (Fischman & Law, 2009). Some studies analyzing other topics have found DW-Nominate to have robust predictive power (Wasserman & Connolly, 2016); however, K-12 learning disabled tuition reimbursement cases did not appear to be one of those instances. It may be questionable whether the time and effort invested in the derivation of the DW-Nominate calculation might be an efficient use of resources in all cases. In this instance, the yield on the investment appears to have been minimal to non-existent. It would appear that to the extent that resources and time are limited, it may be that in defined instances, party-of-appointing-president would be a better choice. Future researchers should consider that it may be sufficient to use the party-of-appointing-president in studies which involve ideological factors that influence judicial voting.

Overview and Implications

The present study expanded the body of research on judicial voting by investigating the influence of: (1) judges' political ideology as measured by party-of-the-appointing president and DW-nominate scores; and (2) legal precedent, as measured by voting which occurred before or after the 1997 IDEA amendments on judges' liberal and conservative voting between 1975 and 2016 at the United States Courts of Appeals, using binary logistic regression as its main statistical tool.

The principal findings for this group of K-12 decisions are: (1) ideology, as determined by party-of -appointing president, is an effective predictor of judges' voting in K-12 IDEA

tuition reimbursement cases decided at the U.S. Courts of Appeals when all other variables are held constant … the odds of a Democrat-appointed U.S. Court of Appeals judge voting in favor of the parents are significantly greater than the odds of a Republican-appointed U.S. Court of Appeals judge voting in favor of the plaintiff in these cases; (2) ideology, as determined by judges' DW-Nominate score, is an effective predictor of judges' voting in K-12 IDEA tuition reimbursement cases at the U.S. Courts of Appeals when all other variables are held constant… the odds of a U.S. Court of Appeals judge with a DW-Nominate score below 0 (liberal) voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge with a DW-Nominate score above 0 (conservative) voting for the plaintiff in these cases; (3) whether a vote was cast before or after the 1997 IDEA amendments was only an effective predictor of judges' liberal or conservative at the U.S. Courts of Appeals when the remands were excluded from the data base. This effect occurred in both the party of the appointing president and DW-Nominate models … the odds of a U.S. Court of Appeals judge prior to the 1997 amendments voting in favor of the parents are greater than the odds of a U.S. Court of Appeals judge voting in that direction after the 1997 amendments when the remands were excluded. The pre- verses post-amendment comparisons did not show a significant difference when the remands were included. This makes interpretation of the results for the 1997 amendments variable more ambiguous thereby requiring more investigation to clarify its meaning.

These results suggest that ideology is an important factor which controls voting across K-12 tuition reimbursement cases where the needs of learning disabled children are in issue. It is apparent that in this instance, ideological effects produced large effect sizes relative to the P-A-P and DW-Nominate ideological indicators. That said, the better view is that there are multiple

effective variables which contribute to liberal or conservative voting in this type of case.

Limitations of the Study

This study extended the existing body of research on judicial behavior to study the effects of ideology (measured by party-of–the-appointing-president and judges' DW-Nominate scores) and the 1997 IDEA amendments on judges' liberal and conservative voting in cases involving tuition reimbursement for learning disabled children under the IDEA. There are other variables, however, that may also have an effect on voting in these cases.

These may include: the law of the circuit from which a decision was issued; the work load assigned to judges at the time a decision was made; whether the decision involved an elementary or secondary student; the length of a judge's tenure and the goals that s/he is trying to accomplish; and the panel composition based on the number of a party's appointees participating in a decision for example (Atkins, 1974; Broscheid, 2011; Collins, 2010; Curry & Miller, 2015; Kaheny, Haire, & Benesh, 2008). Moreover, studying judges' ethnic, racial, and religious characteristics may also be a productive line of research (Audette & Weaver, 2015; Graycar, 2008; Lindquist, 2006; Sisk, 2004). These and other variables' effects on courts of appeals judges' voting may be worth pursuing in future investigations.

Although the data base excluding the remands resulted in the 1997 Amendments showing more powerful effects than when remands were included and coded as pro-parent, including the remanded cases may be a sounder approach to analyzing the effects of ideological and legal factors on voting. This is primarily because: (1) remands resulted in plaintiffs achieving their goal at the appellate level by reversing the trial court's grant of summary judgment or motion to dismiss for failure to state a claim for the defendant and (2) represented a distinct possibility of

going to trial in the lower court or obtaining a favorable settlement on issuance of the remand order.

A review of the literature revealed that there are very few studies that investigate Court of Appeals judicial voting in IDEA tuition reimbursement cases. In this study, I investigated the effect of ideology and law on judges voting in such cases. This study contributed to the research to help fill the gap in the literature concerning Court of Appeals judicial voting and extended the literature in the ways I have described above.

References

Atkins, B. M. (1974). Opinion assignments on the United States Courts of Appeals: The question of issue specialization. *The Western Political Quarterly, 27*(3), 409 – 428.

Audette, A. P., & Weaver, C. L. (2015). Faith in court: Religious out-groups and the perceived legitimacy of judicial decisions. *Law & Society Review, 49*(4), 999 – 1022.

Bateman, A. B., & Lapinski, J. (2016). Ideal points and American political development: Beyond DW-nominate. *Studies in American Political Development, 30*(2), 147 – 171.

Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982)

Bond, J.R., & Smith, K. B. (2012). *The promise and performance of American democracy*. Boston, MA: Wadsworth.

Bonventre, V. M., & Hiller, A. (2001). Public law at the New York court of appeals: An update on developments, 2000. *Albany Law Review, 64*(4), 1355 - 1403.

Brace, N., Kemp, R., & Snelgar, R. (2012). *SPSS for psychologists*. New York, NY: Palgrave Macmillan.

Broscheid, A. (2011). Comparing circuits: Are some U.S. Courts of Appeals more liberal or conservative than others? *Law & Society Review, 45*(1), 171 – 194.

Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955)

Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985)

Carter, J. (1980, July 4). [Speech to NAACP]. Copy retrieved from http://www.presidency.ucsb.edu/ws/?pid=44730

Collins, T. (2010). Is the sum greater than its parts? Circuit court composition and judicial behavior in the courts of appeals. *Law & Policy, 32*(4), 434 – 453.

Cortiella, C., & Horowitz, S. H. (2014). *The state of learning disabilities: Facts, trends, and emerging issues.* NY: National Center for Learning Disabilities, 2014.

Cox, A. B., & Miles, T. J. (2008). Judging the voting rights act. *Columbia Law Review, 108*(1), 1-54.

Curry, B., & Miller, B. (2015). Judicial specialization and ideological decision making in the US Courts of Appeals. *Law & Social Inquiry, 40*(1), 29 – 50.

Davison, L. (2016). Endrew F. ex rel. Joseph F. v. Douglas County School Dist. Re-q: A missed opportunity. *Denver Law Review, 94*. Retrieved from http://www.denverlawreview.org/dlr-onlinearticle/2016/12/19/endrew-f-ex-rel-joseph-f-v-douglas-county-school-dist-re-1-a.html

D.F. v. Collingswood Board of Educ., 694 F.3d 488 (3rd Circ., 2012).

Edwards, H.T., & Livermore, M.A. (2009). Pitfalls of empirical studies that attempt to understand the factors affecting appellate decisionmaking. *Duke Law Journal, 58*(8), 1895-1989.

Endrew v. Douglas County School Dist., 798 F.3d 1329 (10th Cir. 2016).

Epstein, L. (2016). Some thoughts on the study of judicial behavior. *William & Mary Law Review, 57(*6), 2017 – 2073.

Ertelt, S. (2016). Donald Trump: "I will appoint supreme court judges who will be pro-life." *Life News.* Retrieved from http://www.lifenews.com/2016/05/11/donald-trump-i-will-appoint-supreme-court-judges-who-will-be-pro-life/

Federal Judicial Center. (2016). Biographical Directory of Federal Judges, 1789-present. Retrieved from http://www.fjc.gov/history/home.nsf/page/judges.html

Fischman, B. J., & Law, D. S. (2009). What is judicial ideology, and how should we measure it? *Washington University Journal of Law & Policy, 29*(7), 133 – 214.

Florence Cty. Sch. Dist. Four v. Carter By & Through Carter, 510 U.S. 7, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993)

Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 129 S. Ct. 2484, 174 L. Ed. 2d 168 (2009)

Gopal, S. (2004). Compensatory Education and the IDEA. *School Law Bulletin*. Retrieved from http://sogpubs.unc.edu/electronicversions/slb/slbspr04/article2.pdf

Graycar, R. (2008). Gender, race, bias and perspective: Or, how otherness colours your judgment. *International Journal of the Legal Profession, 15*(1/2), 73 – 86.

IDEA, 20 U.S.C. §§ 1401-1415 (2004).

J.L. v. Mercer Island School District, 592 F.3d 938, (9th Cir., 2010).

Kaheny, E. B., Haire, S.B., & Benesh, S.C. (2008). Change over tenure: Voting, variance and decision making on the U.S. courts of appeals. *American Journal of Political Science, 52*(3), 490 – 503.

Lindquist, S. (2006). Judicial background characteristics and the choice to dissent. *Conference Papers – Law & Society*, 1.

Mayes, T.A., & Zirkel, P.A. (2001). Special education tuition reimbursement claims: An empirical analysis. *Remedial and Special Education, 22*(6), 350 – 358.

M.H. and E.K. v. NY. Board of Educ., 685 F.3d 217, (2nd Cir., 2012).

Mills v. Board of Educ., 348 F.Supp. 866 (E. D. Pa., 1972).

National Information Center for Children and Youth with Disabilities (1998). The IDEA amendments of 1997. *NICHCY News Digest, 26*. Retrieved from http://files.eric.ed.gov/fulltext/ED420943.pdf

Mr. G.L. v. Ligonier Valley Sch. Dist., 802 F.3d 601 (2015).

Open Jurist. (2016). *Appeals Court*. Retrieved from http://openjurist.org/us-court/type/appeals-court

Pennsylvania Ass'n for Retarded Children v. Com. of Pa., 343 F. Supp. 279 (E.D. Pa. 1972)

Pinello, D. R. (1999). Linking party to judicial ideology in American courts: A meta-analysis. *The Justice System Journal, 20*(3), 219 – 254. Retrieved from http://www.danpinello.com/Meta-Analysis.htm

O.S. v. Fairfax Cty. Sch. Bd., 804 F.3d 354 (4th Cir. 2015)

Poole, K.T. (1999). *Nominate: A short intellectual history*. Retrieved from http://k7moa.com/pdf/nominate.pdf

Poole, K., & Rosenthal, H. (1984). *A spatial model for legislative roll call analysis*. Retrieved from http://www.voteview.com/pdf/Upside_Down-A_Spatial_Model_for_Legislative_Roll_Call_Analysis_1983.pdf

Regional School Dist. No. 9 Board of Educ. v. Mr. And Mrs. M., WL 2514064 (D. Ct., 2009).

Scherer, N. (2001). Who drives the ideological makeup of the lower federal courts in a divided government? *Law & Society Review, 35*(1), 191.

Segal, A. J., & Spaeth, H. J. (2002). *The Supreme Court and the attitudinal model revisited*. New York: Cambridge University Press.

Singer, J., Miller, M., & Jehle, A. (2006). Religion in the courts: A psychological analysis of the role of religious attitudes in legal decision-making. *Conference Papers – Law & Society*, 1.

Sisk, G. (2004). Searching for the soul of judicial decisionmaking: An empirical study of religious freedom decisions. *Conference papers – Law & Society*, N.PAG.

Sisk, G. C., & Heise, M. (2012). Ideology "all the way down"? An empirical study of establishment clause decisions in the federal courts. *Michigan Law Review, 110*(7), 1201-1263.

Songer, D. R., & Ginn, M. H. (2002). Assessing the impact of presidential and home state influences on judicial decisionmaking in the United States courts of appeals. *Political Research Quarterly, 55*(2), 299 – 328.

Toobin, J. (2014). The Obama brief: The President considers his judicial legacy. *The New Yorker*. Retrieved from http://www.newyorker.com/magazine/2014/10/27/obama-brief

U.S. Department of Education (2005). *IDEA: Reauthorized statute; Part C amendments in IDEA 2004*. Retrieved from http://www2.ed.gov/policy/speced/guid/idea/tb-partc-ammend.pdf

U.S. Department of Education. (2010). *Thirty-five years of progress in educating children with disabilities through IDEA*. Retrieved from http://www2.ed.gov/about/offices/list/osers/idea35/history/index.html?exp=5

U.S. Department of Education. (2016). *Condition of education 2016*. Retrieved from http://nces.ed.gov/pubs2016/2016144.pdf

U.S. Departments of Education, National Center for Education Statistics. (2016). *Digest of Education Statistics, 2014 (NCES 2016-006),* Chapter 2. Retrieved from https://nces.ed.gov/fastfacts/display.asp?id=64

U.S. Office of Special Education Programs. (2000). *History: Twenty-five years of progress in education children with disabilities through IDEA*. Retrieved from http://www2.ed.gov/policy/speced/leg/idea/history.pdf

Wasserman, L. M. (2009). Delineating administrative exhaustion requirements and establishing federal courts' jurisdiction under the Individuals with Disabilities Education Act: Lessons from the case law and proposals for congressional action. *Journal of the National Association of Administrative Law Judiciary, 29*(2), 350 – 432.

Wasserman, L. M., & Connolly, J. P. (2016). Unipolar panel effects and ideological commitment: An analysis of U.S. Courts of Appeals free speech decisions involving K-12 public education employees. *ABA Journal of Labor & Employment Law, 31*(3), 537 – 552.

Weinshall-Margel, K. (2008). Attitudinal Model versus new institutional approach to Supreme Court decision-making: Israel and the U.S. *Conference Papers – Law & Society*, 1.

Wright, P. W. D. (1999). *Appendix A to part 300 – notice of interpretation*. Retrieved from http://www.wrightslaw.com/info/iep.law.appendixa.htm

Wright, P. W. D. (2006). *Summary of major changes in the regulations*. Retrieved from http://www.wrightslaw.com/idea/law/idea.regs.sumry.chngs.pdf

Wright, P. (2010). *The history of special education law*. Retrieved from http://www.wrightslaw.com/law/art/history.spec.ed.law.htm

Yung, C. R. (2010). Judged by the company you keep: An empirical study of the ideologies of judges on the United States Courts of Appeals. *Boston College Law Review, 51*(4), 1133 – 1208. Retrieved from http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3125&con

Zirkel, P. A. (2012). Special education hearing officers balance and bias. *Journal of Disability Policy Studies, 24*(2), 67-74.

Biographical Information

Tara Stephens started her career at IBM business solutions and Experian Information Solutions as a project manager in corporate data and research projects upon completion of a Bachelor of Music degree from The University of Texas at Arlington. Following humanitarian interests, in 2007 her career shifted to public education where she spent ten years as an elementary teacher in Title I schools. Through the merging of her corporate research and public education experiences, while in public education, her interests in educational organizational development and leadership emerged, leading to the completion of a Master of Education in educational leadership from Midwestern State University. Her research interests include organizational development, leadership, professional development, diversity, poverty, race, students with disabilities, and special education law. She intends to pursue leadership opportunities that allow positive contributions to society.