

*Significant Outcomes in Case Law in the United States: Autism and IDEA in 2013, Transition Issues and Changes in Diagnostic Evaluation Criteria*

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*Abstract*

The authors examined 85 cases decided in 2013 where the facts centered on violations of the Individuals with Disabilities Education Act (IDEA) and the provision of a Free Appropriate Public Education (FAPE) for students with autism spectrum disorder (ASD). Trends in prevailing party by geographic location, court circuit, gender, and other specifics (including transition and changes in evaluation criteria) are explored and compared to earlier research. Suggestions for educators who provide services for students with ASD are provided as well as free evidence-based resources for professional development.

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Autism has been redefined in the Diagnostic and Statistical Manual of Mental Disorders- 5<sup>th</sup> Edition (American Psychiatric Association [APA], 2013). Three of the previously separate disorders (autistic disorder [autism], Asperger's disorder, and pervasive developmental disorder-not otherwise specified) have been redefined as a single condition with different levels of symptom severity in two core domains; 1) deficits in social communication and social interaction and 2) restricted repetitive behaviors, interests, and activities. Both components are required for diagnosis, and social communication disorder is generally diagnosed if no restrictive, repetitive behaviors are present (APA, 2013).

In 2000 the prevalence rate for autism spectrum disorder (ASD) was 1 in 150 children. In 2010, the year for which we have the most up-to-date statistics, the rate is the well-publicized 1 in 68 (Centers for Disease Control, 2014) under DSM-IV criteria. The changes in DSM-5 led to speculation regarding future diagnosis of autism spectrum disorder (ASD) in children. One of the concerns with the new diagnostic criteria is that the symptoms must show up from early childhood, even if not recognized until later (APA, 2013). While educational diagnosis may differ than DSM-V diagnosis (e.g., higher functioning individuals with an ASD diagnosis by DMS-V standards but not qualify for services because the disability does not impact educational progress), the latter is taken into consideration when determining eligibility for services under IDEA. Since parents interact with medical and educational professionals when seeking services for their child, the professional language used by both impact service provision (Prykanowski, Gage, & Conroy, 2015).

Several investigators examined the reliability of DSM-5 criteria against DSM-IV criteria using clinical samples, and concluded that the DSM-5 criteria have specificity and sensitivity against DSM-IV criteria (Frazier et al., 2012; Huerta, Bishop, Duncan, Hus, & Lord, 2012). Wing, Gould, and Gillberg (2011) also examined these criteria in some detail. They determined that the committee that developed the DSM-5 overlooked a number of important issues, including social imagination, infant and adulthood diagnosis, and the possibility that girls and women with ASD may continue to be misdiagnosed/undiagnosed under the new manual's criteria. The authors concluded that a number of changes would be required for DSM-5 criteria to be used with reliability and validity in practice and research. Matson, Hattier, and Williams (2012) also found that under the DSM-5, diagnoses of ASD would drastically decrease, and Ghaziuddin (2010) argued that the diagnosis of Asperger's syndrome (AS) should be retained and that diagnostic criteria should be modified. Clinical professionals rely on descriptive data for diagnosing ASDs, and changes from DSM-IV to DSM-5 may have implications for all professionals (including educators), even when educational diagnosis (which even varies between professional clinicians) utilizes other "gold standard" tools such as the Autism Diagnostic Observation Schedule (ADOS) and the Autism Diagnostic Interview-Revised (ADI-R), (Esler, 2013; Kulage, Smaldone, & Cohn, 2014).

### **Understanding Outcomes of Case Law**

Analyses of case outcomes involving autism and IDEA decided between 1990 and 2002 (published between 2002 and 2004) yielded relatively split case decisions regarding prevailing party (50% parent, 50% school district) using different research approaches. Choutka, Doloughy, & Zirkel (2004) compared autism cases involving applied behavior analysis (ABA) and treatment and education of autistic and related communication handicapped children (TEACCH). Yell, Katsiyannis, Drasgow, & Herbst (2003) studied autism cases decided between 1990 and 2002, where violations were mainly in the areas of parental participation, evaluation, individualized education program (IEP), placement, lack of qualified personnel, behavior intervention plan (BIP), and extended school year (ESY) services. Zirkel (2002) studied cases involving students with any pervasive developmental disorder (PDD). Eligibility, methodology, attorney's fees, discipline, and ESY and related services were the focus of his study and yielded almost split outcomes between prevailing parties.

Research involving autism and case law between 2007 and 2010 (Hill, Martin, & Nelson-Head, 2011; Hill and Hill, 2012; Hill and Kearley, 2013) indicated that school districts prevailed more than twice as often over parents. There is a need to continue to evaluate results of autism litigation given rising numbers both in diagnosis and in students transitioning into adulthood. Compared to the earlier studies, the pendulum has swung with regard to transition. While the number of cases involving transition (both from early intervention to school and from school to the adult world) parents prevailed over schools in the study conducted using 2007-08 cases (6 cases ruled in favor of parents, 4 in favor of districts, and 7 outcomes were evenly divided; Hill, Martin, and Nelson-Head, 2011). In the study by Hill and Hill (2012) parents prevailed in 5 cases involving transition, school districts in 3, and 0 cases resulted a split decision between parents and districts. In comparison, outcomes in 2010 (Hill and Kearley) found that parents prevailed in 2 cases and school districts in 7 (there were no split decisions). Using these repeated measures to evaluate trends in a systematic manner informs stakeholders and helps in decision making and prioritizing educational focus for students with ASD. Transition also exemplifies

the shift from parent to school district as prevailing parties.

The purpose of the present study is to examine court cases at the US District Court level and to: (a) continue to monitor trends in prevailing parties regarding ASD and IDEA by year; (b) provide a historical legal analysis for determining if and/or when changes in diagnostic criteria for ASD may impact due process filing, and outcomes of case law; and (c) examine consistent and emerging factors involved in violations of IDEA and the provision of FAPE for students with ASD in light of the changing environment, such as the numbers of individuals transitioning to adulthood, and the impact of changes with NCLB and Every Student Succeeds Act (ESSA; Fennell, 2016).

### *Method*

#### **Variables**

Using the *LexisNexis*<sup>TM</sup> database of federal and state court cases and the search terms autism or Asperger's, IDEA, and 2013, the authors examined cases involving students between the ages of 3-21, and the provision of a free appropriate public education (FAPE) as required under the Individuals with Disabilities Education Act (IDEA) as the independent variables of the study. The cases were organized by circuit and were included using the most current stage of litigation to determine the prevailing party. As promoted by their website, the *LexisNexis*<sup>TM</sup> research system provides the most expansive collection of online legal content available anywhere and the tools needed to extract the essentials from the overwhelming amount of information available (LexisNexis, 2014). The dependent variables were the prevailing parties in each case (schools, parents, or a split decision) by the District or Circuit court judge (or equivalent). The authors realize that many cases settled through mediation are not included in the database, but this database provides a snapshot of those cases that reach the District or Circuit court level.

Each case was coded on variables including procedural violations (parent participation, IEP, placement, evaluation, and unqualified personnel), substantive violations (services not provided, services equal no progress, transition, functional behavior assessment/behavior interventions plan (FBA/BIP), data not collected, and ESY services), and demographic information (District or Circuit court, gender, diagnosis, and grade level). Based on commonalities found across cases, data were also coded under the category of "other" (e.g. private school, applied behavior analysis, student behavior, failure to exhaust administrative remedies, and whether the court indicated that the student was an English language learner). If the item was mentioned as part of the case it was coded and ultimately graphed by case outcome (parents, school district, or tie). These areas are worthy to note because they may be indicators of future trends in litigation.

#### **Inter-observer Agreement**

Inter-observer agreement (IOA; Cooper, Heron, & Heward, 2007) measures how much two raters come to the same agreement of some outcome. To ensure IOA in this study, the second researcher reviewed 23 cases (27 %). Data were categorized by prevailing party (1=parent prevailed on all/most issues, 2=school district on all/most issues, or 3=split decision). After training, the second researcher reviewed the cases, obtaining inter-observer agreement of 91% (21 of 23 cases included in the review). The cases where agreement was not met were reviewed and discussed again by the researcher until 100% agreement was reached. The agreed upon outcome was used in the final research.

### Data Analysis Procedures

Comparisons in prevailing party were made to the 2007-2011 case outcomes (Hill, Martin, & Nelson-Head, 2011; Hill & Hill, 2012; Hill and Kearley, 2013) to determine if trends such as schools prevailing more than parents and number of cases heard continued to increase (see Table 1). Each case was coded by area if noted as part of the case. These were then graphed by case involvement and prevailing party.

### Results

Eighty-five cases involving autism and IDEA in 2013 were examined using the *LexisNexis*<sup>TM</sup> database through a local university. The search terms used include autism, IDEA, and Asperger's. These were the same terms used in the 2007-08, 2009, and 2010. While more cases were discovered and examined for 2013 (an increase), outcomes were similar to the studies using data since 2007, and school districts (65%; n=55) prevailed more than twice as much as parents (26%; n=22), while 9% (n=8) resulted in a tie (see Table 1).

The majority of cases (73%) occurred in the 2<sup>nd</sup> (New York, Vermont, and Connecticut; n=31) and 3<sup>rd</sup> (Pennsylvania, New Jersey; n=10) as well as the 9<sup>th</sup> (cases from Arizona, California, Hawaii, Idaho, and Nevada; n=21; Figure 1) court circuits. At least one procedural violation to IDEA was involved in every case examined. Substantive violations were noted in 71 of 85 cases (84%).

Table 1  
*Case Outcomes between 2007-2010 compared with 2013*

Years Covered in Research	Number of Cases	Parent	Prevailing Party School District	Tie
2007-2008	99	27.3% (n=27)	53.5% (n=53)	19.2% (n=19)
2009	62	29% (n=18)	63% (n=39)	8% (n=5)
2010	68	35% (n=24)	60% (n=41)	4% (n=3)
2013*	85	26% (n=22)	65% (n=55)	9% (n=8)

\*Current Study

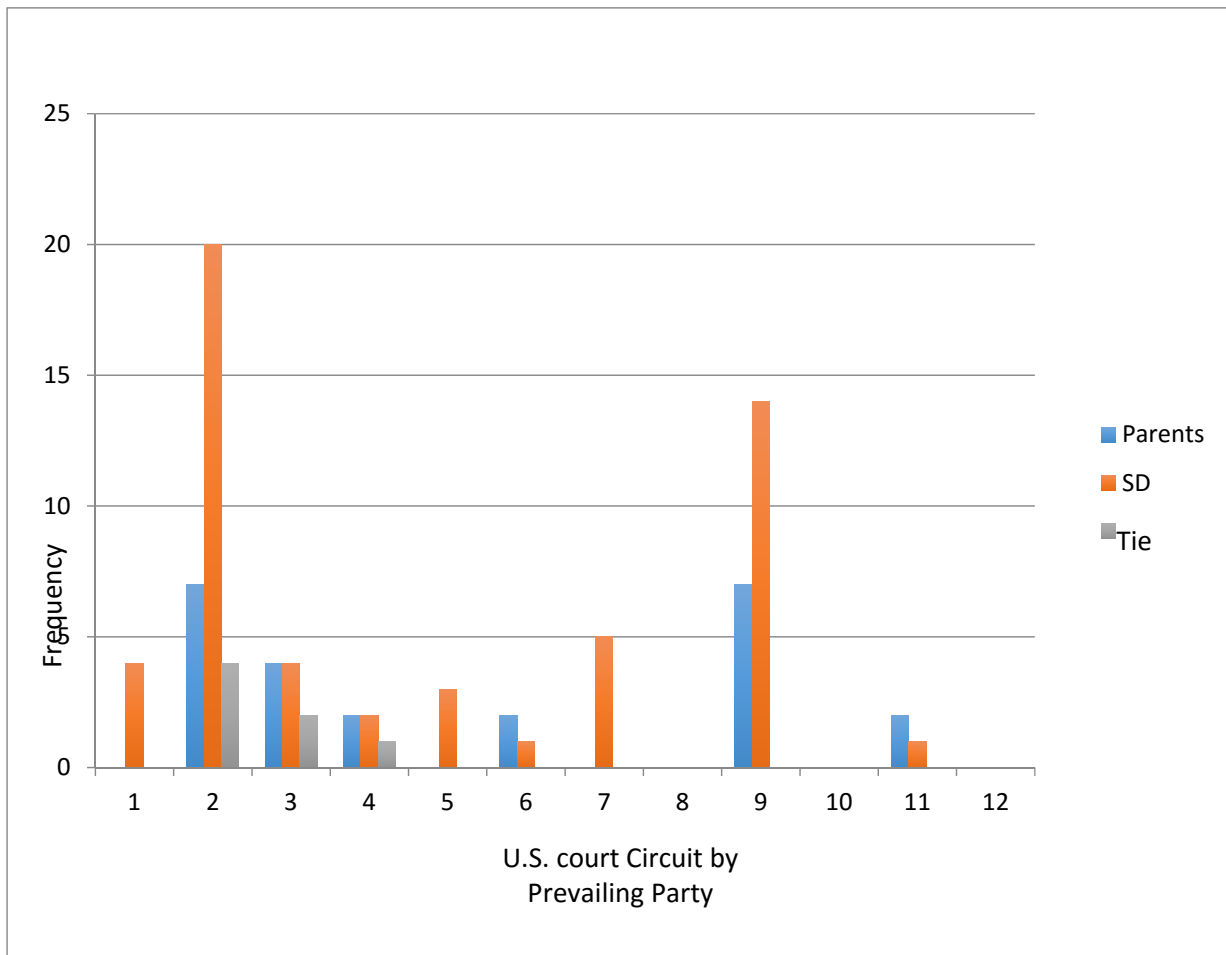


Figure 1. Outcomes by U.S. Court Circuit

SD- School District

Procedural violations to IDEA included issues regarding parent participation (41%; n=35), IEP procedures (91%; n=77), placement (72%; n=61), evaluation (45%; n=38), and unqualified personnel (20%; n=17). Substantive violations include services not provided (58%; n=49), services equal no progress (24%; n=20), transition (19%; n=16), FBA/BIP (31%; n=26), data not collected (7%; n=6), and provision of ESY services (16%; n=14). Procedural and substantive violations are graphed in Figures 2-3.

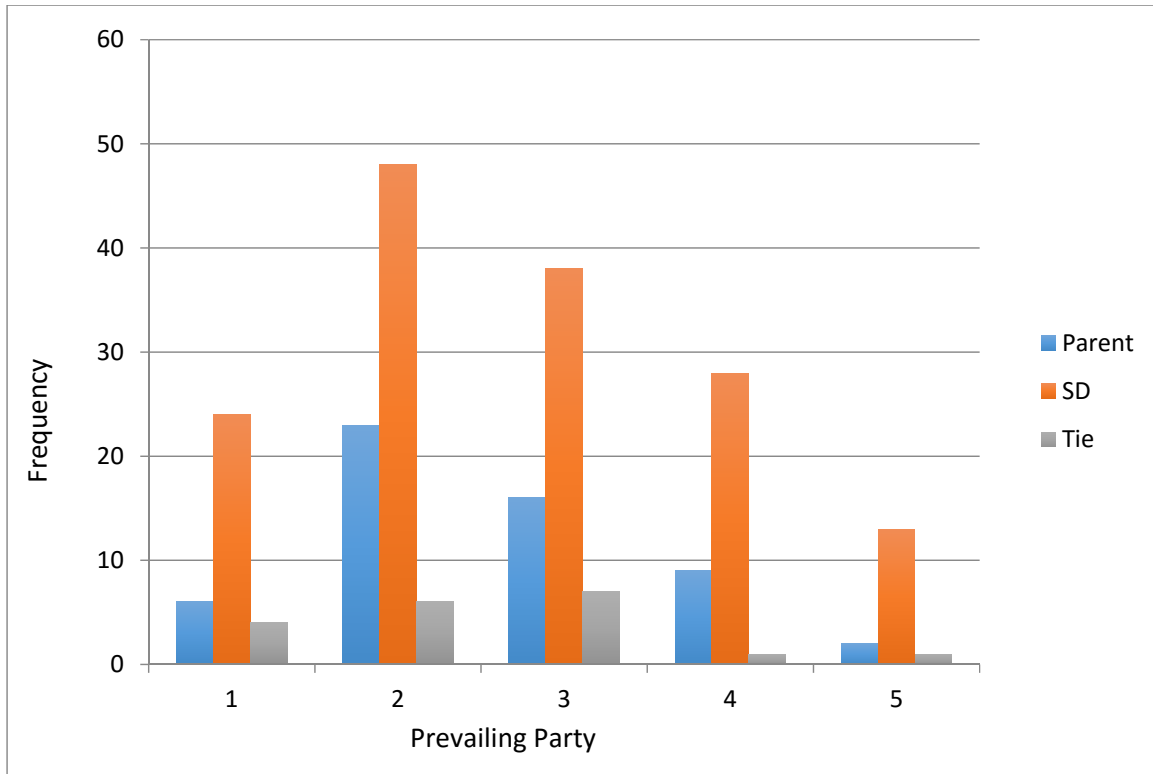


Figure 2. Procedural Violations

SD-School District

1-Parent Participation, 2-IEP\*, 3-Placement, 4-Evaluation, 5- Unqualified Personnel

\* In cases where the IEP was not part of the case, placement (n=5), Evaluation (n=1), or Unqualified Personnel (n=2) were the sole issues decided.

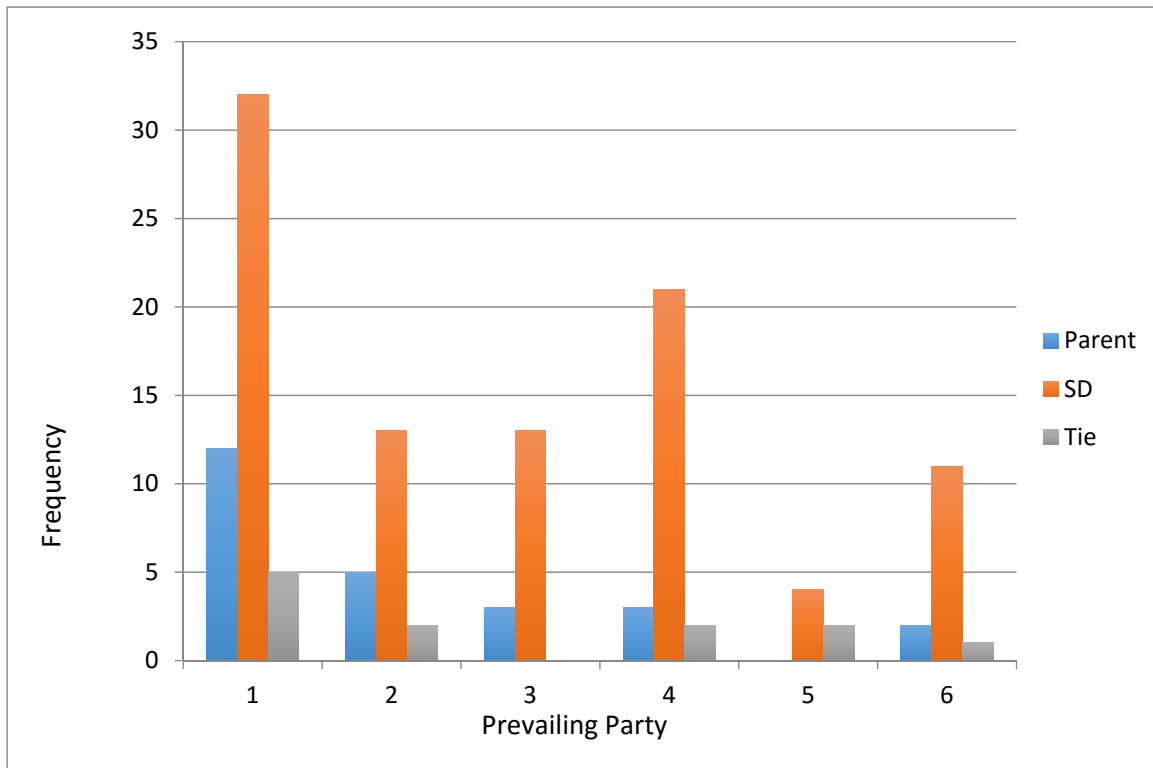


Figure 3. Substantive Violations

SD-School District

1-Services not provided, 2-Services equal no progress, 3-Transition, 4-FBA/BIP, 5- Data not collected, and 6-ESY

Demographic data were also coded and displayed. Males were involved in 71 of 85 cases (one case involved 5 boys, another involved two boys, and a third involved 2 boys and a girl), while 15 females were identified as the subjects in the 85 cases examined. In this study, the ratio of 71 males to 15 females (almost 5/1) was similar to the ratio of males to females outlined in the literature (Autism Speaks, 2015; Harrop, Gulstrud, & Kasari, 2015).

Thirty-five (41%) students had autism as well as a co-morbid condition, while 50 (59%) were identified as strictly having an ASD. School districts prevailed 2:1 over parents regardless of the co-morbidity or singular ASD diagnosis. When cases involved students in Pk-6, school districts prevailed at least 2:1 (n=34) over parents (n=16), with 5 cases resulting in a tie, but in cases involving students in grades 7-12, school districts prevailed (n=18) at least 3:1 over parents (n=6) with 2 cases resulting in a tie. Grade level was not indicated in 4 cases (Figure 5).

Finally, data were coded for new areas of interest in the cases examined. These data involved private schools (66%; n=56), ABA services (28%; n=24), student behavior (51%; n=43), and failure to exhaust administrative remedies (15%; n=13). When the court cases examined involved provision of ABA services, parents fared better (parents-11, school districts-12). The other area that was close in outcome was failure to exhaust administrative remedies (e.g., when a parent pulls the child out of school without mediation) where parents prevailed in 6 cases and school districts in 7.



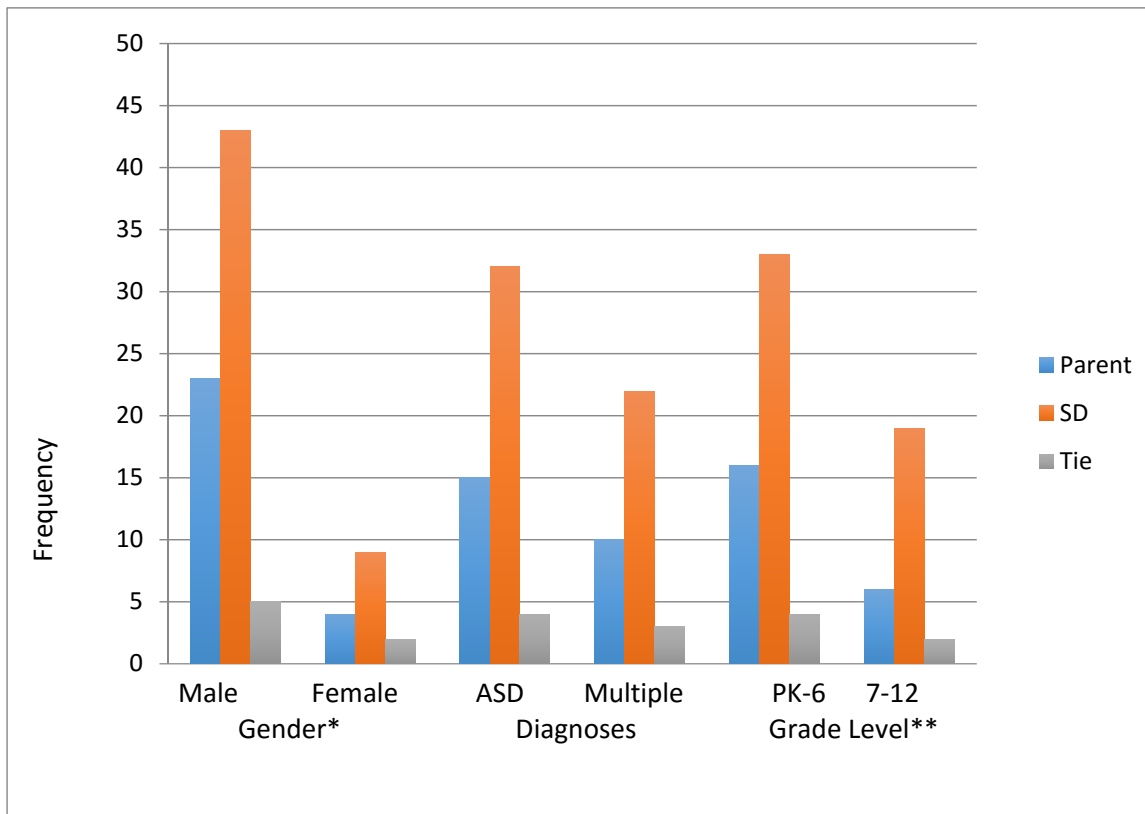


Figure 4. Demographics

SD-School District

\*One case where parents prevailed involved 4 boys, one case where school districts prevailed involved 2 boys, and one case where parents prevailed involved 2 boys and 1 girl

\*\* Grade level could not be determined in 5 cases

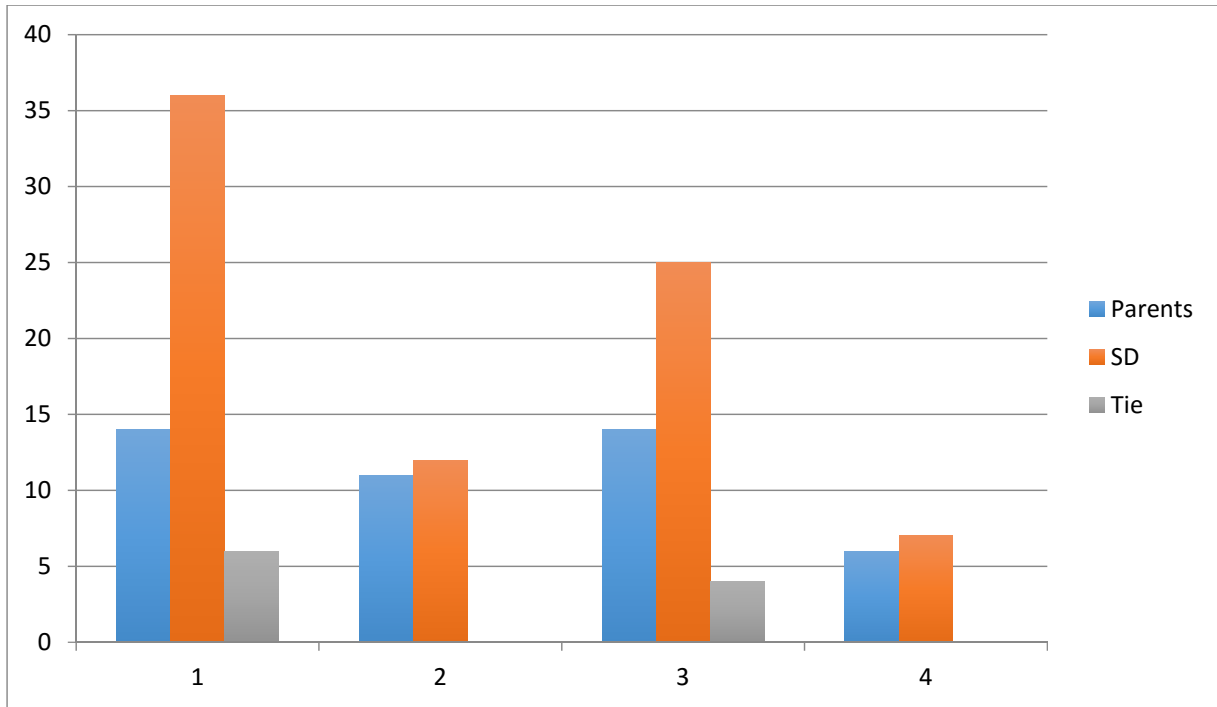


Figure 5. Other Issues Noted in 2013

SD-School District

1-Private School, 2-ABA, 3-Behavior, 4-Failure to Exhaust Administrative Remedies

## *Discussion*

Changes in criteria of how individuals are diagnosed with ASD have the potential to impact educational decisions and future due process cases, whether because of changes in diagnostic criteria, individual state criteria for qualification, service provision or in the numbers of cases heard. Because transition overall (to, from, and between schools) continues to impact outcomes, especially when parents arbitrarily move their student to private placements without following due process procedures, the authors discuss several notable cases in and their roles in the provision of FAPE in the LRE in each case and ultimate rulings.

### **Transition**

Cases involving transition included the move from home to school and IEP development, between schools (public/private, elementary/middle/high school, between states), focused on individual students or several students at a time, and transition from high school to adulthood. In some cases, transition was key to FAPE determination and in others it was a factor but was not key to denial of FAPE. Several cases are discussed as examples of these rulings. The shift from parents prevailing in 2007-08 and 2009 to schools prevailing in 2010 and 2013 is important to note. Since more students are reaching the age of transition, we will look a little closer at the cases involving transition for 2013.

In *R.C. v. Keller Independent School District*, the student moved from California to Texas and was diagnosed with a myriad of disorders including autism (mood disorder, PDD, ADHD, anxiety disorder, bipolar disorder). He was placed in a “behavior modification” classroom for part of the day and the general education setting part of the day. The Texas assessment team found that he qualified under emotional disturbance (not ASD or Asperger’s). In eleventh grade, he was re-evaluated and homebound services were recommended due to anxiety, depression, and irritability. The teams discussed his return to school in a smaller group setting with plans for transitioning gradually to general classes with support. The parents began due process procedures claiming that not all his homebound services were provided. The school district’s transition specialist sent a transition survey to the parents to complete. The survey was not returned and the parents did not sign the IEP. The student was offered compensatory education over the summer. The services were not completed as he was placed in a residential facility. R.C. failed his classes due to his absences from school. He was scheduled to repeat the eleventh grade the next year in a different school in the same school district, in a positive behavior support (PBS) classroom. The school district wanted to work with the student for at least 30 days before recommending residential placement. The parents declined the placement and any remaining compensatory education offered. They unilaterally placed R.C. in the “Vanguard Preparatory Academy.”

The IEP team conducted the annual meeting and the parents did not attend. The team requested to speak with the professionals at his current placement and the parents refused. The team developed the IEP and recommended placement in the PBS classroom. The student never returned to the public school setting. The parents filed due process, a hearing was held, and it was determined that the school district provided R.C. with a FAPE, and that the parents were not entitled to tuition reimbursement or other relief.

*P.V. v. The School District of Philadelphia* was a class action lawsuit involving four students (all male) who were transferred as part of an upper leveling transfer program to schools with autism resources. The parents alleged that the school district transferred students (K-8) without parental notice/involvement to meet their administrative needs. The parents alleged that the school district made decisions on behalf of 1, 684 students with ASD without parental involvement. The district court ruled on behalf of the parents because the school district deprived the parents the opportunity to participate in the decision-making process regarding the placement and transition of their children with ASD under the IDEA.

In *Gibson v. Forest Hills School District*, the school district prevailed on every issue (assistive technology services, LRE, physical therapy, occupational therapy, parent participation, prompt dependency) except transition for a twenty-year-old girl with seizures, mental retardation, and pervasive developmental disorder (an ASD). She exhibited aggressive behaviors and had severe difficulty with transitions. They ruled in the student's favor because her interests and preferences were not considered in transition planning (the student was not invited to the meetings) and age appropriate assessments were not utilized.

*N.W. v. Randy Poe* involved a 9-year-old male student who was transitioning back to public school after an earlier mediated private placement. The parents argued that the school district failed to develop, implement, or revise the IEP to include transition back to the school district, which denied their son a FAPE. In this case the parents prevailed (at least temporarily) with the private placement deemed the stay-put provision until case resolution. The school district was ordered to reimburse parents for 5.5 hours per day of tuition in the private placement (plus transportation costs) until the end of judicial proceedings of the court.

Transition in one case involved the closure of forty-nine schools in the Chicago area. Two elementary students with ASD were part of a due process claim that revolved around the failure to change IEPs as a result of school closure, and the lack of a transition plan to address academic, social, cultural, staffing, and safety needs. The school district showed that transition plans had been prepared for receiving schools, and that the IEPs were student specific and not building specific. The receiving schools indicated that administrators and case managers were reviewing IEPs to ensure they would be implemented correctly. The district court found in favor of the school district and added that the plaintiffs failed to exhaust their administrative remedies before filing a due process claim.

Transition from an Individualized Family Service Plan (IFSP) to an Individualized Education Program (IEP) was at the center of the case involving *E.C. and M.W. v. Board of Education of the City School District of New Rochelle*. Parents sought transition support to help their 4 year-old son with ASD successfully transition to a school program from a home-based program for the 2009-2010 school year. After a year in the school system, the parents rejected the IEP for the 2010-2011 school year and unilaterally placed him in a private school. The court ruled on the side of the school district, and while transition was important to the initial move to public school and part of this case, it was the parents' dissatisfaction with the 57 IEP goals, training of the paraprofessional, placement, and lack of progress that initiated the due process complaint.

A New York District Judge found in favor of the school district in *F.B & E.B. v. New York*

*Department of Education*. L.B. (age nine) was provided services in the private Rebecca School at district expense for two years prior to the due process hearing. The school district determined that they could then provide adequate services and proposed a transition back to the public school. The parents visited the school and rejected it as an appropriate placement. The judge ruled on there was sufficient evaluative data used, and that the failure to conduct an FBA and BIP or provide parent training did not deny L.B. a FAPE. He remanded the case back to the hearing officer to work out issues such as insufficient IEP goals and provision of transitional support services as LB moved from a private back into the public school.

In *P.C. and S.C. v. Harding Township Board of Education*, the New Jersey school district prevailed when a preschool placement in a “kids in transition” program, which included ABA interventions, was rejected by the parents, who opted to keep him in a private setting with a program for children with ASD. On a similar note, in *B.M. v. Encinitas Union School District*, the lack of a written transition plan and the District Court Judge stating that the “plaintiff has not shown that the student was in any manner prejudiced by the failure to specify the exact transition plan for his attendance at Flora Vista or that he was denied an educational benefit or that the student’s parents were not involved in the discussion concerning the transition to on-campus services” impacted the school districts case and they also prevailed.

In the case where parents prevailed and pre-school transition was involved (*Blount County Board of Education v. James E. Carr*), an Alabama District Court Judge ruled that the parents were entitled to reimbursement of tuition to *Mitchells Place* in Birmingham. When the special education director acquiesced and approved the out of district placement, and communicated with them for implementation of the IEP, her role as the LEA committed district resources, whether that was or was not formally discussed.

### **Arbitrary Removal from Current Placement**

When parents and schools disagree about issues pertaining to the provision of a FAPE, either party can request a due process hearing. Prior to the hearing, states are required to offer parents the option to resolve the dispute through voluntary mediation, where a trained mediator (impartial and familiar with the laws and regulations of special education) attempts to facilitate an agreement between parties on the disputed matter. If the matter is not resolved or the parents refuse mediation, the due process hearing is the next step. The hearing is a venue where both sides can present their issues or arguments to a trained, impartial third party. During the hearing, the student must remain in the program/placement in effect when the hearing was requested (Yell, 2012). For the majority of the cases involving arbitrary removal from the current placement (which often includes a failure to exhaust administrative due process remedies), the parents removed the student from the then current placement before mediation or a due process hearing could occur. Failure to exhaust administrative remedies and transition were sometimes inter-related and key to the ultimate ruling by the judge. In others, they were noted, but the judge did not determine them as key to the provision of a FAPE in the LRE, and the resulting violation of IDEA.

For example, in *Skylar Intravaia v. Rocky Point Union Free School District*, plaintiff parents claimed that exhaustion was excused because the school failed to implement services that were specified and clearly stated in the IEP, and the school district demonstrated “serial” failure to

provide their daughter Skyler with the services required by law in her then current placement. The District judge ruled to dismiss parent plaintiff's claim that the school district could file due process for parents' failure to exhaust their administrative remedies pursuant to IDEA.

In *T.B. and D.B. v. Haverstraw-Stony Point Central School District*, parents sought to overturn the State Review Officer's decision that the school district was not required to reimburse the parents for the unilateral placement of their son in a private "Community" school for second grade. During his first grade year, T.B. underwent a comprehensive evaluation. It was determined that he had significant speech/language delays, that he would "shut down" when anxious in large group settings, and would benefit from services to improve speech, strengthen academics and attention, reduce anxiety and behavior difficulties, and from typical peers who would be good social peer models. The evaluators recommended a small, self-contained class of no more than 12 students. T.B.'s mother approached the district asking that he be placed at a small, private school in New Jersey (they lived in New York). The end of year report showed that T.B. made progress on all 17 IEP goals and achieved 4 of them. The district suggested he remain in the general education setting, that small group reading instruction increase to 45 minutes each day, and that consultation by a certified special education teacher be incorporated to make accommodations and adjustments to meet T.B.'s individual needs. The judge ruled in favor of the school district and plaintiff's request for reimbursement was denied and ordered the case closed.

Similarly, in *B.M. v. New York City Department of Education*, parents challenged the New York State's Review Officers decision that their son with autism was not denied a FAPE and not awarded 960 hours of compensatory special education tutoring. The initial complaint stated that the IEP was not appropriate, that the paraprofessional did his work for him and did not monitor him sufficiently, and that the teachers did not have training to address his behavior issues. The hearing officer noted that B.M. benefitted from the most recent program placement and that the deficiencies identified in the initial complaint were remedied during the resolution period. The parents appealed this decision and stated that the IHO erred in denying the compensatory services and that their son was denied a FAPE. The school cross-appealed stating that in addition to dismissing the appeal, that the parents introduced a new issue questioning the qualifications of the special education teacher and counselor, and ruled that it was not addressed in the original complaint so the court lacked subject matter jurisdiction and that they needed to exhaust administrative remedies for that complaint.

In *L.V. v. Montgomery Township School District Board of Education*, the plaintiff filed a complaint on behalf of her son asking that the school district board of education pay for her son's placement in the school of her choice where she unilaterally placed him. She alleged the school district violated the IEP and did not provide L.V. (her son) with an appropriate education. She contended that she was excused from exhausting her administrative remedies in his current placement under IDEA because of the urgent nature of L.V.'s circumstances, but the administrative law judge ruled that L.V. had not met her burden of proof that an emergency existed, or that he would suffer irreparable harm, and therefore had not exhausted administrative remedies and ruled in favor of the school district.

Parents prevailed in *Alex Shadie v. Hazelton Area School District* when the Pennsylvania District

Court Judge determined that the assault case could also be seen as an IDEA claim for tuition reimbursement. The student Alex, was enrolled in a 12<sup>th</sup> grade life skills class at Hazelton Area High School in Pennsylvania, where it was alleged that the aide assaulted him on several occasions, that the school district violated the provisions of IDEA, and that the statute of limitations had not expired for the IDEA claim. The IDEA claim was added when the plaintiffs charged that the school district misrepresented that problems regarding IDEA had already been resolved, and that they withheld information from the parents. The district contended that the plaintiff Alex Shadie's IDEA claim failed because he did not demonstrate that the school failed to implement the IEP when he was still a student. The court also found that the plaintiff sufficiently alleged "educational harm" through regression in language ability, increased agitation and aggressive behavior, and that the district raised no new novel arguments regarding the court's finding that tuition reimbursement may be available. The district argued that tuition reimbursement was an administrative remedy, which the plaintiff failed to exhaust. With two years of litigation before the court, the judge ruled that failure to exhaust administrative remedies was no longer a factor in dismissal, but that tuition reimbursement may be available for violations to IDEA.

The case of *Bethlehem School District v. Diana Zhou* involved M.Z., who was a gifted student diagnosed with central auditory processing disorder and PDD (an ASD). Mrs. Zhou requested a pre-hearing conference so she could discuss IEP concerns when M.Z. entered kindergarten (2001). Due process hearings (8) and mediations (10) continued and eventually included transition planning to middle school in 2007. The hearing officer found, among other things, that Mrs. Zhou attempted to dictate curriculum, telephoned teachers while in the classroom and violated the school sign-in policy. Even though he was making appropriate progress, she continued to file for more services than other students received. Her requests included smaller and quieter classes, teacher training, school-bus cameras, lunch-table concerns, and concerns that the school district was not considering other evaluations. Over the course of 7 years Mrs. Zhou failed to present evidence that the IEPs proposed for M.Z. failed to provide him a FAPE. In 2008, Mrs. Zhou rejected plans for M.Z.'s transition plan to middle school, as she wanted the school district to pay for private school tuition to private Moravian Preparatory School. Mrs. Zhou commented to the middle school supervisor of special education, after a two-hour meeting, "If the District would pay for a private school like Moravian, this would all go away." By 2009, expenses of the hearings and mediation proceedings were approaching \$200,000.00. In April 2013, the district court judge ruled that Mrs. Zhou initiated the due process hearings for improper purposes, and in favor of the school district. He found the school district entitled to costs incurred and ordered counsel to meet to consider awarding attorney's fees to the school district.

### *Summary*

There is much overlap in the violations of IDEA, provision of FAPE in the LRE, and outcomes based on the synthesis of case factors. Understanding the procedural and substantive issues involved in case law, as well as cultural issues and demographics of students, can assist stakeholders as they seek to provide services (including transition) to educate students with ASD. Teachers often fear the thought of legal issues, which can become a barrier to effective communication between stakeholders involved in the IEP process. An understanding of how judges rule with regard to the violations of IDEA and the provision of a FAPE in the LRE, can assist parents in decision making and give the confidence to teachers and administrators that is

needed to best serve the students in their classrooms and schools. The authors recommend several resources (Table 2) as guides to implementing evidence based practice, as tools for communication with parents, for professional development, and to access behavioral resources. Knowledge of IDEA, provision of FAPE, and how to implement research-based interventions, can enhance capacity in schools and foster the home-school collaboration required when providing services to students with ASD and other developmental disabilities. Future research should include examining the potential differences in case outcomes in the years following DSM changes, in-depth examinations of court cases using qualitative analysis, and examining long-term outcomes of students in the cases of this nature. Even though diagnostic criteria may have changed, and criteria for eligibility for services vary from state to state, students with the social, behavioral, and communicational challenges associated with ASD will continue to need educational, social, and behavioral supports to be successful.

Table 2  
*Stakeholder Resources*

Resource	Website	Purpose
National Autism Center	<a href="http://www.nationalautismcenter.org">www.nationalautismcenter.org</a>	Provides free publications on evidence-based practice and ASD. They include: <ul style="list-style-type: none"> <li>• National Autism Center’s National Standard’s Report</li> <li>• National Autism Center’s National Standard’s Report Findings &amp; Conclusions</li> <li>• Evidence-based Practice for Autism in the Schools</li> <li>• A Parent’s Guide to Autism and Evidence-based Practice</li> </ul>
Autism Internet Modules	<a href="http://www.autisminternetmodules.org">www.autisminternetmodules.org</a>	Developed by the Ohio Center for Autism and Low Incidence (OCALI), these online learning modules include information on assessment and identification of ASDs, recognizing and understanding behaviors and characteristics, transition to adulthood, employment, and numerous evidence-based practices and interventions.
Autism Speaks	<a href="http://www.autismspeaks.com">www.autismspeaks.com</a>	The School to Community Tool Kit is a publication that provides helpful information about students with ASD and strategies to achieve positive interactions and increase learning.
National Professional Development	<a href="http://autismpdc.fpg.unc.edu">http://autismpdc.fpg.unc.edu</a>	2014 report on evidence-based practices for children, youth, and young adults with autism spectrum disorder



Center on ASD		
Autism Society of America	<a href="http://www.autism-society.org">www.autism-society.org</a>	Improves the lives of those affected by autism through education, advocacy, services, research and support.
Behavior Analysis Certification Board	<a href="http://www.bacb.com">www.bacb.com</a>	Established in 1998 to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services. Use this website to find a BCBA in your area.

### *References*

- American Psychiatric Association. (2013). DSM-5 autism spectrum disorder fact sheet. Retrieved from <http://www.dsm5.org/Documents/Autism%20Spectrum%20Disorder%20Fact%20Sheet.pdf>.
- Autism Speaks. (2014). What is autism? Retrieved from <http://www.autismspeaks.org/what-autism>
- Autism Speaks. (2015) Facts about autism. Retrieved from <https://www.autismspeaks.org/what-autism/facts-about-autism>
- Centers for Disease Control. (2014). Prevalence of autism spectrum disorder among children aged 8 years - autism and developmental disabilities monitoring network, 11 sites, United States, 2010. Retrieved from [http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?s\\_cid=ss6302a1](http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?s_cid=ss6302a1)
- Choutka, C. Doloughty, P. & Zirkel, P. (2004). The “discrete trials” of applied behavior analysis for children with autism: Outcome-related factors and case law. *The Journal of Special Education*, 38(2), 95-103.
- Cooper, J.O., Heron, T.E., & Heward, W.L. (2009). *Applied behavior analysis (2<sup>nd</sup> ed.)*. Upper Saddle River, NJ.
- Esler, A. (2013). Adjusting diagnostic tests for the DSM-5. Viewpoint Newsletter. Retrieved from <https://spectrumnews.org/opinion/adjusting-diagnostic-tests-for-the-dsm-5/>
- Fennell, M. (2016). What educators need to know about ESSA. *Educational Leadership*, 73(9), 62-65.
- Frazier, T.W., Youngstrom, E.A., Speer, L., Embacher, R., Law, P., Constantino, J., Findling, R.L., Hardan, A.Y. and Eng, C., (2012). Validation of proposed DSM-5 criteria for autism spectrum disorder. *Journal of American Academy of Child and Adolescent Psychiatry*, 51(1), 28-40.
- Ghaziuddin, M. (2010). Brief report: Should the DSM V drop Asperger syndrome? *Journal of Autism and Developmental Disorders*, 40(11), 1146-1148.
- Harrop, C., Gulsrud, A., & Kasari, C. (2015). Does gender moderate core deficits in ASD? An investigation into restricted and repetitive behaviors in girls and boys with ASD. *Journal of Autism and Developmental Disorders*, 45, 3644-3655. doi: 10.1007/s10803-015-2511-9.

- Hill, D., Martin, E., and Nelson-Head, C. (2011). Examination of case law (2007-2008) regarding autism spectrum disorder and violations of the Individuals with Disabilities Education Act. *Preventing School Failure, 55*(4), 214-225.
- Hill, D. & Hill S. (2012). Autism spectrum disorder, Individuals with Disabilities Education Act, and case law: Who really wins? *Preventing School Failure, 56*(3), 157-164.
- Hill D. & Kearley, R. (2013). Autism litigation: Outcomes for 2010, trends in decision-making and changes in diagnostic criteria. *Research in Developmental Disabilities, 34*, 1843-1848.
- Huerta, M., Bishop, S.L., Duncan, A. Hus, V., & Lord, C. (2012). Application of DSM-5 criteria for autism spectrum disorder to three samples of children with DSM-IV diagnoses of pervasive developmental disorders. *American Journal of Psychiatry, 169*(10), 1056-1064.
- Kulage, K., Smaldone, A., & Cohn, E. (2014). How will DSM-5 affect autism diagnosis? A systematic literature review and meta-analysis. *Journal of Autism and Developmental Disorders, 44*, 1918-1932.
- LexisNexis. (2014). Lexis™ total research system. Retrieved from <https://www.lexisnexis.com>
- Matson, J., Hattier, M., & Williams, L. (2012). How does relaxing the algorithm for autism affect DSM-V prevalence rates? *Journal of Autism and Developmental Disorders, 42*(8), 1549-1556.
- Prykanowski, D.A., Gage, N.A., & Conroy, M.A. (2015). Educational implications of the DSM-V criteria for autism spectrum disorders. *Beyond Behavior, 24*(2), 30-38.
- Yell, M., Katsiyannis, A., Drasgow, E. & Herbst, M. (2003). Developing legally correct and educationally appropriate programs for students with autism spectrum disorders. *Focus on Autism and Other Developmental Disabilities, 18*, 182-191.
- Wing, L., Gould, J., & Gilberg, C. (2011). Autism spectrum disorders in the DSM-V: Better or worse than the DSM-IV? *Research in Developmental Disabilities, 32*(2), 768-773.
- Zirkel, P. (2002). Autism case law: Administrative and judicial rulings. *Focus on Autism and Other Developmental Disabilities, 17*, 84-93.

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