

Students with Disabilities in Charter Schools: Legal Cases and Three Dimensions of FAPE

Jeanne Connelly¹ and Angela Tuttle Prince[#]

¹Metropolitan State University at Denver, USA

[#]Advisor

ABSTRACT

Given the increased enrollment of students with disabilities in charter schools, it is important to examine the special education services provided within these settings. The authors examined charter school court cases from the last twenty years to understand the procedural, substantive, and implementation dimensions of free, appropriate public education (FAPE). The *Three Dimensions of FAPE Rubric*, based on peer-reviewed literature, was used to code court cases. Nine FAPE components were analyzed: individualized assessment, present levels of academic achievement and functional performance, measurable goals, special education services, monitoring student progress, parent involvement in the individualized education program (IEP), placement decision, IEP team members, and implementation of the IEP. Results indicate that the existing court cases involve multi-faceted decision-making, regardless of who brings the claim.

Introduction

In 1992, the first charter school opened in Saint Paul, Minnesota, to serve students who had previously been unsuccessful in the city's schools and were living in poverty (National Alliance for Public Charter Schools, 2012). More than 25 years later, charter schools have increased exponentially. During the 2020-2021 school year, there were over 3.7 million students enrolled in charter schools, with over 7,800 schools in operation, which amounted to 7.5% of all public school students. Twenty states plus the District of Columbia had over 100 charter schools (National Alliance for Public Charter Schools [NAPCS], 2018). According to the National Center for Education Statistics (NCES), the number of students attending charter schools increased from 400,000 to 2.8 million during 2000-2015, and six states had over 10% of school-age children enrolled in charter schools (NCES, 2018).

In 2017, the U.S. Department of Education awarded \$253 million to expand charter schools with The Expanding Opportunity through Quality Charter Schools Program to nine states and 23 non-profit charter management organizations. The U.S. Department of Education's Strategic Plan (2018) for fiscal years 2018-2022 first strategic objective was to *Expand Educational Options to Support School Choice* with corresponding implementation strategies. With increased federal funding for charter schools, a need exists to evaluate the services that students with disabilities receive in charter schools.

Students with Disabilities in Charter Schools

During the 2009-10 school year, the most recent data available, approximately 11% of the public school population had a disability, compared to eight percent of students in charter schools (Government Accountability Office, 2012). Enrollment of students with disabilities in charter schools was specifically addressed by the Office for Civil Rights in 2014, with a *Dear Colleague* letter sent to districts. This letter clarified that excluding students at any stage of the

admissions process because of race, color, national origin, or disabilities is discriminatory and thus prohibited. Students were also protected from discrimination within extra-curricular activities and disciplinary procedures.

Beyond abiding by the same regulations as traditional public schools, charter schools have unique conditions to consider when serving students with disabilities. In their 2018 legal brief, Dunn and colleagues delineated important implications specific to charter schools serving students with disabilities. Charter schools are responsible for providing students with disabilities a free, appropriate public education (FAPE) in the least restrictive environment (LRE), but they may not have articulated plans, systems, or curriculum that provides for that responsibility. Given their limited resources, it is more challenging for charter schools to provide a full continuum of services for students with high- and low-incidence disabilities and students with needs requiring more intense individualized support. Additionally, the implementation of Child Find, which requires that students have access to IDEA rights and receive specialized instruction and behavioral supports, may need to be improved. Charter schools' level of autonomy and different funding structures create conditions in which schools may fail to protect the rights of students with disabilities (Dunn et al., 2018).

Charter schools, as public entities, must follow federal and state requirements for serving students identified within the Individuals with Disabilities Education Act (IDEA) in the same manner as traditional public schools. Additional laws, such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, are also mandated within charter schools. Specifically, the U.S. Department of Education (2016) policies clarify that there must be no discrimination in recruitment, application, or *counseling out* related to the enrollment of students with disabilities in charter schools. *Counseling out* refers to a practice whereby school personnel coerce parents considering the charter school to enroll their child elsewhere.

When students with disabilities are enrolled in charter schools, their rights are protected by federal laws, explicitly the right to a free and appropriate education (FAPE). The right to a FAPE applies to all students meeting the criteria for Section 504 Plans or individualized education programs (IEPs). Therefore, the charter school is also required by law to comply with Child Find procedures: screening for at-risk students and evaluating for special education needs as warranted. Schools must commit resources and build structures to ensure compliance with the laws and appropriate service for any child with disabilities enrolled. Section 504 regulation defines a person with a disability as “any person who: (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment” (42 U.S. Code § 12102). A student with a disability under Section 504 is entitled to a FAPE regarding education services that meet individual student needs, education with nondisabled students, and appropriate evaluation and placement decisions with due process procedures (U.S. Department of Education, 2010).

Since 1975, FAPE for a child with an IEP is special education and related services.

(A) are provided at public expense, under public supervision and direction, and without charge; (B) meet standards of the state educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program (IDEA, 20 U.S.C. § 1401[a][9][A–D]).

As Yell and Bateman (2017) observed, the 1982 Supreme Court decision in *Board of Education of the Hendrick Central School District v. Rowley* (1982) established a two-part test to measure if a child with a disability had been given a FAPE: “First, has the state complied with the procedures of the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” (Rowley, 1982, pp. 206–207). If these requirements were met, a school had complied with FAPE requirements. In 2017, *Endrew F. v. Douglas County School District RE-1* modified the two-part test established in Rowley: “Part 1: Has the school district complied with the procedures of the IDEA? Part 2: Is the IEP reasonably calculated to enable a child to make appropriate progress in light of a student’s circumstances?” (Yell & Bateman, 2017, p. 13).

Given the increased enrollment and unique conditions of autonomy and funding within charter schools, this study aimed to determine what issues arose within charter schools' provision of FAPE by systematically reviewing relevant court cases. The research questions for this systematic analysis of case law follow:

1. Among the 291 cases within a search of FAPE in charter schools, what were the longitudinal trends in terms of parties and claims?
2. In the 47 cases that included students with IEPs in charter schools, were components of FAPE dimensions of (a) substantive, (b) procedural, or (c) implementation present?
3. What were the relationships between the components of FAPE and findings for families in the sample cases?
4. What were the relationships noted among the individual components within our dimensions of FAPE?

Method

This study's data source was LRP's Special Ed Connection® (2018), a comprehensive database of fully searchable case law, federal policy and guidance, and statutes and regulations. The authors performed searches using the terms *charter school* and *FAPE* within the Judicial Decisions (IDEA/Section 504) identifier. The authors did not specify a start date to gather a large view of cases over time. The end date for our search was August 1, 2018, and the last search was performed on August 13. The first case within our search was *Thompson v. Minneapolis School District* (1996). Next, the authors used exclusion/inclusion criteria for the cases retrieved in the initial search: included or excluded based on an analysis of whether the case involved a student enrolled in a charter school during the time of claim and whether FAPE was an issue within the case. A third round of coding addressed multiple cases with the same plaintiffs. If a case had rulings at multiple levels (e.g., U.S. District Court and U.S. Court of Appeals), the case from a higher court was retained while the lower court ruling was excluded. An exception to this rule was *Cosbert v. Options Public Charter School* (2012) because the higher court's ruling was irrelevant to this review.

Research question one included all cases from our initial inquiry of charter schools and FAPE in SpecialEd Connection®. This resulted in 291 cases for question one. To answer questions two and three, the authors applied exclusion criteria. Per our exclusion criteria, the authors removed 39 cases whose primary decision was related to attorney fees; these cases were related to procedural due process rather than FAPE. The authors removed 136 cases that included the search term charter school; in these cases, the charter school was irrelevant in the court case. For example, multiple cases provided lists of schools in the district, which included one or more charter schools. An additional 39 cases were removed because the FAPE issue was related to jurisdiction, failure to exhaust IDEA remedies, or timeliness of claims; the questions addressed in this study made these issues irrelevant. Further, 28 cases were removed because they were lower court decisions.

To discuss students with disabilities within charter schools, our initial search included IDEA and Section 504 court cases. Of the 49 cases analyzed in research question two, 33 cases included students who qualified for special education services under IDEA, two cases included students who were served under Section 504, and 14 cases included students who were served under both IDEA and Section 504. Because our review questions were related to FAPE, which is specific to IDEA rights, the authors removed the 2 cases related only to Section 504 and used 47 cases to analyze questions 2 and 3.

Coding Instrument

The major charge of IDEA is to provide eligible students with disabilities with a FAPE. To evaluate FAPE within IEPs, the first author developed the *Three Dimensions of FAPE Rubric* (FAPE3DR; Author, 2018) based on four publications from leaders in the field of special education policy and litigation: Zirkel (2018); Yell et al. (2016); Zirkel

and Bauer (2016); and Yell et al. (2013). The authors began with Zirkel’s (2018) designation of three dimensions of FAPE: substantive, procedural, and implementation.

Within these three dimensions, the authors further delineated nine components. Yell et al. (2016) described five substantive errors in the IEP process: (a) failing to conduct a complete and individualized assessment, (b) failing to address all of a student’s needs in the PLAAFP, (c) failing to write ambitious, measurable goals, (d) failing to provide comprehensive special education services, and (e) failing to monitor student progress. Yell et al. (2013) described five procedural errors in the IEP process: (a) not including students’ parents in the IEP process, (b) predetermining a student’s IEP services or placement, (c) determining placement before programming, (d) not fielding an appropriate IEP team, and (e) failing to implement the IEP as written.

In earlier work, Zirkel and Bauer (2016) described the third dimension of FAPE by three standards: (a) Materiality / Benefit Standard, (b) Materiality-Along Approach, and (c) Per Se Approach. Because Yell et al.’s (2013) fifth substantive error – failing to implement the IEP as written – perfectly overlapped with Zirkel’s (2018) third dimension of FAPE, the authors coded implementation errors separately as a fixed category. Due to the complexities of coding Implementation errors and the lack of IDEA regulations about implementing the IEP, additional components were not coded. Therefore, Implementation was unique on the rubric because it was both a dimension and a component. Using the FAPE3DR (Author, 2018) to code each dimension also involved rating the levels of presence within the case: absent, contextual, and relevant. Absent was coded if the keywords related to that dimension did not appear anywhere in the case. it was rated absent. The rating was contextual if the component keywords identified legal requirements (i.e., citing IDEA regulations) or referenced a previous case (identifying legal precedence). The rating used when keywords included concepts or issues pertinent to the present case was named Relevant. The dimensions, components, and corresponding regulations are provided in Table 1.

Table 1. *Three Dimensions of FAPE Rubric* (Author, 2018)

Dimension	Keywords	Contextual	Relevant
Substantive			
Conduct a complete and individualized assessment	<i>evaluate; assess; identify; child find; refer; consent; eligibility</i>	Conducting individualized assessments to identify disability is mentioned in the case as background knowledge	The case included evaluation in that the district did <u>or</u> did not conduct and complete an individualized assessment.
Address all the student’s needs in the PLAAFP	<i>present level; perform; deficit; needs; functional; strength; weakness</i>	PLAAFP is mentioned in the case as background knowledge	The case included PLAAFP in that the district did or did not address all the students needs
Write ambitious, measurable goals	<i>goal; annual; objective</i>	Measurable annual goals is mentioned in the case as background knowledge	The case included measurable annual goals, in that the district did or did not write ambitious measurable goals.
Provide comprehensive special education services	<i>IEP, special education, related services; LRE; compensatory service; least restrictive environment</i>	The implementation of transferred IEP, development of new IEP, or modification of existing IEP was mentioned in the case as background knowledge	The case included the implementation of transferred IEP, development of new IEP (if initial evaluation was in process) or modification of existing IEP.

Monitor student progress	<i>monitor; progress; CBM; measurable</i>	Progress monitoring is mentioned in the case as background knowledge	The case included monitoring student progress, in that the district did or did not adequately monitor the student's progress.
Procedural			
Including students' parents in the IEP process	<i>parent; mother; father; guardian; consent; surrogate</i>	Including parent in the IEP process is mentioned in the case as background knowledge	The case mentions parent involvement in the IEP process, in that the district did or did not include parents as required
Predetermining a student's IEP services or placement; determining placement before programming	<i>predetermine; prior written notice; placement; program; class; safeguard</i>	Placement or programming is mentioned in the case as background knowledge	The case included the student's placement, in that the district did or did not predetermine a student's IEP services or placement <u>or</u> determining placement before programming.
Fielding an appropriate IEP team	<i>IEP team; meeting; student invite; administrator; participate; MDT implement</i>	Inclusion of an appropriate IEP team is mentioned in the case as background knowledge	The case included an appropriate IEP team, in that the district did <u>or</u> did not field a correct team.
Implementation		Implementation of the IEP is mentioned in the case as background knowledge.	The ruling included implementation of the IEP in that the district did or did not do so sufficiently.

Note: If no keywords were present in the case, the case was rated as Not Applicable for our analysis. CBM = curriculum-based measurement; IEP = individualized education program; LRE = least restrictive environment; MDT = multidisciplinary team; PLAAFP = present levels of academic achievement and functional performance

Interrater Reliability

The authors independently coded successive random five-case subsamples among the excluded cases to establish interrater reliability. At each stage, they compared their codes, discussed the differences, and refined the terms in the coding protocol. Due to multiple situations that warranted these refinements, the process amounted to three successive iterations until reaching the interrater agreement of 90%. Next, the first author coded all of the included cases based on the final version of the protocol. The second author verified codes during consultation meetings.

Results

To make meaning of the cases reviewed, the authors considered the demographics of the students involved. The students within the cases reviewed ranged in age, and a fairly even distribution of ages was represented. There were two preschool-aged children, twelve elementary-aged students, ten middle schoolers, and twelve students in high school. Six students were identified as teenagers, one as adults, and six as undisclosed. The distribution of disabilities represented in the included cases was also calculated. Students with more than one disability comprised 18% of the cases

(*n* = 9). In 16% of the cases (*n* = 8), the student’s identification for special education services was questioned; this evaluation is part of the Child Find process. The third largest category included students with emotional or behavioral disorders at 14% (*n* = 7). The authors chose not to use the federal definition of emotional disturbance because the cases described students’ disorders with great variation across states and times. The remaining categories and totals are provided in Table 2.

Table 2. Student Demographics Among Included Cases

Disability Categories	Number of Students	Percentage of Included Cases
Attention Deficit Hyperactivity Disorders	4	8%
Autism Spectrum Disorders	3	6%
Child Find-Evaluation	8	16%
Emotional or Behavioral Disorders	7	14%
Intellectual Disabilities	5	10%
More than one disability	9	18%
Not Indicated	5	10%
Speech-Language Impairments	2	4%
Specific Learning Disabilities	6	12%
	49	98%

Note: Child Find = evaluation for special education services is in question within the court case; Not Indicated = court case did not provide information for the student’s disability; this is frequently noted as “a student with an undisclosed disability.”

1. Among the 291 cases within a search of FAPE in charter schools, what were the longitudinal trends in terms of parties and claims?

Research Question 1 related to the distribution of cases over time; the overall sample consisted of 291 cases. The first case was in 1996, and the cases before August 2018 were included. There was a total of 41 cases during the interval between 1996-2007. From 2008 to 2018, the total number of cases was 250. The frequency of court proceedings in the dozen years following the first charter school case returned in our search (1996-1998) averaged 3.42 cases per year. From 2008 to the present, the average number of cases reported was 22.73 per year. Comparing the average number of cases per year in that first interval of 12 years with the ending interval of 11 years shows an increase of over 550% in the average number of cases per year. 2012-2014 were the years with the most frequent cases, averaging 32 per year.

Additionally, the distribution of plaintiffs and defendants was calculated. In several instances, there were multiple plaintiffs and defendants, and in several cases, the role of one party was both plaintiff and defendant. Each role was coded discretely and then used in calculating percentages. For the interval 1996-2018, families (student, parent, guardians, friends of minor) were plaintiffs or co-plaintiffs in 78.35% of all the cases. Charter schools brought cases as plaintiffs in 10.99% of the total, and school districts were plaintiffs in 10.31% of the cases. Defendants or Co-defendants in these cases were most frequently in the school district, 45.02% of the time. Charter schools were listed as defendants 25.08% of the time and families 15.81% of the time. Further, Departments of Education were defendants 21.99% of the time. During the years studied and in the total cases studied, additional defendants in at least one case included the Office of Civil Rights, a School Reform Commission, the Department of Labor, a School Board Association, and Minnesota’s Department of Children, Family, and Learning.

2. In the 47 cases that included students with IEPs in charter schools, were components of FAPE dimensions of (a) substantive, (b) procedural, or (c) implementation present?

Using the FAPE3DR (Author, 2018), the authors identified three dimensions of the IEP process: substantive, procedure, and implementation, then defined individual components. Ratings of contextual and relevant were used, as described above. *Special education services*, a component of the substantive dimension, was relevant in 46 of 47 cases and contextual in one case. Additionally, the most frequent component noted in the substantive dimension was *individualized assessment*; *Child Find* or *evaluation* issues were present in 89.36% of the cases. *Measurable goals* and *monitoring progress* were the least frequent substantive issues. In the procedural dimension, *placement* issues were relevant in 42 of 47 cases (89.36%). *Parent participation* and *IEP team* were coded as relevant in 76.59% of the cases. The dimension of implementation was relevant in nearly three-fourths of the cases (72.34%).

Table 3 provides a detailed count of FAPE dimensions and components by frequency and level. Of note were the 12 cases in which every FAPE dimension and component was coded as relevant. Among these cases, families successfully pursued their claim(s) in five cases (41.66% of the time).

Table 3. FAPE3DR Components Based on Coding.

Dimensions and Components	Not Present	Contextual	Relevant	Total
Substantive				
Individualized assessment	2	3	42	47
PLAAFP	7	10	30	47
Measurable goals	15	11	21	47
Special education services	0	1	46	47
Monitor progress	13	6	28	47
Procedural				
Parents	0	11	36	47
Placement	1	4	42	47
IEP team	6	5	36	47

Note: IEP = individualized education program; PLAAFP = present levels of academic achievement and functional performance

3. What were the relationships between the components of FAPE and findings for families in the cases?

For this statistical analysis, the authors collapsed the levels (absent, contextual, relevant) to present or not present. For instance, *individualized assessment* and *placement* were prevalent across most of the included cases. Each case was recorded as zero (not present) or one (present) to maintain the integrity of the data analysis. *Special education services* was removed from question three analysis. This component was coded as contextual in one case, relevant in the other 46, or present in all cases, making it a constant variable.

Individual chi-square tests of independence were performed to examine the relationship between case outcome and FAPE3DR (Author, 2018). None of these relationships reached statistical significance. Three were associated with a greater likelihood that the case outcome would favor the family. When *individualized assessment*, *monitoring progress*, or *measurable goals* were part of the case, the outcome was more likely to favor the family. Additionally, when *Implementation* was relevant, families were more likely to be successful in the pursuit of their claims.

The *IEP team* was associated with a greater likelihood that the case outcome would favor the agency. When *placement* issues were part of the case, the agency and the family decided the outcome evenly.

The co-occurrence of a FAPE3DR (Author, 2018) and case findings for the parent reached significance for *the two components of PLAAFP and Including parents*. When *PLAAFP* was part of the case, the outcome was more likely to favor the agency. The relation between these variables was significant $X^2(1, N = 47) = 4.06, p < .05$. When *parent involvement* was part of the case, the outcome was more likely to be found in favor of the agency. The relation between these variables was significant $X^2(1, N = 47) = 5.44, p < .05$. Additional details for the relationships between components and case finding for the parent are available in Table 4.

Table 4. FAPE3DR Variables Related to Case Findings in Favor of Family

	Dimension is Absent			Dimension is Present			Significance		
	<i>n</i>	% Agency	% Family	<i>n</i>	% Agency	% Family	X^2	p-values	F
1. Individualized assessment	5	60.00	40.00	42	47.62	52.38	--- ^a	.67	.08
2. PLAAFP	17	29.41	70.59	30	60.00	40.00	4.06	.04*	.29
3. Measurable goals	26	50.00	50.00	21	47.62	52.38	0.03	.87	.02
4. Monitor progress	18	50.00	50.00	29	48.28	51.72	0.01	.91	.02
5. Including Parents	11	18.18	81.82	36	58.33	41.67	5.44	.02*	.34
6. Placement	5	40.00	60.00	42	50.00	50.00	--- ^a	> .99	.06
7. IEP team	11	27.27	72.73	36	55.56	44.44	2.70	.10	.24
8. Implementation	13	69.23	30.77	34	41.18	58.82	2.96	.09	.25

Notes: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$; A = agency; F = family; IEP = individualized education program; PLAAFP = present levels of academic and functional performance. ^a No chi-square statistic reported due to expected values < 5; corresponding p-values obtained from Fisher’s exact tests. Phi coefficients (F) reflect the linear association between the component presence and case outcomes in the family’s favor.

4. What were the relationships noted among the individual components within our dimensions of FAPE?

Correlations were used to address question four. Table 5 details the significant co-occurrence of FAPE3DR (Author, 2018) components. These relationships suggest that components of the IEP were significantly interrelated. For example, in cases where *PLAAFP* was present, *measurable goals*, *monitoring progress*, and the *IEP team* were also likely involved. Similarly, when *measurable goals* were present, all other FAPE components except parents were more likely to be relevant. In cases where *placement* was present, *the IEP team and Implementation* were also likely to be impactful. Among FAPE components, the *IEP team* was statistically significant in all but one analysis.

Table 5. FAPE3DR Components Correlated with Each Other

	1	2	3	4	5	6	7
9. Individualized assessment							
10. PLAAFP	.17						
11. Measurable goals	.31*	.41*					
12. Monitor progress	.15	.41*	.44**				

13. Parents	.14	.11	.09	.40**			
14. Placement	-.11	.17	.30*	.30*	.14		
15. IEP team	.30*	.32*	.40**	.19	.41*	.30*	
16. Implementation	.10	.13	.36*	.10	.11	.40**	.33*

Note: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$; IEP = individualized education program; PLAAFP = present levels of academic and functional performance. Values reflect Pearson correlations that are identical to phi coefficients for the 2 x 2 matrices involving each component pair.

Discussion

Given the increased enrollment and unique conditions of autonomy and funding within charter schools, this study aimed to determine what issues arose within charter schools' provision of FAPE. In this analysis, the authors expanded the understanding of case law by systematically reviewing cases related to the provision of FAPE in charter schools since 1996. Yell et al. (2013), Zirkel and Bauer (2016), and Yell et al. (2016) described nine components to provide FAPE to students with disabilities: *Individualized assessment, PLAAFP, Measurable goals, Special education services, Monitor progress, Parents, Placement, IEP team, and Implementation*. The 550% increase of cases between the intervals 1996-2007 and 2008-2018 provided a set of cases that could support knowledge construction.

Our systematic review of court cases resulted in 291 cases involving charter schools in 20 years. We reviewed 47 cases that addressed the rights of students with disabilities who qualified for services under the IDEA ($n = 33$), and both federal laws ($n = 14$). The *special education services* component was present in all 47 cases involving IDEA regulations related to FAPE. This was a predictable, given our question. The components of *including parents* and *placement* were the next most prevalent components in these cases. Our findings show that the components of *Individualized assessments*, including *Child Find- Evaluation Processes*, were present in 90% of the cases. This is important because charter schools are responsible for providing adequate Child Find processes so students with disabilities receive specialized instruction and behavioral support (Dunn et al., 2018). *Measurable goals* and *monitoring progress* were the least frequent substantive issues, which may indicate that special educators in charter schools are meeting the requirements of the laws within these components.

Complexity of Courts' Decision Making

Our findings indicate that courts consistently look at the whole of the IEP more than individual components when making decisions. Among the 12 complex cases, families successfully pursued their claim(s) 41.66% of the time, and the agency successfully pursued their claim(s) 58.34% of the time. Of note were the 12 cases wherein all dimensions within the components – substantive, procedural, and implementation – were each coded as relevant. This indicates that court cases are complex, with multi-dimensional factors that may compound each other that are considered in decisions. The complexity of the cases is also validated by the interrelatedness of the components. All eight FAPE components demonstrated significant relationships with other components. These findings indicate that a court's determination of who successfully pursues their claim is not based on one of the dimensions, substantive, procedural, or implementation, being more relevant than another. Rather, courts consider the entirety of the IEP process rather than one specific aspect.

Paradox of Parent Participation

Using the FAPE3DR (Author, 2018), the authors examined associations that showed significance between the outcome of the case –who successfully pursued their claim(s) – and the presence of FAPE components within the legal

narrative. In the initial sample of cases, family members were plaintiffs or co-plaintiffs in more than three-quarters of 291 cases. *Including Parents* and *IEP team* components were coded as relevant in 76.59% of the cases. While parent participation is prioritized in the IDEA and policy statements, this study found that when *including parents* was part of the case, the outcome was more likely to favor the agency. However, the individual components of *PLAAFP* and *parents* showed a significant co-occurrence, with the case being ruled for the parents. This finding may seem illogical; however, it may indicate that while districts met FAPE requirements for including parents, families did not perceive that they were fully included in the IEP process and moved toward legal remedies.

Placement Decisions and Implementation of Special Education Processes

Compliance with due process rights and procedures ensures that FAPE is provided in the least restrictive setting and that families are included in decision-making within the IEP process. Within charter school cases involving FAPE, this study showed that in the procedural category, *placement* issues were relevant in 42 of 47 cases (89.36%). The implementation category was relevant in nearly three-quarters of the cases (72.34%). Charter school teams may face specific barriers to meet procedural requirements, including limited resources, lack of oversight for compliance, and lack of qualified personnel (Dunn et al., 2018).

Connections to the Rowley Two-Part Test

We considered how our findings related to the 1982 Rowley two-part test, given the timeframe of our cases. In the cases reviewed, had the state complied with the procedures of the Act? In the cases reviewed, at least one of the procedural components was rated as relevant in at least 75% of the cases. This indicates that the Rowley question related to procedures remains relevant. Secondly, the question, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (Rowley, 1982, pp. 206–207) was considered. The two components of measurable goals and monitoring progress may be related to that question. We related this question to components of the substantive dimension: *write ambitious, measurable goals, provide comprehensive special education services, and monitor student progress.*

Measurable goals and *monitoring progress* were the least frequent substantive issues identified in our study, which may indicate that issues related to this test were not reaching the courts. Additionally, it may indicate that special educators in charter schools are meeting the requirements of the laws within these components. Looking forward, scholars may choose to evaluate cases using the 2017, *Andrew F. v. Douglas County School District RE-1* modified two-part test: "Part 1: Has the school district complied with the procedures of the IDEA? Part 2: Is the IEP reasonably calculated to enable a child to make appropriate progress in light of a student's circumstances?" (Yell & Bateman, 2017, p. 13).

Conclusion

Charter schools are part of the larger public system of schooling that serves children who qualify for services under Section 504 and the IDEA. As the number of students with disabilities in charter school settings grows, charter schools and educators need to stay up-to-date on their legal obligations to serve all students. Additionally, given the increased amount of money being funneled into charter schools under current federal policy, charter school personnel must be provided adequate training and support to provide free, appropriate public education (FAPE) to students with disabilities in charter schools. This research adds knowledge to the field for those purposes, supporting charter school educators' understanding of how to meet their legal requirements for serving all students.

Limitations

Due to the broad nature of this topic, it is possible the authors missed cases in this review. Another limitation is that complaints that may appear at district and state levels were not part of this review; including these cases may have produced different findings. Based on the inclusion criteria, this study examined a relatively small set of cases with greater detail, especially in light of the power of the statistical tests. Specifically, the IEP team and Implementation were not statistically significantly associated with the likelihood of agency/family outcome ($p = .10$ and $.09$, respectively). However, the effect sizes ($F = .24$ and $.25$, respectively) are not trivial. A larger sample of cases given the same proportional splits would likely result in statistical significance. Due to the lack of peer-reviewed research on service provision for students with disabilities in charter schools, the authors broadly defined the outcomes of cases as defined by which party successfully pursued their claim(s). The authors recognize that their lack of formal legal training is a limitation within this study; however, their combined special education experience of nearly 50 years and their strong reliability while using the coding instrument are assets to this study.

References

- Author. (2018). *Three Dimensions of FAPE Rubric (FAPE3DR)*. Ames, IA: Iowa State University.
- Cohen, J. (1992). A power primer. *Psychological Bulletin*, *112*(1), 155–159.
- Cosbert v. Options Public Charter School* 116 LRP 13748 (D. D.C., 2012).
- Dunn, M. E., Katsiyannis, A., & Ryan, J. B. (2018). Charter schools and students with disabilities: Legal and practice considerations. *Intervention in School and Clinic*, *53*(4), 252-255.
<https://doi.org/10.1177/1053451217712973>
- Andrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017).
- Government Accountability Office. (2012). *Charter schools: Additional federal attention needed to help protect access for students with disabilities*. Washington, DC: National Alliance for Public Charter Schools.
- Individuals with Disabilities Education Improvement Act (IDEA), P. L. 114-38, 20 U.S.C. § 1414 *et seq.* (2006).
- Individuals with Disabilities Education Improvement Act Regulations, 34 C.F.R. §300 *et seq.* (2012).
- National Alliance for Public Charter Schools. (2018). *Estimated Charter Public School Enrollment, 2016-17*. Retrieved from http://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2017/01/EER_Report_V5.pdf
- National Center for Education Statistics. (2018). *Public Charter School Enrollment*. Retrieved from https://nces.ed.gov/programs/coe/indicator_cgb.asp
- Pennsylvania Department of Education. (2018). *2017-2018 Cyber and Charter Schools Listing [Data File]*. Retrieved from <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/default.aspx>

Thompson v. Minneapolis School District, 24 IDELR 677 (D. Minn. 1996).

U. S. Department of Education (2017). U.S. Department of Education Awards \$253 Million in Grants to Expand Charter Schools.

U.S. Department of Education, Office for Civil Rights. (2016). *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973*.

U.S. Department of Education, Office for Civil Rights. (2014). *Dear Colleague Letter: Charter Schools*.

U.S. Department of Education, Office for Civil Rights. (2010). *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973*.

Yell, M. L., & Bateman, D. F. (2017). Endrew F. v. Douglas County School District (2017) FAPE and the U.S. Supreme Court. *TEACHING Exceptional Children*, 50(1), 7–15. <https://doi.org/10.1177/0040059917721116>

Yell, M., Katsiyannis, A., Ennis, R. P., & Losinski, M. (2013). Avoiding procedural errors in individualized education program development. *TEACHING Exceptional Children*, 46(1), 56–64. <https://doi.org/10.1177/004005991304600107>

Yell, M. L., Katsiyannis, A., Ennis, R. P., Losinski, M., & Christle, C. A. (2016). Avoiding substantive errors in individualized education program development. *TEACHING Exceptional Children*, 49(1), 31–40. <https://doi.org/10.1177/0040059916662204>

Zirkel, P. A., & Bauer, E. T. (2016). The third dimension of FAPE under the IDEA: IEP implementation. *Journal of the National Association of Administrative Law Judiciary*, 36(2), 409-427.

Zirkel, P. A. (2018). An analysis of the judicial rulings for transition services under the IDEA. *Career Development and Transition for Exceptional Individuals*, 41(3), 136–145. <https://doi.org/10.1177/2165143417732745>