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WHAT ARE THE INFLUENTIAL FACTORS IN THE SETTLEMENT PROCESS FOR DUE PROCESS DISPUTES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT?

Perry A. Zirkel[*] *and Ann Vevier Lockwood*[**] *with Linling Shen*[***]

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The Individuals with Disabilities Education Act (IDEA), which is nearing its fiftieth anniversary, continues to be an active area of litigation.[1]

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1. 20 U.S.C. §§ 1400 *et seq*. The original version of the legislation, which has been amended several times since then, was titled the Education for All Handicapped Children Act of 1975. *Id.* § 1400(c)(2); *see also* U.S. Department of Education, A History of the Individuals with Disabilities Education Act (2024), https://sites.ed.gov/idea/IDEA-History [https://perma.cc/5GKM-TNNM] (summarizing the evolution of the Act, including its successive amendments); Jeffrey J. Zettel & Joseph Ballard, *The Education for All Handicapped Children Act of 1975 (P.L. 94-142): Its History, Origins, and Concepts*, *in* SPECIAL EDUC. IN AMERICA: ITS LEGAL AND GOVERNMENTAL FOUNDS. 11 (Joseph Ballard, Bruce Ramirez & Frederick Weintraub, eds., 1982) (analyzing the early steps for and under the original version of the legislation). For overviews of the litigation activity at the administrative and judicial levels, respectively, see Perry A. Zirkel & Gina L. Gullo, *Trends in*

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Scholars have characterized the IDEA litigation, like litigation more generally, with the "iceberg" metaphor.[2] A distinguishing feature of the IDEA is that the first level of litigation is at the administrative level, specifically a due process hearing (DPH).[3] The analyses of the DPH stage of IDEA litigation have focused on the frequency and outcomes of the DPH decisions and, occasionally, on the much larger number of DPH filings, respectively representing the ending and starting points of the IDEA's administrative adjudication process.[4] For example, Zirkel and Gullo calculated the average ratio nationally between DPH filings and decisions as approaching 20-to-1.[5] But, what happens in the interim,

Impartial Hearings under the IDEA: A Comparative Analysis, 376 EDUC. L. REP. 870 (2020) (comparing 2006–2011 and 2012–2017 filings and adjudications at the administrative level); Perry A. Zirkel & Zorka Karanxha, *Longitudinal Trends in Special Education Case Law: An Updated Analysis*, 37 J. SPECIAL EDUC. LEADERSHIP 42 (2024) (tracing the trend of published court decisions under the IDEA from 1998 to 2022); Perry A. Zirkel & Benjamin Frisch, *Longitudinal Trends of Judicial Rulings in K–12 Education: The Latest Look*, 407 EDUC. L. REP. 409 (2023) (tracing the trend of special education judicial case law, including unpublished decisions, within the wider context of K-12 education litigation more generally).

2. The iceberg metaphor illustrates that litigation has many levels, with (a) several below the visible surface; (b) published court decisions at the tip of the visible part; and (c) a semi-fluid state based on not only interactions of the levels, such as reversals and remands upon appeal, but also non-adjudicative dispositions, such as settlements. For the use of this metaphor for IDEA litigation, see Perry A. Zirkel, *The Role of Law in Special Education*, 31 EXCEPTIONALITY 308 (2023); Perry A. Zirkel & Amanda Machin, *The Special Education Case Law "Iceberg": An Initial Exploration of the Underside*, 41 J.L. & EDUC. 483 (2012). For examples of its use in relation to other litigation, see Robert A. Mead, *"Unpublished" Opinions as the Bulk of the Iceberg: Publication Patterns in the Eighth and Tenth Circuits of the United States Courts of Appeals*, 93 L. LIBR. J. 589 (2001); Lois J. Scali, Comment, *Prediction-Making in the Supreme Court*, 32 UCLA L. REV. 1020, 1046 (1985); Peter Siegelman & John Donohue, *Studying the Iceberg from Its Tip: A Comparison of Published and Unpublished Employment Discrimination Cases*, 24 L. & SOC'Y REV. 1133 (1990).

3. 20 U.S.C. § 1415(g). Per an option in the IDEA, a small minority of states currently have a second administrative tier in the form of a state review officer. For an overview of the various state systems for administrative adjudication under the IDEA, see Jennifer F. Connolly, Perry A. Zirkel & Thomas A. Mayes, *State Due Process Hearing Systems under the IDEA: An Update,* 30 J. DISABILITY POL'Y STUD. 156 (2019). For the IDEA legal framework for IDEA DPHs, see 34 C.F.R. §§ 300.507–300.515. Some state laws add varying refinements. *E.g.*, Perry A. Zirkel, *State Laws for Due Process Hearings Under the Individuals with Disabilities Education Act*, 38 J. NAT'L ASS'N ADMIN. L JUDICIARY 1 (2018) (serving as one of a cluster of four analyses of state law additions).

4. The limited exception for the ending point are appeals of DPH decisions in the relatively few states with a review officer level. *Supra* note 3. For a longitudinal analysis of filings and decisions, see Zirkel & Gullo, *supra* note 1. For a synthesis of the much more extensive research literature on IDEA DPH decisions, see Perry A. Zirkel & Cathy A. Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525, 527–40 (2014). For the most recent national outcomes analysis, see Perry A. Zirkel & Diane M. Holben, *Due Process Hearing Decisions under the IDEA: A Follow-Up Analysis with and without New York*, 431 EDUC. L. REP. 394 (2025).

5. Zirkel & Gullo, *supra* note 1, at 879 (finding a ratio of 19.3-to-1 for 2012–17, which was an increase from 14.5-to-1 in 2006–11). However, after careful correction, including adjusting these gross figures to deduct the intervening category of "pending" cases (*infra* note 23) and limiting the jurisdictions to the 50 states plus the District of Columbia, the national rate for the proportion of

particularly the disposition of these cases via settlement, is a large and almost entirely unexplored subsurface segment of the IDEA litigation iceberg.

This article consists of successive parts that approximate the general template for empirical research, here focused on settlements under the IDEA at the DPH stage. Part I provides an illustrative review of the literature on the settlement process, including the negligible data within the specific context of the IDEA. Part II summarizes the methodology of this survey study. Parts III and IV respectively present the findings that address identified research questions and a discussion that includes limitations, interpretations, and recommendations.

I. BRIEF REVIEW OF THE LITERATURE ON THE SETTLEMENT PROCESS

A. Civil Context Generally

The settlement process in the general context of civil litigation is well-recognized as advantageous for resolving family, business, employment, and other disputes in terms of saving transaction costs and facilitating the ongoing relationship of the parties.[6] Much of this literature is based on the practical experience of the authors in various settlement contexts. For instance, based on his experience settling thousands of cases as a federal magistrate judge, Baker emphasized that the merits of the case serve as only one, and often not the primary factor, in reaching a settlement. He mentioned various other contributing factors, such as those in the economic (e.g., transaction costs), non-economic (e.g., the parties' relationship), and process-based (e.g., the adjudicator and the parties' representatives) areas.[7]

Theoretical sources, often based on the perspectives of economics or sociology, comprise another category of the settlement literature in

filings that ended as fully adjudicated decisions more accurately approximated 10%, or a 9.6-to-1 ratio, for that six-year period, and 13%, or a 7.8-to-1 ratio, for the most recent available period of 2016–21. These calculations are based on the National & State DR Data Dashboard of the federally funding Center for Appropriate Dispute Resolution in Special Education (CADRE), https://www.cadreworks.org/national-state-dr-data-dashboard [https://perma.cc/R85S-2GYH].

6. *See, e.g.*, LINDA SINGER, SETTLING DISPUTES: CONFLICT RESOLUTION IN BUSINESS, FAMILIES, AND THE LEGAL SYSTEM (2018); Eugene F. Lynch & Lawrence C. Levine, *The Settlement of Federal District Court Cases: A Judicial Perspective*, 67 OR. L. REV. 239, 240 (1988).

7. Tim Baker, *Sizing Up Settlement: How Much Do the Merits of the Dispute Matter?*, 24 HARV. NEGOT. L. REV. 253 (2019); *cf.* Herbert M. Kritzer, *Adjudication to Settlement: Shading in the Gray*, 70 JUDICATURE 161, 165 (1986–87) (differentiating the reasons as a complex continuum beyond objective odds assessment).

contexts other than the IDEA.[8] For example, in a landmark article, Galanter explained that "repeat players" are less likely to settle civil cases than "one-shotters."[9]

Other sources in the literature about settlements in the civil litigation context are empirical. Synthesizing various empirical studies, Galanter observed that settlements constitute a much more frequent disposition than adjudicative decisions.[10] In an analysis of settlements of civil cases in two federal district court jurisdictions, Eisenberg and Lanvers found that the settlement rate varies by jurisdiction, case type, time, lawyering, judicial demographics, and party characteristics.[11] Other empirical analyses also found that various factors, including but not limited to probable outcome, can play a systematic role in whether a case settles.[12] Yet, while confirming the varying effect of multiple contributing factors, such as the involvement of an alternate dispute resolution (ADR) process, Barkai and Kent's analyses of the dockets and attorneys for various civil court cases in Hawaii observed that researchers' definitions of "settlement" are not uniform. They found that more than a quarter of their cases ended in neither an adjudicated decision nor a settlement agreement (e.g., abandonment).[13]

8. *See, e.g.,* Russell Korobkin, *Aspirations and Settlement*, 88 CORNELL L. REV. 1 (2002); Lucian Bebchuk, *Litigation and Settlement under Imperfect Information*, 15 RAND J. ECON. 404 (1984); George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

9. Marc Galanter, *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *L. & SOC'Y REV.* 95 (1974).

10. Marc Galanter, *"… A Settlement Judge, Not a Trial Judge:" Judicial Mediation in the United States*, 12 L. & SOC'Y REV. 1 (1985) ("[T]he negotiated settlement of civil cases is not a marginal phenomenon; it is not an innovation; it is not some unusual alternative to litigation. It is only a slight exaggeration to say that it is litigation.").

11. Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 11 (2009).

12. *See, e.g*., David S. Kaplan et al., *Litigation and Settlement: New Evidence from Labor Courts in Mexico*, 5 J. EMPIRICAL LEGAL STUD. 309 (2008) (repeat players and exaggerated claims); Jason S. Johnston & Joel Waldfogel, *Does Repeat Play Elicit Cooperation? Evidence from Federal Civil Litigation*, 31 J. LEGAL STUD. 39 (2002) (repeat attorney interaction); Joel Waldfogel, *Reconciling Asymmetric Information and Divergent Expectations Theories of Litigation*, 41 J.L. & ECON. 451 (1998) (parties' experience and status); Gary R. Gray, *A Comparison of Attorneys' Reasons for Settlement in Personal Injury Lawsuits*, 4 J. SPORTS MGMT. 147 (1990) (probable outcome); William L. Landes, *An Economic Analysis of the Courts*, 14 J.L. & ECON. 61 (1971) (case importance or severity).

13. John Barkai & Elizabeth Kent, *Let's Stop Spreading Rumors About Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts*, 29 OHIO ST. J. ON DISP. RESOL. 85 (2014).

B. More Related Specific Contexts

The settlement literature is more limited in contexts more closely related to the IDEA. For example, in an empirical analysis of employee lawsuits in federal court under the Americans with Disabilities Act (ADA), Moss et al. classified 61% of the cases as settled, but they did not separate out among the cases that lacked an explicit docketing entry for settlement or those that were abandoned or withdrawn.[14] Subsequent analyses of ADA employment cases have similarly focused on win-loss rates but recognized the difficulties of determining the extent and nature of settlements.[15]

More closely related in both context and findings, in successive analyses of school bullying litigation, Zirkel and Holben found a 61% settlement rate for the ultimate disposition of inconclusive judicial rulings.[16] In a subsequent study that disaggregated the bases for the rulings in this particular judicial context, they found the settlement rate for the limited number based on Section 504 or the ADA to be 67% and those based on the IDEA to be 52%.[17]

C. IDEA Context

The settlement literature in the context of the IDEA is even more limited in scope and depth. An occasional article indirectly addressed the IDEA settlement process by analyzing the contributing factors for parent-district conflicts in special education.[18] More directly but narrowly

14. Kathryn Moss, Michael Ullman, Jeffrey W. Swanson, Leah M. Raney & Scott Burris, *Prevalence and Outcomes of ADA Employment Discrimination Claims in the Federal Courts*, 29 MENTAL & PHYSICAL DISABILITY L. REP. 303 (2005).

15. *See, e.g.*, Ruth Colker, *Speculation about Judicial Outcomes under 2008 ADA Amendments: Cause for Concern*, 2010 UTAH L. REV. 1029, 1044 (2010); Sharona Hoffman, *Settling the Matter: Does Title I of the ADA Work?*, 59 ALA. L. REV. 305, 312–13 (2008).

16. Perry A. Zirkel & Diane M. Holben, *Spelunking in the Litigation Iceberg: Exploring the Ultimate Outcomes of Inconclusive Rulings*, 46 J.L. & EDUC. 195, 209 (2017). The distribution of the other ultimate outcomes was as follows: withdrawal/abandonment – 20%; conclusive for plaintiff – 1%; conclusive for defendant – 11%; and unknown – 6%. *Id*.

17. Diane M. Holben & Perry A. Zirkel, *Bullying Litigation: An Empirical Analysis of the Dispositional Intersection Between Inconclusive Rulings and Ultimate Outcomes*, 42 U. HAW. L. REV. 76, 93 (2020). For the total of 513 judicial rulings in this analysis, the respective numbers for those based on Section 504/ADA and the IDEA were 45 and 25, respectively. *Id*.

18. *E.g.,* Jeannie F. Lake & Bonnie S. Billingsley, *An Analysis of Factors That Contribute to Parent-School Conflict in Special Education*, 21 REMEDIAL & SPECIAL EDUC. 240 (2000) (identifying, via a qualitative approach in telephone interviews with a limited number of parents, school officials, and mediators in the context of DPHs in a single state, eight categories of contributing factors, such as discrepant views of a child's needs). The forty-four interviews represented a response rate of 5% for the parents and 4% for the school officials. *Id*. at 242. Moreover, only six of their forty-four interviewees were mediators, and the findings did not systematically examine differences among the three subgroups or the perceptions of the party's representatives at the DPH. *Id.*

relevant, occasional articles have discussed ADR mechanisms developed in the IDEA context[19] and other relatively limited aspects of settlements in special education.[20] The Center for Appropriate Dispute Resolution in Special Education (CADRE) provides frequency data on various phases of the DPH process from filings to decisions based on annual state education agency reports to the United States Department of Education.[21] However, despite inflated informal estimates,[22] the specific proportion of the DPH filings that end in settlement rather than decision is not reliably available.[23]

19. *E.g.,* Reece Erlichman, Michael Gregory & Alisia St. Florian, *The Settlement Conference as a Dispute Resolution Option in Special Education*, 29 OHIO ST. J. ON DISPUTE RESOL. 407 (2014) (describing an ADR option developed in Massachusetts, in addition to the state's alternative mechanisms of Spedex and advisory opinions, that provides the parties with an experienced hearing officer's independent analysis of the outcome odds of their respective positions). For an overview of interest-based ADR options in the IDEA context, see Center for Appropriate Dispute Resolution in Special Education, (CADRE), Continuum: Conflict (n.d.), https://www.cadreworks.org/cadre-continuum/conflict [https://perma.cc/VD62-NSCU]; Tracy Gershwin Mueller, *Alternative Dispute Resolution: A New Agenda for Special Education Policy,* 20 J. DISABILITY POL'Y STUD. 4 (2009). For identification of the relatively few state laws that incorporate ADR and mediation options beyond the IDEA's provisions, see Andrew M.I. Lee & Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The Pre-Hearing Stage*, 40 J. NAT'L ASS'N ADMIN. L JUDICIARY 1, 16 (2021).

20. *E.g.*, John D. Rue & David B. Rubin, *The Ethics of Negotiating Settlements in Special Education Litigation*, 335 N.J. LAW. 26 (April 2022) (providing a point-counterpoint discussion of the ethics of waivers for attorneys' fees under the IDEA as part of settlement agreements in the New Jersey special education context); Perry A. Zirkel, *Mediated Settlement Agreements under the IDEA*, 216 EDUC. L. REP. 1 (2015) (tracing the limited case law specific to the IDEA provision for mediated settlement agreements); Mark C. Weber, *Settling Individuals with Disabilities Education Act Cases: Making Up Is Hard to Do*, 43 LOYOLA L.A. L. REV. 641 (2010) (summarizing the IDEA's regulatory framework for mediation and the case law specific to interpretation and enforcement of IDEA settlement agreements); Ryan L. Everhart, *Limiting Liability for Lawyers' Fees*, 66 SCH. ADM'R 34 (May 2009) (discussing the IDEA provision for timely offer of settlement in the context of attorneys' fees); Geoffrey F. Schultz & Joseph McKinney, *Special Education Due Process: Hearing Officer Background and Case Variable Effects on Decision Outcomes,* 2000 BYU EDUC. & L.J. 17 (2000) (finding, for one mid-western state in the mid-1990s, that the legal background of the hearing officer correlated significantly with the outcome of settlement rather than decision).

21. For the instruction manual to the states, see U.S. DEP'T OF EDUC., E*MAPS* USER GUIDE: IDEA PART B DISPUTE RESOLUTION SURVEY (2023), https://www2.ed.gov/about/inits/ed/edfacts/index.html [https://perma.cc/UX8T-CQ2S] ("E*MAPS* IDEA Part B Dispute Resolution User Guide").

22. *E.g.,* Kevin Hoagland-Hansen, *Getting Their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania,* 163 U. PA. L. REV. 1805, 1824 (2015) (reporting informal Pennsylvania parent attorney estimates of 70% to 90%).

23. *E.g.*, CADRE, IDEA DISPUTE RESOLUTION DATA SUMMARY FOR U.S. AND OUTLYING AREAS: 2011–12 TO 2021–2022 (2023), https://www.cadreworks.org/resources/cadre-materials/2021-22-dr-data-summary-national [https://perma.cc/WY8N-V8PF]. For example, for the most recent available school year (2021–22), the potential numerator could be the number of "mediation agreements" (2,842) plus the number of "settlement agreements in the resolution period" (1,665) = 4,507, and the potential denominator could be the number of filings (29,490) minus the number of "pending" DPH cases (12,797) = 16,693. *Id*. at 10, 12. This approach would yield an

The only relatively broad discussions of the settlement process under the IDEA, including the contributing factors, tend to be in unpublished conference presentations. For example, a school district attorney and a parent attorney jointly presented a paper at a national special education conference that identified multiple factors that influenced the settlement of IDEA disputes, including the parties' relationship, the likelihood of success, the availability of ADR mechanisms, the role of insurance carriers, and the transaction costs of litigation.[24]

Thus far, however, the literature lacks any empirical research, whether quantitative or qualitative, specific to the key factors in the special education settlement process. Moreover, the perspectives of not only the parties' representatives but also mediators and other third-party neutrals, and the coverage beyond a single state or region, are desirable features of such exploratory research.

II. OVERVIEW OF THE PURPOSE AND METHOD

The purpose of this exploratory study is to determine the perceptions of experienced participants in IDEA disputes as to the factors that influence the settlement of due process complaints either before or after a DPH. The survey participants were composed of three subgroups—attorneys or advocates representing parents, attorneys representing school districts, and mediators or other facilitating third-party neutrals.

The specific research questions were as follows:

1. What is the relative ranking of the five overall factor categories from most to least influential for (a) the total group, and (b) the three subgroups?

estimate of 4,507/16,693 = 27%, which is approximately twice as high as the corresponding rate of full adjudications (*supra* note 5). However, this settlement rate is not sufficiently reliable for various reasons, including that (a) the numerator does not extend beyond the two enumerated categories to other settlements, which are included without differentiation in the separate category of filings that are "withdrawn, dismissed, or otherwise resolved without a hearing"; (b) the calculation does not include the ultimate and unknown disposition of the pending category, which varies in its proportional size each year; (c) the manual with instructions for the state education agency data reporting (E*MAPS* IDEA Part B Dispute Resolution User Guide, https://www.ed.gov/about/inits/ed/edfacts/index.html [https://perma.cc/6HGQ-DGFR]) is subject to misinterpretation by not clearly treating "mediation agreements" and "settlement agreements in the resolution period" as mutually exclusive, (d) the mediation agreements category extends beyond the DPH context (e.g., those via the separate state complaint process or prior to either of filing for either of these two decisional processes); and (e) the lack of rigorous systematic quality controls often leaves uncorrected such misinterpretation and other errors in the inputting of the data.

24. Amy Brooks & Heidi Goldsmith, Know Your End Game: Strategic X's and O's for Special Education Settlements, Presentation at the Lehigh University Special Education Symposium (June 23, 2022) (on file with first author).

2. Which factors are the most influential and the least influential, first without, and then with, weighting of their categories, for (a) the total group, and (b) the three subgroups?[25]

The research design consisted of survey development and data collection stages, each including several successive steps. The first step of the survey development stage was the formation of an advisory panel of experts by the first and second authors.[26] The second step was the second author's individual telephone interviews with each panel member to identify various influential factors for IDEA settlements. The third step was the second author's tentative synthesis of the panel's responses organized into five tentative categories. The fourth step was obtaining the panel members' subsequent feedback for these broad factor categories and refining them accordingly. The final step of this stage was pilot testing by having the panel members serve as participants to the draft survey form, including their proposed revisions as to content and format. During this final step, we also obtained their suggestions of organizations to facilitate dissemination of the final survey form to qualified participants.

The data collection stage began with the first two authors' finalization of the content and format of the survey instrument, which is Appendix A of this article. As the cover page of the instrument shows, survey participants were limited to members of the three subgroups who participated in at least eight successful or unsuccessful settlements of IDEA disputes during the past ten years.[27] The cover page also included instructions for the participants to (1) rank, without ties, the five broad factor categories from most influential to least influential; and (2) identify one or two of the most influential factors within each category; and (3) optionally, to clarify their choices or add other supplemental comments. As the main page of the survey instrument shows, the final arrangement consisted of five broad categories, each consisting of four or five individual factors, followed by a box to insert optional comments.

The next step was dissemination of the survey instrument as widely as feasible with the goals of obtaining approximately equal representation of the three subgroups and representation from every state. In addition to

25. Although design of the survey questionnaire primarily focused on quantitative data in terms of rankings, it also included the opportunity for participant's qualitative comments.

26. The advisory panel consisted of the following members: parent attorneys Matt Cohen (Illinois), Michael Eig (Maryland), and Caryl Oberman (Pennsylvania), and parent advocate Joan Harrington (New York); school district attorneys Eric Herland (Maine), Janet Horton (Texas), and Michael Stafford (Delaware); and mediators or third-party neutrals Lucius Bunton (Texas), Reece Erlichman (Massachusetts), and Barry Moscowitz (New Jersey).

27. The cover page of the survey form also shows that we only required, via drop-down menus, identification of the participant's role group and primary state of activity. In contrast, for the same reason of improved response rate, we avoided identification of the participant's name.

potential participants known to the first two authors, we sought assistance from various organizations, resulting in cooperation from CADRE, the Council of Administrators of Special Education, the Council of Parent Attorneys and Advocates, the Counsel of School Attorneys, the Education Law Association, the Florida School Board Attorneys Association, the Justice Center of Atlanta, the National Association of Special Education Teachers, the National Association of State Directors of Education, and the Texas General Counsel Forum. We also sent the survey instrument to the dispute resolution coordinators of the fifty states and the District of Columbia, requesting dissemination to individuals who met our specified qualifying criterion.[28] Finally, we e-mailed special education attorneys and mediators whom we identified via Internet searches and from the IDEA dispute resolution coordinators of state education agencies, seeking both their participation and their referral to potential other qualifying participants.

As a result, after more than six months of cumulative dissemination efforts, we received completed survey forms from 180 participants with an equal number of participants from the three designated subgroups.[29] More specifically, as tabulated in Appendix B, the participants consisted of sixty school-side attorneys, sixty mediators or other neutrals, and sixty parent-side attorneys or advocates, representing forty-nine states and the District of Columbia.[30]

The primary analysis was quantitative via descriptive statistics, such as frequencies and averages.[31] As a secondary matter, the second author analyzed the optional comments on the survey forms, which we included as supplementary qualitative findings for each research question.[32]

28. *Supra* text accompanying note 27.

29. Approximately 15% of the respondents initially submitted survey forms that did not completely conform to the instructions on the survey instrument. Based on our individual follow-up, most of them submitted completely corrected forms. We did not include in Appendix B or in our findings the few participants who did not do so.

30. The state director of special education for South Dakota, the only nonparticipating state, assisted our efforts to secure at least one respondent from her state but ultimately concluded that, due to the consistently low level of due process complaints, the state lacked individuals in the designated subgroups who met our experience criterion.

31. The third author's calculation included the averaged ranking of the five categories and the frequencies for each factor both without weighting (i.e., on their own without consideration of the ranking of their overall category) and with weighting (i.e., multiplied by the weight of their respective category ranks). The weight of each category was simply the obverse of its rank, such that if the participant ranked a category in first place, we counted its weight as a "5." *See infra* notes 34 and 46.

32. A slight majority (57%) of the participants included comments on their survey forms. Although these comments represent limited numbers of participants, we include them rather liberally so that readers can evaluate their significance in relation to the otherwise bare quantitative results.

III. FINDINGS IN RESPONSE TO THE RESEARCH QUESTIONS

A. Research Question 1

In response to the part (a) of research question 1,[33] the ranking for the total group (n=180) of the five overall categories was, on average,[34] from the most to least influential as follows:

1. Litigation Strategy – 3.47
2. Practices or Proposals for the Child[35] – 3.29
3. Financial Factors – 3.19
4. Settlement Process – 2.73
5. Psychological & Emotional Factors – 2.38

As these average rankings show, although Litigation Strategy was the leading category, the positions of the first three categories were relatively close to each other, whereas Settlement Process and Psychological or Emotional Factors lagged further behind.

In their optional comments, various participants in all three subgroups pointed out the difficulty of ranking the five overall categories as to their extent of influence due to (a) overlap between these broad rubrics,[36] and (b) the variation in influence depending on the nature of the particular case.[37] For example, some of the participants in all three subgroups indicated that the Financial Factors category served as a major negative settlement influence for tuition reimbursement cases but as a major positive settlement influence for discipline cases. Moreover, representatives in the neutrals' subgroup particularly emphasized that regardless of positive or negative directionality, the ranking of the category was "case specific," including the interaction among the various applicable categories.

33. *Supra* text accompanying note 25.

34. These averages represent reversing the survey form entries for the categories (i.e., 1←→5 and 2←→4), so as to arrive at their relative range from 5 as most influential to 1 as least influential.

35. For spacing purposes only, this descriptor is abbreviated. As Appendix B shows, the full version of this category is "Educational Practices & Proposals in Relation to the Child."

36. The survey form assumed that (a) the identified factors for each category defined its content and contours and (b) the directionality of the category would depend on the valence of each of these factors (e.g., high or low outcome odds).

37. Among other specific situations, identified examples of cases that were most difficult to settle were those in which the parent and the school district drastically differed in their perceptions of the child's needs and those in which the cost of settlement was particularly high.

In response to the part (b) of research question 1,[38] Table 1 presents the relative ranking (with the corresponding average) for the five categories for each of the three subgroups.[39]

Table 1: Subgroup Ranking of the Three Overall Categories

	School Representatives	Neutrals	Parent Representatives
Litigation Strategy	1 (4.22)	5 (2.43)	1 (3.75)
Practices/Proposals for Child	3 (3.28)	1 (3.37) [tie]	2 (3.22) [tie]
Financial Factors	2 (3.50)	4 (2.85)	2 (3.22) [tie]
Settlement Process	4 (2.07)	1 (3.37) [tie]	4 (2.75)
Psychological/Emotional Factors	5 (1.98)	3 (2.98)	5 (2.18)

Review of Table 1 reveals that the three subgroups are not identical in their rankings of the overall categories, with the difference almost entirely attributable to the neutrals. Both attorney subgroups were almost entirely agreed in their category rankings, with the only slight difference being in the position of Practices/Proposals for the Child being either third or tied for second.

In their optional comments for their choice of Litigation Strategy as the most influential category, attorneys on both sides explained that their initial step in any DPH was similar: an evaluation of the strengths and weaknesses of the case as well as that of the opposing party. Similarly helping to explain their limited difference in the ranking of Financial Factors, some of the participants for both attorney subgroups commented that this category's overlap with the cost-benefit factor under Litigation Strategies made this ranking less than clear-cut.

Correspondingly, optional comments of neutrals explained that their tied first-place ranking for the Settlement Process and Educational Practices & Proposals was attributable to their bridging role in assisting the parties to understand the give-and-take of negotiations and to prioritize their concerns and values for arriving at a mutually satisfactory compromise.

38. *Supra* text accompanying note 25.

39. The tables use the generic headings of school representatives, neutrals, and parent representatives. For the sake of brevity and to avoid undue repetition, the school-side and parent-side subgroups are referred to herein generically as "attorneys," even though the 60 parent representatives included three lay advocates, and the neutrals are alternatively referred to as "mediators," even though a few of them focused on more specialized dispute resolution roles other than being adjudicators.

B. Research Question 2

In response to part (a) of research question 2,[40] Table 2 identifies in abbreviated form[41] the five most influential of the twenty-one listed factors selected by the total group respectively without and with weighting according to their category ranking.[42]

Table 2: Total Group's Five Most Influential Factors on Unweighted and Weighted Bases[43]

Unweighted[44]	**Weighted**
outcome odds (n=122) and cost-benefit analysis (n=122) [tie]	outcome odds (n=451)
	cost-benefit analysis (n=421)
parties' relationship (n=100)	feasibility of requested relief (n=312)
home stress (n=98)	staff's perception of child's profile (n=311)
feasibility of requested relief (n=97)	attorney fees in settlement agreement (n=305)

Examination of Table 2 reveals that weighting makes a notable difference, resulting in a separation of the two most influential factors from a tie to a higher position for outcome odds (meaning the odds of winning or losing) over a cost-benefit analysis. Weighting also resulted in a completely different set of factors for the next three positions in comparison to the unweighted results.

40. *Id*.

41. All these tables use slightly abbreviated entries for the factors. For the full wording, see Appendix A.

42. The unweighted n's are simple frequency counts for the participants' check marks for each factor. The weighted n's account for each participant's ranking of the overall categories (with reversal to show the relative importance of each category). This weighting procedure thus allows for examining the importance of a factor by not only how often the participants chose it but also how highly each participant rated its overall category.

43. Conversely, the total group's corresponding five *least* influential of the twenty-one listed factors were as follows:

Unweighted	**Weighted**
Opposing attorney (n=21)	Opposing attorney (n=64)
IHO reputation (n=28)	IHO reputation (n=115)
Witness credibility (n=44)	Witness credibility (n=125)
Mediator's knowledge of IDEA (n=49)	Mediator's knowledge of IDEA (n=140)
Complexity of requested relief (n=63)	Disruption on parents (n=167)

44. The number in parenthesis is the total count of survey participants who selected that item.

In response to part (b) of research question 2,[45] Tables 3 and 4 report each subgroup's selection of the most influential factors respectively with and without weighting according to their category ranking.[46]

Table 3: Each Subgroup's Five Most Influential Factors on an Unweighted Basis[47]

School Representatives	Neutrals	Parent Representatives
cost-benefit analysis & disruption on staff (n=48) [tie]	home stress (n=44)	home stress (n=44)
	parties' relationship (n=43)	outcome odds (n=42)
outcome odds & school stress (n=42) [tie]	cost-benefit analysis & parents' perception of child (n=40) [tie]	disruption on parents (n=40)
		cost of relief (n=38)
feasibility of requested relief (n=40)	outcome odds (n=38)	attorney fees in settlement agreement (n=37)

Table 3 shows a rather wide variance among the three subgroups' selection of the five most influential of the twenty-one factors without weighting for the respective category rankings. More specifically, outcome odds was the only factor selected by all three subgroups and then in different positions (but none in first place) within the top five. The only factors selected by two subgroups were cost-benefit analysis (by school attorneys and neutrals) and home stress (by neutrals and parent attorneys). Moreover, whereas the school attorneys selected disruption and stress on the school side, the parent attorneys and advocates selected stress or disruption on the parents' side.

In their optional comments, one or more members of both attorney subgroups explained that for their relatively high frequency of outcome odds, a key factor in FAPE cases was whether the record contained appropriate documentation (i.e., a "paper trail) of the child's progress or the lack thereof. A few members of these two subgroups also both

45. *Id*.

46. The weighted results show the frequency of the factor multiplied by the reversed ranking entry (e.g., 5 for the highest ranked position) for each subgroup.

47. Conversely, each subgroup's corresponding unweighted five *least* influential of the twenty-one listed factors were as follows:

School Representatives	Neutrals	Parent Representatives
home stress & parents' perception of child (n=10) [tie]	representatives' relationship (n=18)	IHO reputation & mediator IDEA knowledge & school stress (n=14) [tie]
	witness credibility (n=16)	
IHO reputation (n=9)	requested relief's complexity (n=13)	disruption for staff (n=9)
opposing attorney & disruption on parents (n=4) [tie]	opposing attorney (n=11)	opposing attorney (n=6)
	IHO reputation (n=5)	

mentioned that parent attorneys' fees, whether as part of the cost benefit analysis or as the overlapping item in the Financial Factors category, was a significant influence regarding not only whether the requested amount was acceptable but also whether the school board would agree to include it as part of the settlement package.[48] One of the parent attorneys maintained that such a clause in the settlement agreement is "essential," attributing resistance particularly to school districts without any DPH experience.[49]

Within the school attorneys' subgroup, members explained that their relatively frequent cost-benefit analysis included the high but relatively open-ended transaction costs for both parties; the extent of any insurance coverage; and, inferably in line with the IDEA attorneys' fees provision,[50] whether an offer of settlement would substantially approximate what the parents are likely to receive if they prevail in the DPH decision. One school district attorney observed that the attorneys' fees factor tends to be "highly regional and state-specific." The comments of a few of the school attorneys questioned the billing practices of opposing counsel, including whether the amount of time claimed for the period prior to filing was reasonable.

Other school attorneys also provided explanatory comments on their subgroup's equally frequent choice of disruption on school staff. For instance, a school attorney noted that in light of the stress and emotional toll the conflict places on school personnel, it's "not worth the upheaval to fight every case." Several school attorneys also observed that hearings have become much more strident and acrimonious, with parties engaging in extensive and unreasonable discovery and school districts facing unrealistic demands for relief from parents.

In their optional comments, more than one member of the parent attorneys' subgroup explained that in most cases a major factor in addition to their assessed odds of winning or losing was their assessment of the parent's commitment to what can be a prolonged legal process that compounded the financial and emotional pressures on the family.

Varying notably from their quantitative results, the optional comments of some parent attorneys put top priority on whether the district

48. The parent attorneys' subgroup included members who provided services to low-income parents on a pro bono or sliding scale basis or who worked for public interest advocacy organizations. Depending on the specific nature of their client arrangements, the attorneys' fees factor was not necessarily as significant. Even more distinct, this factor does not play a role for parents who proceed pro se, with or without a lay advocate.

49. The comment colorfully characterized such resistance as "kicking, screaming, and … fighting tooth and nail."

50. 20 U.S.C. § 1415(i)(3)(D)(i); 34 C.F.R. § 300.517.

understood the child's needs and whether the district offered the services to address these individual needs. This priority on achieving a "favorable and sufficient remedy" for the child at best approximates the child and remedy factors under the Educational Practices & Proposals category.

A few members in the neutrals' subgroup clarified their relatively frequent choice of cost-benefit analysis as being particularly attributable to tuition reimbursement cases and as more generally applicable in comparing the costs to parents for outside credible experts as opposed to the school district's "ready access to a bevy of expert witness personnel." Some of the neutrals also commented that as part of the cost benefit analysis the issue of attorneys' fees can be a "dealbreaker" and, thus, a prime factor in a declaration of impasse.

Although neutrals did not select school stress as one of the most frequent factors on an unweighted basis, some of them emphasized its importance. Serving as a possible explanation for the disparity between these quantitative and qualitative findings, one mediator noted that school district concerns regarding stress, anxiety and morale are "on the rise as school personnel report more problematic interactions with parents." In independent agreement, another mediator commented that IDEA cases have become much more difficult to settle due to "a dysfunctional dynamic that prevents parents from meaningfully engaging and being willing to commit to realistic settlement negotiations."

Table 4: Each Subgroup's Five Most Influential Factors on a Category-Weighted Basis[51]

51. Conversely, each subgroup's corresponding weighted five *least* influential of the twenty-one listed factors were as follows:

School Representatives	Neutrals	Parent Representatives
requested relief's complexity (n=38)	disruption on staff (n=54)	mediator IDEA knowledge (n=36)
mediator IDEA knowledge (n=37)	requested relief's complexity (n=36)	settlement agreement releases (n=36)
home stress (n=23)	witness credibility (n=27)	school stress (n=30)

School Representatives	Neutrals	Parent Representatives
cost-benefit analysis (n=202)	parties' relationship & parents' perception of child (n=146) [tie]	outcome odds (n=165)
outcome odds (n=184)		cost-benefit analysis (n=127)
staff perception of child (n=140)	home stress (n=139)	cost of relief (n=121)
litigation cost (n=135)	mediator effectiveness (n=124)	attorney fees in settlement agreement (n=119)
feasibility of requested relief (n=125)	feasibility of requested relief (n=113)	complexity of requested relief (n=111)

The results reported in Table 4 show not only a continued wide variance among the three subgroups upon recalculation on a weighted basis, but also at least a moderate change between the unweighted and weighted top five factors within each subgroup.[52]

In their optional comments, more than one parent attorney stated the most important consideration in reaching settlement is whether the school district understands the child's needs and whether it offers the services that the child needs. These comments align with the cost of relief and complexity of relief that parent attorneys chose as influential factors on a weighted basis.

Representatives of all three subgroups commented on the increased importance in the weighted results for factors specific to the requested relief. For example, an experienced mediator expressed a perceived change in attitude and approach by parents leading to unreasonable settlement terms that included "big dollar compensation" and "funding for top-flight private schools."[53] Conversely, a school attorney noted the likelihood of settlement is significantly higher "when parents agree to a certain number of hours of compensatory services or [propose] a desired placement that makes educational sense."

In their optional comments explaining their even more pronounced priority on a weighted basis for the parties' relationship, members of the neutrals' subgroups characterized this factor as being a "critical"

opposing attorney (n=14)	opposing attorney (n=24)	opposing attorney (n=26)
disruption on parents (n=7)	IHO reputation (n=19)	disruption on staff (n=19)

52. Approximately half of each subgroup's top five factors changed, and those that remained in the top five tended to change their relative position.

53. The other identified examples of "unreasonable" settlement terms included whole swaths of student records redacted or destroyed; public shaming of the campus and its personnel; and large-scale institutional policy changes.

influence on settlements. As one mediator explained it more broadly, "settlement depends on whether the attorneys understand the significance of maintaining, repairing, or enhancing the relationship between the parties, what it takes to effectively educate the child going forward, and whether the attorney has an understanding not simply of the IDEA itself but how it functions in 'real life' for the parent, the child, and the school district."

Although not emerging at all in the top five factors in the weighted quantitative analysis for the other two subgroups, the parties' relationship was the subject of relatively frequent comments among the school and parent attorneys. They noted the importance of effective communications and trust between the parties. They also noted that the longer the dispute lasts, the more likely that the valence of this factor changes to a negative effect, in some cases superseding the specific issues in dispute.

The relationship between the opposing attorneys seemed to be a more dramatic difference between the quantitative and qualitative results. Although of low importance in the weighted frequencies,[54] it emerged frequently in the optional comments among all three subgroups. For example, a parent attorney identified as the "key ingredient" for settlement "attorneys who can be reasonable in their interactions with each other and who have earned the trust of their clients." Similarly, both a parent attorney and a school attorney each independently commented that a relationship of trust and respect between opposing counsel facilitates settlement.

Mediator effectiveness was another factor that illustrated variation between the weighted frequencies and the optional comments. First, supplementing its identification in the top five weighted factors only for the neutrals' subgroup, the comments of various neutrals cumulatively identified as essential elements of mediator effectiveness in the IDEA context (a) knowledge of educational practices, (b) skill in establishing rapport with the parties, and (c) diligence in "pre-mediation work."[55] A mediator with extensive experience in both IDEA and non-IDEA settlements explained that within this particular context knowledge of both the legal requirements and the practical implementation of the IDEA contributes to establishing rapport with the parties and facilitating resolution of the case.

54. *Supra* Table 4.

55. "Pre-mediation work" refers to the initial preparation mediators do prior to meeting in the mediation session, such as reviewing memoranda or position statements from counsel, reviewing pleadings and correspondence, and having conversations with counsel or a pro se party to identify concerns and needs or to resolve any issues about mediation with the parties.

Second, although mediator effectiveness did not appear in Table 4 for either attorney subgroup, some of their members volunteered comments about its high importance. Both school and parent attorneys pointed out that the prospects for settlement increase with the mediator's ability to get to the root of the dispute and assist both parties in understanding the strengths and weaknesses of their respective legal positions. They also stated that mediators who lack knowledge of special education law are "simply not effective," whereas those with knowledge of the IDEA "just generally understand the issues better" and "know the questions to ask to push the parties toward common ground."

State differences also emerged in the attorney comments about mediation. For example, an attorney in one state complained that the mediation roster was largely "unhelpful," with only one mediator on the roster viewed as effective in achieving settlement of IDEA cases. In another state, the settlement conferences with IDEA administrative law judges, which may or may not be a form of mediation,[56] received participant praise as particularly productive. Finally, in a third state, attorneys on both sides independently agreed that the availability of a very experienced and knowledgeable IDEA facilitator proved to be effective.

IV. DISCUSSION IN RELATION TO THE FINDINGS

This final section provides the delimitations of the design; the interpretation of the findings, including the implications for practice; and the recommendations for further research.

A. Delimitations of the Design

As a threshold matter, the delimitations of the survey instrument and data collection warrant identification as boundaries for the interpretation of the findings.[57] First, because this study was merely exploratory for a topic that largely lacked specifically aligned previous research,[58] the development of the survey instrument depended on the collective knowledge and experience of the first two authors and the advisory panel.

56. *See, e.g.*, Erlichman et al., *supra* note 19. As another example of the overlap between mediation and settlement conferences, in California the full-time hearing officers receive regular cross-training and separately fulfill the role of mediator. https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/The-Mediation-Process-Including-Virtual-Mediations [https://perma.cc/S7VH-4LK5].

57. For the general norms and limitations of modern survey studies, see FLOYD J. FOWLER, SURVEY RESEARCH METHODS (2014); ULEMA LUHANGA & ALLEN G. HARBAUGH (EDS.), BASIC ELEMENTS OF SURVEY RESEARCH IN EDUCATION (2021).

58. *Supra* notes 18–24 and accompanying text.

To maximize response rate, the aforementioned[59] multi-step process focused on brevity, with the cover page limited to directions, verification of the experiential qualification, and identification of the participant's subgroup and state and the second page limited to ranking of overall categories and selection of specific factors along with optional comments.[60] Nevertheless, despite format refinements and pilot testing, some of the participants required assistance with the instructions or follow-up for missing data.[61] The principal difficulties appeared to be attributable to the inevitable overlap and interaction among the categories,[62] the different procedure for the selection of factors,[63] and the absence of a state-specific context. Moreover, the brevity of the survey instrument, which only provided a limited space for optional comments, did not provide for (a) the complete scope of potentially significant contributing factors,[64] (b) the depth of information that would have been possible via individual interviews or other data-collection procedures, and (c) the complexities of individual cases and the various factors that combine for its satisfactory resolution. Finally, the particular difficulties perceived by some of the potential survey respondents may have skewed the representativeness of the participants.

Second, although we obtained participation from all but one of the fifty-one jurisdictions and from an evenly balanced total from each subgroup, these results of our extensive efforts were not necessarily representative of their respective populations. In the absence of a definitive sampling frame and random representation, the participants were volunteers, who may have been different in their survey instrument responses from nonparticipants.[65] Moreover, in light of state-specific

59. *Supra* note 26 and accompanying text.

60. *See infra* Appendix A.

61. *Supra* note 29.

62. Some of the participants also expressed difficulty with the prohibition of ties and the absence of fractions in the forced choices in the ranking of the categories. An alternative approach to consider would be ranking each category separately on a ten-point low-to-high scale or a Likert-type strongly agree to strongly disagree scale.

63. The differences for the factors as compared to the categories included limited frequency choices rather than relative rankings.

64. Among the additional factors that the optional comments suggested were (a) enforceability of the settlement agreement, (b) the well-being of the child; (c) familiarity of IDEA requirements by the client parents and district officials; (d) self-interest or personal agendas of the school or parent attorneys; (e) the impact of the settlement agreement on "stay-put"; (f) preserving a working school-parent relationship; (g) controlling the outcome by school districts; and (h) overly zealous or inexperienced attorneys.

65. The extent of this limitation on the present analysis is subject to question. *E.g., compare,* Rachel A. Pruchno, Jonathan E. Brill, Yvonne Shands, Judith R. Gordon, Maureen Wilson Genderson, Miriam Rose & Francine Cartwright*, Convenience Samples and Caregiving Research: How Generalizable Are the Findings?*, 52 THE GERONTOLOGIST 149 (2008) (reporting different

differences,[66] the distribution of subgroup participants among and within the jurisdictions was uneven.

Third, the data analysis was limited in two ways: (a) the quantitative results were based on simple descriptive statistics, including the answer to research question 2 on both an unweighted and weighted basis, because more nuanced statistical analysis did not appear to be definitively defensible and useful;[67] and (b) the qualitative analysis was only secondary and supplementary, without advanced procedures of content analysis.[68]

B. Interpretation of the Findings

Within these delimitations, the finding for research question 1a that the overall group ranked the categories of Litigation Strategy, Practices or Proposals for the Child, and Financial Factors at a notably higher level than the Settlement Process and Psychological & Emotional Factors would seem to suggest the primacy of the immediate DPH case context as compared to the procedures for settlement and the effects on the parties. The accompanying comments reinforced the importance of the case-specific context.[69]

At least as important, the finding for research question 2 that the relative ranking of the five categories was much more similar between the

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results and conclusions upon comparing random sampling with convenience samples in their caregiving research, *with* Justin Jager, Diane L. Putnick & Marc H. Bornstein, *More Than Just Convenient: The Scientific Merits of Homogeneous Convenience Samples,* 83 MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT 13 (2017) (arguing that homogeneous convenience samples, which share similar socio-demographic characteristics, can offer better generalizability).

66. The relevant differences among the states include the varying hearing officer systems, mediation and other ADR mechanisms, availability of specialized parent attorneys, and overall litigiousness.

67. The inferential statistics that we considered included the nonparametric Kruskal-Wallis ANOVA test, the chi-square of independence (with the Bonferroni correction), and Kendall's coefficient of concordance, but none seemed suitable and defensible in relation to our particular research questions, data, and readership.

68. The approach to the qualitative data was within the norms of the legal field for IDEA research. *See, e.g.,* Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. REV. 143 (2015); Jane R. Wettach & Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorney*s, 20 CONN. PUB. INT. L.J. 239 (2021) (reporting the quantitative and qualitative results of a survey of parent-side and school-side special education attorneys). Yet, the special education field has incorporated more nuanced social science approaches for content analysis. *See, e.g*., Jennie F. Lake & Bonnie S. Billingsley, *An Analysis of Factors That Contribute to Parent-School Conflict in Special Education*, 21 REMEDIAL & SPECIAL EDUC. 240 (2000) (applying successive levels of open, axial, and selective coding); David Scanlon, Lauren Saenz & Michael P. Kelly, *The Effectiveness of Alternative IEP Dispute Resolution Practices*, 41 LEARNING DISABILITY Q. 68 (2018) (using independent coding with consensual resolution).

69. *Supra* note 37 and accompanying text.

party representatives as distinct from the neutrals.[70] The relative agreement between the perceptions of school-side and the parent-side subgroups accounted for the overall group's higher ranking of the three DPH-related categories. In contrast, the neutrals put in a higher position the immediate Settlement Process and the underlying Psychological & Emotional Factors, likely reflecting the responsibilities and expertise associated with their role. Thus, the differences in perspective appear to be in line with the primacy of the DPH for the party attorneys and the primacy of the settlement dynamics for the neutrals.

The finding in response to research question 2a that outcome odds was the preeminent factor for the overall group, whether on an unweighted or weighted basis,[71] seems to confirm the common conception that settlements skew the outcomes of adjudicated DPHs in the direction of defendant-school districts. However, examination of the corresponding findings for research question 2b reveal this preeminent position for the overall group was based on it being in the top five factors for all three subgroups (but in first position for none of them) on an unweighted basis and in the top five for two subgroups (with first position only for parent attorneys) on a weighted basis.[72] Thus, moderating its importance as an influential factor in settlements, the estimated odds of winning or losing depends on its interaction with the other primary contributing factors and the clearly varying perspectives of the three role groups within each particular case.

Similarly illustrating the differences between the primary factors for the overall group and those for the subgroups, for the unweighted frequencies, cost benefit analysis had a reduced position whereas home stress had an enhanced position upon subgroup disaggregation.[73] Weighting also has a compounding differential effect, as illustrated by comparing the relative positions within the top five factors not only for the total group (Table 2) but also upon subgroup disaggregation (Table 4).

Squaring with the settlement literature for other, more general contexts,[74] the supplementary qualitative results in the present study reinforce the overall conclusion, which that neither outcome odds nor any other single contributing factor serves as the primary explanation for the settling IDEA disputes at the DPH stage. Rather, the explanation depends on the interaction of various factors, depending on the perspective of the three direct subgroup players in this process and the specific

70. *Supra* Table 1.
71. *Supra* Table 2.
72. *Supra* Tables 3 and 4.
73. *Compare* Table 2 *with* Table 3.
74. *Supra* notes 7 and 11–12.

circumstances of the case, including the particular child, parents, and district.[75] Moreover, IDEA-specific differences in the larger context of the state or region may also contribute to the settlement rate.[76]

C. Implications for Practice

The practical meaning of the findings of this exploratory study is likely to vary depending on the reader's experiential perspective. However, for all the "players" in the settlement of IDEA DPH cases, including but extending members of the three subgroups in this study, one significant message may be commonality in the ranking of the overall categories of settlement factors between the parent-side and the district-side attorneys. This commonality between the party representatives presents an opportunity for neutrals to realign their own prioritization for increased settlement rates.[77] Although based on core knowledge and skills, mediator training programs need fine-tuning to the practical and legal context of special education for optimizing IDEA settlements. Overall, the basic skills of each of the three subgroups in the intermediate positions between the plaintiffs and defendants are the same as for other settings, but settlements in this specific context requires customization to the legal standards and prevailing practices under the IDEA, with informed attention to the priorities of the perspectives of the other two subgroups.

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75. The proportion of pro se parents in some jurisdictions is evident. *See, e.g.*, Kay Hennessy Seven & Perry A. Zirkel, *In the Matter of* Arons: *Construction of the IDEA's Lay Advocate Provision Too Narrow?*, 9 GEO. J. ON POVERTY L. & POL'Y 193, 218–19 (2002) (reporting a survey showing an inadequate level of parent attorneys under the IDEA). The lack of legal representation for these parents will likely be a contributing factor. For analogous significant differences disfavoring pro se parents in the adjudicated cases, see Perry A. Zirkel, *Are the Outcomes of Hearing (and Review) Officer Decisions Different for* Pro Se *and Represented Parents*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 264, 273 (2015).

76. One example is the extent of IDEA litigiousness. *See* Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Analysis*, 376 EDUC. L. REP. 870, 875 n.33 (2020) (referring to the "two worlds" of DPH decisions)); Perry A. Zirkel & Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings under the IDEA: A Nationally Representative Analysis with and without New York*, 44 J. NAT'L ASS'N ADMIN. L. JUDICIARY 126, 137–42 (2023) (finding New York City to amount to a particular outlier for DPHs). An additional example is the notable variation in the state hearing/review officer systems under the IDEA. *See* Jennifer L. Connolly et al., *State Due Process Hearing Systems Under the IDEA: An Update*, 30 J. DISABILITY POL'Y STUD. 156 (2019). State laws that provide for enhanced settlement mechanisms constitute a third example. *Supra* note 19.

77. One example would be to conduct a risk-analysis with each party (i.e., evaluation of strengths and weaknesses of the case, the risks of losing, and the consequences of winning), focusing on the feasibility of the requested relief in terms of meeting the child's needs and fitting the district's available resources.

One approach to reinforce the commonalities between the attorney subgroups and provide mediators with further advantageous alignment would be follow-up discussions of these findings via panel discussions at conferences and training sessions at the state and national levels for key stakeholders that extend beyond our three subgroups to hearing officers, parents, and educators.

A second significant message presents a more challenging and overlapping picture, which is the complexity of the manifold differences not only among but also—as shown by the variance between the quantitative findings—within the subgroups as to the prioritization of factors that may facilitate or impede settlement. This complexity serves as a reminder that there is no magic bullet or simple solution for optimizing the settlement process in the IDEA context, which has partially distinctive features of focusing on the individual child, having a rather comprehensive administrative adjudication mechanism, and presenting the fiction of "full funding."[78] Rather, the findings of this exploratory study reinforce the need for both policy makers and practitioners to appreciate the multiple factors at play and for the members of the three primary subgroups to focus on commonalities of interests and compromise among perspectives.

D. Recommendations for Research

Based on the lack of previous empirical research on the influential factors in the settlement of IDEA DPH disputes, this study was merely exploratory. It is intended as a springboard for follow-up research both in the quantitative and qualitative directions.

In the quantitative category, recommended research includes, for example, follow-up surveys with (a) validation and replication-with refinement[79] studies to test these initial findings; (b) improved instrumentation with contextual content, such as case scenarios, and technological delivery, such as computer-administered formats that allow for branching; (c) customized extension to other role groups, such as

78. *See* Congressional Research Service, *Special Education Law Overview: Structure, Funding, and Controversial Issues*, 84 CONG. DIG. 6, 8 (Jan. 2005) (explaining that "full funding" under the IDEA refers to 40% of the excess costs for special education and that the actual amount is typically less than 20%); *see also* Evie Blad, *Federal Aid to Spec. Ed.: A Sore Spot*, EDUC. WK. 1 (Jan. 15, 2020) (reporting that the shortfall has continued without improvement).

79. The refinements could include using the categories merely as organizing headings, with the ranking or rating limited to the factors and with a different scale (*supra* note 62); arranging for balanced representation of the three subgroups within each jurisdiction; using stratified sampling to proportion participation from each jurisdiction according to its level of DPH activity; and extending the focus to settlements at the subsequent stage of judicial appeals.

school administrators, lay advocates, and pro se parents; and (d) focusing the survey on a few of the states with a high frequency of DPH decisions but dramatically different levels of filings. Data collection and analysis of selected characteristics of (a) the participants, such as the number of successful, as compared to attempted settlements, and (b) their primary jurisdiction, such as the nature of their IDEA mediation system and ADR options also warrants consideration.

In the qualitative category, interviews and focus groups with specially selected individuals with settlement experience and with sophisticated data analysis procedures would represent a major advance from the limited data-collection and analysis procedures of our study.[80] For instance, applying the case study approach to a carefully selected DPH filing that resulted in settlement and a comparable DPH filing in which the attempt at settlement was not successful would provide more enriching insights than our brief survey.

Finally, a carefully balanced dual-method approach would harmonize and integrate the various differences between the quantitative results and optional comments reported in our study.[81] The ultimate benefit, which is in the shared interest of parents and districts in IDEA disputes is to achieve successful settlements in lieu of this statute's ponderous and otherwise costly adjudication process.

80. *See, e.g.*, J. AMOS HATCH, DOING QUALITATIVE RESEARCH IN EDUCATION SETTINGS (2023); MARILYN LICHTMAN, QUALITATIVE RESEARCH IN EDUCATION (2023); MICHAEL R.M. WARD & SARA DELAMONT (EDS.), HANDBOOK OF QUALITATIVE RESEARCH IN EDUCATION (2020).

81. *See, e.g.,* Melinda M. Leko et al., *Quality Indicators for Mixed Methods Research in Special Education*, 89 EXCEPTIONAL CHILD. 432 (2023) (identifying best-practice criteria for analyses that integrate quantitative and qualitative methods).

Appendix A: Survey Instrument

SURVEY OF LEADING FACTORS THAT INFLUENCE SETTLEMENT OF IDEA LEGAL DISPUTES

***Directions for completing the first section below*:**

A. Please click to put a check in the box to confirm that you meet the criteria for being a respondent to the survey. ***If you do not meet the criteria, please do not complete the survey.***
B. Please use the drop-down arrow to identify whether your primary role in the IDEA settlement process has been as a mediator/facilitator, a parent attorney/advocate, or school district attorney/representative.
C. Please type in the state in which you primarily provided this settlement activity.

Identifying Information

A. ☐ I confirm that I have participated in at least 8 successful or unsuccessful settlements of IDEA disputes during the past 10 years.

B. My primary role during these settlement activities has been as a: [ ]

C. The state in which I have done the majority of these settlement activities: [ ]

Directions for completing the survey on the next page:
The next page lists 5 broad categories (in red) and, under each one, 4-5 specific illustrative factors that generally influence either positively or negatively the settlement of IDEA disputes before, during, or after the due process hearing. These categories and factors inevitably are not mutually exclusive or exhaustive.

1. *First, rank each category by using the drop down arrow in the box next to each category to select its rank from "1" (most influential) to "5" (least influential).* ***Please use each rank only once without any ties or blanks****.*
2. *Next, identify the most influential factors by selecting either one or two factors in each of the five categories that, in your view, are the most influential within that category.* ***Please click on no less than one and no more than two of the small blue boxes in each category****.*
3. *Finally, at the end, please type in any comments you have to clarify your responses, list additional factors, or otherwise provide your views about a category or your indicated factors.* ***Please be sure to identify the category you are referring to when typing your comments****.*

Upon finishing, please ***hit SAVE*** *and return this two-page form as an attachment via email to me – Annie Lockwood, avlockwood@gmail.com. If you have any difficulty reaching me via email, you can call or text me at (512) 922-2060. If you want to provide additional information via an interview, please let me know and I'll arrange it with you.*

Please be sure to keep this survey form in your computer files after completing and saving it and before emailing the completed copy to me.

Appendix A: Survey Instrument (cont.)

For each category, select ranking, without repeats or blanks.

LITIGATION STRATEGY *Reminder: Use 1, 2, 3, 4, or 5 only once.*

Overall consideration of:
- ☐ odds of winning or losing
- ☐ cost-benefit analysis

Specific consideration of:
- ☐ credibility of witness
- ☐ opposing party's representation
- ☐ reputation of hearing officer/administrative law judge

Reminder: select either one or two factors in this category

SETTLEMENT PROCESS *Reminder: Use 1, 2, 3, 4, or 5 only once.*

Mediator or facilitator:
- ☐ knowledge of the IDEA
- ☐ general effectiveness

Relationship, including trust and perceived respect, between:
- ☐ the parties (i.e., school staff and parents)
- ☐ the district's attorney and the parents' attorney (or their advocate or, if self-represented, the parents)

Reminder: select either one or two factors in this category

FINANCIAL FACTORS *Reminder: Use 1, 2, 3, 4, or 5 only once.*

Estimated costs of:
- ☐ litigation, including any insurance coverage
- ☐ likely relief

Inclusion in settlement agreement of:
- ☐ parent's attorneys' fees
- ☐ extent, if any, of release of claims (e.g., IDEA, §504, ADA, §1983)

Reminder: select either one or two factors in this category

PSYCHOLOGICAL & EMOTIONAL FACTORS *Reminder: Use 1, 2, 3, 4, or 5 only once.*

Stress/anxiety/morale within:
- ☐ home/family
- ☐ school

Disruption of daily life for:
- ☐ parents
- ☐ school staff

Reminder: select either one or two factors in this category

EDUCATIONAL PRACTICES & PROPOSALS IN RELATION TO THE CHILD

Reminder: Use 1, 2, 3, 4, or 5 only once.

Perceptions of child's needs and strengths by:
- ☐ parents
- ☐ school staff

Requested relief:
- ☐ complexity
- ☐ feasibility within school district resources

Reminder: select either one or two factors in this category

Supplementary Comments (optional): Type in any additions or clarification to your responses. Please be sure to identify the category you are referring to when typing comments.

Appendix B: Distribution of Participants

	School Attorneys	Mediators/Other Neutrals	Parent Attorneys
Alabama		1	2
Alaska		1	
Arizona	1	1	1
Arkansas			1
California	6	4	3
Colorado	2		1
Connecticut	1	3	
Delaware	1	2	
District of Columbia			1
Florida	7		3
Georgia	1	3	2
Hawaii			1
Idaho		3	
Illinois			1
Indiana	1		1
Iowa	1		
Kansas	1	1	
Kentucky	1	1	
Louisiana	1		1
Maine	1		1
Maryland		1	1
Massachusetts	3	2	3
Michigan		2	2
Minnesota		2	1
Mississippi	1		
Missouri	1		
Montana	1		1
Nebraska	1	1	
Nevada		1	1
New Hampshire		1	
New Jersey	4	4	
New Mexico	1	3	2
New York	1		5
No. Carolina		2	3
No. Dakota	1		
Ohio		1	
Oklahoma	1		
Oregon	2		

	School Attorneys	Mediators/Other Neutrals	Parent Attorneys
Pennsylvania	8	1	12
Rhode Island		2	1
So. Carolina		1	1
So. Dakota			
Tennessee			2
Texas	8	6	3
Utah		1	
Vermont		3	1
Virginia		1	
Washington	1	4	1
West Virginia	1		
Wisconsin		1	
Wyoming			1
49 states + DC	60	60	60