

THE SPECIAL EDUCATION BAR

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Abstract

*This Article reports on a qualitative research study of lawyers in the Chicago area who represent families with disabled children in special education cases. The research consists of structured interviews of selected attorneys concerning their backgrounds and motivation, how they prepared for the practice, how their workplaces are organized, how the lawyers manage financially, how they select clients and pursue their cases, what relationship they have with local and national organizations of individuals with disabilities, what obstacles to success they face in their practice, and what their job satisfaction is. The research builds on a study conducted in 2022–23 concerning special education cause lawyers. That study entailed semi-structured interviews of prominent lawyers in different parts of the country who advance families’ legal claims for special education and related services with the purpose of effecting systemic change. The research also builds on landmark studies of the Chicago Bar conducted a generation ago by social science researchers. The present study finds that the lawyers studied have varied backgrounds, largely share a motive to be of service and advance the educational rights of children with disabilities, and have a range of advocacy styles and modes of practice. Although they face practical and doctrinal obstacles in pursuing their work, they report strong satisfaction in what they do and what they achieve.*

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## I. INTRODUCTION

This article reports on a qualitative research study of lawyers in the Chicago area who represent families with disabled children in special education cases. The study involves compilation and analysis of information from interviews of ten members of that group.<sup>1</sup> The questions for investigation include their backgrounds and motivation, how they prepared for the practice, how their workplaces are organized, how the lawyers manage financially, how they select clients and pursue their cases, what relationship they have with local and national organizations of individuals with disabilities, what obstacles to success they face in their practice, and what their job satisfaction is. The study finds that the lawyers studied have diverse backgrounds, that they share a basic motive to be of service and advance the educational rights of children with disabilities, and that they have a range of advocacy styles and modes of practice. Although they face practical and doctrinal obstacles in pursuing their work, they report strong satisfaction in what they do and what they achieve.

This new qualitative research builds on a study conducted in 2022–23 concerning special education cause lawyers. That study entailed semi-structured interviews of prominent lawyers in different parts of the country who advance legal claims for special education and related services with the purpose of effecting systemic change.<sup>2</sup> It compared their activities to those of other disability cause lawyers.<sup>3</sup> One goal of the current study is to look at the motivation, work, and impact of attorneys engaged in the day-to-day practice of special education law in a particular area, who may not all identify as cause or social movement lawyers. It may be instructive to compare findings for that group with the findings from the national sample of prominent self-identified lawyers for the disability rights or educational rights cause. There is the need to be cautious in the comparison, however. Although the cause lawyer literature primes observers to think of cause

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1. One interview was conducted in Summer 2022 as part of the Special Education Cause Lawyers study described below, the rest in Fall 2023 specifically for the current project. The questions asked for the Special Education Cause Lawyer study differed somewhat from those for the current study, but there was sufficient overlap to make use of the responses from the 2022 interview. *See infra* note 2 and accompanying text.

2. Mark C. Weber, *Special Education Cause Lawyers*, 74 CASE W. RES. L. REV. 375 (2023).

3. The Special Education Cause Lawyers paper was inspired by Michael E. Waterstone et al., *Disability Cause Lawyers*, 53 WM. & MARY L. REV. 1287 (2012), as well as the voluminous literature on cause lawyers in general, such as the classic works *CAUSE LAWYERS AND SOCIAL MOVEMENTS* (Austin Sarat & Stuart A. Scheingold eds. 2006) and *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* (Stuart A. Scheingold & Austin Sarat eds. 2004).

lawyers as a category distinct from other lawyers,<sup>4</sup> all the lawyers interviewed for the current study viewed themselves as serving the cause of securing educational rights for children with disabilities.<sup>5</sup> Nonetheless, points of comparison and contrast exist between the experiences of the respondents in the Special Education Cause Lawyers study and those in the present one.

The research also builds on studies of the urban bar, most notably the bar of the City of Chicago. In the mid-1970s, John P. Heinz and co-authors investigated the sociology of Chicago lawyers;<sup>6</sup> they repeated that work in the mid-1990s,<sup>7</sup> producing a wealth of information from a large sample of participants. A well-known finding of the research was that the bar in Chicago was divided into two hemispheres: lawyers who serve large businesses and those who serve individual clients and small businesses.<sup>8</sup> There was overlap, of course, but the 1975 study found that in comparison to other lawyers, those who primarily served big businesses had distinct ethnic characteristics and educational backgrounds, worked in differently structured practices, had greater earnings, and had different values and circles of acquaintance.<sup>9</sup> The 1995 update study showed an even greater disparity along some of these lines: more lawyers were in larger law firms serving ever larger corporate clients and making ever more money.<sup>10</sup> Lawyers in small or solo practices and in government earned proportionately less, and proportionally fewer lawyers were in solo practice than in 1975.<sup>11</sup> On the whole, the individual-service lawyers' educational backgrounds remained different from those of the elite lawyers, and although some ethnic and other personal characteristics of the groups seemed less distinct, African-American and women lawyers were disproportionately in the group serving individual clients, government, and smaller businesses.<sup>12</sup> Most or all lawyers representing families of children with disabilities in special education disputes appear to reside in the individual-service hemisphere, but that conclusion is open

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4. *Cf.* sources cited *supra* note 3 (describing distinct category of cause lawyers).

5. *See infra* text accompanying notes 57–62.

6. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982).

7. JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005).

8. HEINZ & LAUMANN, *supra* note 6, at 127.

9. *Id.* at 127–30.

10. HEINZ ET AL., *supra* note 7, at 25 (larger firms), 43 (larger corporate clients), 160–68 (income levels).

11. *Id.* at 99.

12. *Id.* at 49–50, 57–58 (educational backgrounds), 94–95 (ethnicity and gender). Most respondents in the current study identify as female. The interviewees for the special education cause lawyers project were five male and three female.

to qualification. Some work in large service organizations, such as federally funded Protection and Advocacy agencies. Others are large-firm business lawyers doing *pro bono* work.

There are reasons to undertake the present research beyond the intrinsic interest of learning how lawyers, particularly those who may have ideological or conscientious reasons for their actions, happen to tick, and how that ticking may contrast with that of participants in the study of Special Education Cause lawyers. One common refrain of parents of children with disabilities is that it is difficult to find legal representation; several attorneys participating in the present study echoed the concern that not enough lawyers specialize in the field.<sup>13</sup> At the same time, law students frequently express interest in special education law as a career, but are uncertain how to break into the area and are not sure whether they can actually make a living and pay off their student loans if they do.<sup>14</sup> Information about how attorneys conduct their practices and keep their heads above water financially may induce students who hope to practice special education law enter the field, helping solve the legal advocacy shortage. The information may give insight on the broader question whether students who want to work in the public interest can make the transition to lawyers while keeping their ideals intact.<sup>15</sup>

One goal of the Special Education Cause Lawyers study was to help situate the role of leading disability lawyers in the development of social policy, specifically in relation to the social movement for justice for people with disabilities.<sup>16</sup> As with that work, the current study tries to determine how lawyers fit into the process of social reform. To what extent do they cooperate with disability rights organizations? Do the lawyers' efforts expand, restrain, or redirect the achievements of disability or disability education activists?

Special education law might seem like a niche practice, even an exotic one, an extended offshoot of disability rights and education law. But special education law is a significant area of practice for lawyers,

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13. See *infra* text accompanying note 167.

14. This is my personal observation. Of course, my identification with the field may influence my perception.

15. See generally Alexi Freeman & Katie Steefel, *Uniting the Head, Hands, and Heart: How Specialty Externships Can Combat Public Interest Drift*, 25 CLINICAL L. REV. 325, 326–30 (2019) (collecting sources on the phenomenon of students beginning legal education with a desire to work for the public good but losing that ambition while in law school).

16. Much has been written on the social movement for disability rights and the achievement of social reform. In addition to the sources cited in the special education cause lawyers article, see DAVID PETTINICCIO, *POLITICS OF EMPOWERMENT: DISABILITY RIGHTS AND THE CYCLE OF AMERICAN POLICY REFORM* (2019); DORIS ZAMES FLEISCHER & FRIEDA ZAMES, *THE DISABILITY RIGHTS MOVEMENT: FROM CHARITY TO CONFRONTATION* (2011).

notwithstanding the current disparity between demand and supply. There are more than 3,100 members of the Council of Parent Advocates and Attorneys (COPAA), the leading organization of parent representatives in special education disputes.<sup>17</sup> Just since 2017, the United States Supreme Court has decided three cases interpreting the Individuals with Disabilities Education Act (IDEA), the principal federal law concerning special education.<sup>18</sup> The list includes a 2023 case of high significance concerning administrative exhaustion requirements when families of children in special education assert damages claims under statutes other than IDEA.<sup>19</sup>

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17. *About COPAA: Who We Are*, COUNCIL OF PARENT ADVOC. & ATT'YS, <https://www.copaa.org/page/about> [<https://perma.cc/6F87-6YTY>]. Not all members are lawyers; the organization supports and promotes the work of nonlawyer advocates as well.

18. *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023) (holding that IDEA's exhaustion requirement applies only to suits under other federal laws when they seek relief available under IDEA, not compensatory damages); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-I*, 580 U.S. 386 (2017) (rejecting more-than-merely-de-minimis standard for free, appropriate public education and requiring appropriately ambitious programs and challenging objectives); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017) (limiting required exhaustion of non-IDEA claims to those where free, appropriate public education is gravamen of complaint). Fourteen other Supreme Court cases interpreting the Act are (in chronological order): *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982) (interpreting appropriate education standard as requiring benefit but rejecting proportional maximization of benefit); *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984) (requiring catheterization as a related service); *Smith v. Robinson*, 468 U.S. 992 (1984) (finding that special education law supplanted attorneys' fees and various remedies under 29 U.S.C. § 794 and 42 U.S.C. § 1983), *superseded by statute*, 20 U.S.C. § 1415(i), (l); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985) (establishing remedy of tuition reimbursement for denial of free, appropriate public education); *Honig v. Doe*, 484 U.S. 305 (1988) (requiring maintenance of placement in student discipline dispute), *superseded by statute*, 20 U.S.C. § 1415(k); *Dellmuth v. Muth*, 491 U.S. 223 (1989) (imposing Eleventh Amendment immunity defense on claims against states under the Act), *superseded by statute*, 20 U.S.C. § 1403; *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993) (permitting reimbursement for unilateral placement in school not approved by state educational agency); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993) (rejecting Establishment Clause challenge to government provision of sign-language interpreter in religious school under IDEA); *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994) (upholding Establishment Clause challenge to creation of school district for children with disabilities specifically for religious community); *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999) (requiring provision of related services for child dependent on ventilator); *Schaffer v. Weast*, 546 U.S. 49 (2005) (placing burden of persuasion in due process proceedings on party challenging program); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006) (disallowing expert witness fees); *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007) (permitting IDEA action by pro se parents); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009) (upholding tuition reimbursement for unilateral placement of child not previously served in public school special education).

19. *Luna Perez*, 598 U.S. at 147–50, applied textual interpretation to limit the reach of the exhaustion requirement for non-IDEA claims for damages in cases in which an IDEA claim might also be brought.

Westlaw shows 470 cases in its database of reported opinions citing the Act in calendar year 2023;<sup>20</sup> 29,490 due process hearing complaints were filed in school year 2021–22.<sup>21</sup>

Moreover, special education law is a key component of disability rights law.<sup>22</sup> Just as children grow to become adults, the education they receive will permit them to participate in society on a plane of equality with others—or not, if they fail to obtain the education they need.

Part II of this article provides background on the law of special education and the role that lawyers play in its enforcement. Part III describes the methodology of the study and compares the study's methodology with the methodology of the Special Education Cause Lawyers study. Part IV presents and analyzes the results of the interviews, covering the attorneys' motivations, their preparation for the work, the nature and financial basis for their practices, the modes of advocacy they employ, their relation to organizations pushing disability and educational rights, their attitudes towards law reform efforts, the legal roadblocks they encounter in their work, and their subjective job satisfaction. The Conclusion briefly summarizes and evaluates the research findings.

## II. SPECIAL EDUCATION, THE LAW, AND LAWYERS

IDEA requires states receiving federal special education funds to provide all children with disabilities within their jurisdiction a free, appropriate public education.<sup>23</sup> The states and the school districts within them have to provide specialized instruction and services related to education, such as transportation, physical and occupational therapy, specialized recreation, and school health services.<sup>24</sup> Children with disabilities are to be educated to the maximum extent appropriate with

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20. Search in Westlaw on July 2, 2024 using terms “adv: individuals /s disabilities /s education & DA(2023).” Not all of those cases were claims brought under the Act, of course, but the case count shows the significance of special education law, including both IDEA claims and cases using the statute for analogies and other purposes.

21. CTR. FOR APPROPRIATE DISP. RESOL. (CADRE) IN SPECIAL EDUC., IDEA DISPUTE RESOLUTION DATA SUMMARY FOR U.S. AND OUTLYING AREAS: 2011–12 TO 2021–2022 (Jan. 21, 2025), <https://www.cadreworks.org/resources/cadre-materials/2021-22-dr-data-summary-national> [https://perma.cc/E42J-9QEP].

22. The leading Disability Law casebooks all contain sections on special education law. See SAMUEL R. BAGENSTOS, *DISABILITY RIGHTS LAW: CASES AND MATERIALS* ch.6 (3d ed. 2021); STEPHEN F. BEFORT & NICOLE BUONOCORE PORTER, *DISABILITY LAW: CASES AND MATERIALS* ch.6.B. (2d ed. 2021); RUTH COLKER & PAUL GROSSMAN, *THE LAW OF DISABILITY DISCRIMINATION* ch.6 (8th ed. 2013); LAURA ROTHSTEIN ET AL., *DISABILITY LAW: CASES, MATERIALS, PROBLEMS* ch.7 (7th ed. 2024).

23. 20 U.S.C. § 1412(a).

24. See *id.* § 1401(26) (defining “related services”).

children without disabilities, and schools have to provide supplementary aids, services, and accommodations to avoid the need for separate classes.<sup>25</sup> Students covered by the law must meet an eligibility standard embracing both disability and the need for special education and related services as a result of the disability;<sup>26</sup> they are to be served through secondary school or age twenty-one.<sup>27</sup> Each child must have an individualized education program ("IEP") listing, among other things, the student's present level of academic and functional performance, measurable annual goals designed to meet the needs that result from the disability, a statement of the special education and related services to be provided, as well as supplementary aids and services, plus an explanation of the extent to which the student will or will not participate with children without disabilities in regular classes.<sup>28</sup>

Congress enacted the guarantee of appropriate education for all children with disabilities in 1975, determining at that time that about 1.75 million children with disabilities were totally excluded from school and 2.5 million were in programs that did not meet their needs.<sup>29</sup> Parents and their allies had spent years pushing for legally enforceable rights to special education services.<sup>30</sup> Various school districts had programs to serve some categories of children with disabilities and received limited federal subsidies, but there was no universal guarantee of an appropriate education.<sup>31</sup> The number of unserved and underserved children demonstrated the education gap caused by that omission.

Critical to the supporters of the law were parental participation and legal enforcement rights.<sup>32</sup> To obtain the protection of the guarantee of free, appropriate public education for their children with disabilities, parents have the right to notice, to participate in meetings that lead to the

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25. *Id.* § 1412(a)(5); see Mark C. Weber, *The Least Restrictive Environment Obligation as an Entitlement to Educational Services: A Commentary*, 5 U.C. DAVIS J. JUV. L. & POL'Y 147 (2001).

26. See 20 U.S.C. § 1401(3)(A) (listing eligible disabling conditions and setting out eligibility requirement of need for special education and related services as a result of the condition).

27. *Id.* § 1401(9)(c). There are some limits and exceptions. See *id.* § 1412(a)(1).

28. *Id.* § 1414(d).

29. H.R. REP. NO. 94-332, at 11-12 (1975).

30. Mark C. Weber, *The Transformation of the Education of the Handicapped Act: A Study in the Interpretation of Radical Statutes*, 24 U.C. DAVIS L. REV. 349, 356-59 (1990).

31. Frederick Weintraub & Joseph Ballard, *Introduction: Bridging the Decades, in SPECIAL EDUCATION IN AMERICA: ITS LEGAL AND GOVERNMENTAL FOUNDATIONS* 1, 2 (Joseph Ballard et al. eds., 1982).

32. See Alan Abeson & Jeffrey Zettel, *The End of the Quiet Revolution: The Education for All Handicapped Children Act of 1975*, 44 EXCEPTIONAL CHILD. 114, 121, 125-26 (1977).



creation of IEPs, and to challenge the programs and placements contained in the IEPs through due process hearings before an impartial hearing officer.<sup>33</sup> Appeals of hearing officer decisions, or if a state has a second tier of hearings, appeals of those review decisions, may be filed in federal or state court.<sup>34</sup> Due process hearings feature important rights: to receive records and other evidence before the hearing; to bring counsel or other advisors; to present evidence; to cross-examine witnesses; to compel attendance of witnesses; and to obtain a written decision with findings of fact.<sup>35</sup> Mediation and a resolution session process are also available.<sup>36</sup>

As the Supreme Court explained in its first decision interpreting the federal special education law:

When the elaborate and highly specific procedural safeguards embodied in [the special education law] are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.<sup>37</sup>

But it is difficult to take full advantage of the rights available to families without the advice and representation of someone skilled in applying the law. Due process hearings bear a strong resemblance to a civil bench trial,<sup>38</sup> and the opportunities for parent involvement in IEP formulation, mediation, and less formal dealings with school authorities often take on the characteristics of civil case settlement negotiations.<sup>39</sup> IDEA recognizes the role of attorney representation by providing for awards of attorneys' fees for parents who are successful at due process

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33. 20 U.S.C. §§ 1414(d)(1)(B)(i), 1415(a)–(f).

34. § 1415(i)(2).

35. *Id.* § 1415(f)–(h).

36. *Id.* § 1415(e), (f)(1)(B).

37. *Board of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 176, 205–06 (1982).

38. See Jane R. Wettach & Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*, 20 CONN. PUB. INT. L.J. 239, 243–51 (2021) (cataloguing jurisdictions that apply rules of evidence and procedure, allow extensive pre-hearing discovery, etc.).

39. They may in fact be more complex because relief other than money frequently is at stake. See *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 147 (2023) (noting absence of compensatory damages relief in IDEA cases).

hearings or in court, subject to a number of limits and conditions.<sup>40</sup> The special education bar emerged in Chicago and other places to assist parents in asserting their children's rights to the instructional services they need.<sup>41</sup>

### III. METHODOLOGY OF THE STUDY

The current project involved nine interviews of parent-side special education lawyers from the Chicago area in the Fall of 2023. The interviews were between forty-five minutes and one hour in length. The interviews covered a set list of questions,<sup>42</sup> with flexibility for follow-ups and a modest opportunity to explore additional topics. Some questions were closed-ended and others open-ended. The interviews were video recorded, and written notes were taken as well.<sup>43</sup> The current study also draws on information from a 2022 interview of one of the participants in the Cause Lawyers study who practices in the Chicago area, effectively a tenth research respondent.<sup>44</sup>

The plan for the Special Education Cause Lawyers project was to obtain information from advocates in different parts of the country with

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40. 20 U.S.C. § 1415(i)(3)(B). The provision prospectively overruled *Smith v. Robinson*, 468 U.S. 992 (1984), which had rendered fees unavailable. Fees may be awarded to prevailing school authorities against parents and their attorneys in limited circumstances. § 1415(i)(3)(B)(i)(II)-(III).

41. My personal observation from the early days of the law that is currently codified as IDEA is that the parents' lawyers were often those in private practice doing other forms of civil rights work, along with a few law school clinicians and a number of public interest lawyers working with education or disability advocacy organizations, as well as various attorney-parents of children with disabilities. There was substantial litigation before the passage of the 1975 law to try to establish a constitutional right to education of children with disabilities, and lawyers active in that work were among those who began to use the new law to secure appropriate services for clients. See Alan Abeson, *Movement and Momentum: Government and the Education of Handicapped Children II*, 41 EXCEPTIONAL CHILD. 109, 113 (1974) (noting thirty-six pending lawsuits over disabled children's educational rights as of 1974). The initial entrants into the public school-side bar were firms that already did other work for school districts, such as labor and business representation. As stated *infra* text accompanying note 107, the bar is divided sharply between parent-side and school district-side. The current study did not detect an overlap, though one may exist at other times and places.

42. The interview questions for the lawyer in the Cause Lawyer study were not identical, but there was overlap.

43. One interview was over Microsoft Teams, one over the telephone, and the rest over Zoom. The recording failed in the interview conducted over Teams and turned out not to be practical for the one conducted over the phone. Rather than repeat those interviews I used the journalism practice of verifying by email each statement in the article drawn from those two interviews. The verification emails are on file with the author.

44. As indicated *supra* note 1, some of the questions posed in that interview differed from the questions in the other interviews, but the information was sufficiently responsive to the present research to permit its use here.

established national reputations. There was no ambition to investigate the special education bar of any particular location.<sup>45</sup> The current project tries for something more like an exploration of a specific legal ecosystem.<sup>46</sup> Like the Special Education Cause Lawyers project, this investigation employs a what might be termed a purposive sample. The selection is not random. Instead I made a conscious selection of lawyers who work in a variety of practice settings,<sup>47</sup> that is, in private practice and non-profit organizations, in various-sized practices, but all in the same metropolitan area.<sup>48</sup> The respondents include one large-firm practitioner for whom this work is a *pro bono* project, as well a lawyer working in a law school clinic, and one from a nonprofit advocacy organization. My unscientific impression is that the group is very roughly representative of the parent-side special education bar in the city. Whether it is representative of the practice in other cities is unclear. The outlier in numbers of due process hearings is New York.<sup>49</sup> There are generally modest numbers of hearings in most other places,<sup>50</sup> and somewhere between a 26 and 52 percent rate of success for parents in decided cases in many locales.<sup>51</sup> Chicago and the

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45. A helpful panel discussion that includes description of the state of special education dispute resolution in a variety of places throughout the country is Symposium, Erin R. Archerd et al., *The Ohio State University Dispute Resolution in Special Education Panel*, 30 OHIO ST. J. ON DISP. RESOL. 89 (2014). The panel does not specifically focus on attorneys, however. More recent national survey data on the lawyers' views about special education due process rights, including both school-side and parent-side attorneys, is found in Wettach & Sanders, *supra* note 38. As the authors note, "[t]he most salient observation obtained from the survey is that the attorney's client—be it the parents or the school district—strongly shapes the attorney's perceptions of the system's flaws and targets for change." *Id.* at 239.

46. See generally Johanna C. Schwartz, *Civil Rights Ecosystems*, 118 MICH. L. REV. 1539, 1543 (2020) (making comparison to scientific idea of ecosystems and describing civil rights ecosystems as interconnected and interactive collections of legal actors, legal rules, legal remedies, and informal legal practices).

47. The method thus could also be termed a form of judgment sampling, which involves drawing on a consciously chosen set of respondents because of a likelihood that they will provide relevant information, or stratified sampling, in that there was an effort to draw on people with specific kinds of backgrounds or demographic characteristics.

48. The original plan was to supplement names that the investigator knows with the list of COPAA members in the Chicago area, and with other publicly available sources such as law school and advocacy organization web sites. Ultimately, the additional digging added only one name to the list of prospective respondents.

49. Perry A. Zirkel & Elizabeth Zagata, *CADRE's National Data on the Frequency of Due Process Hearing Decisions: Suggested Adjustments*, 422 W.'S EDUC. L. REP. 24, 27 (2024).

50. See *National & State DR [Dispute Resolution] Data Dashboard*, CADRE, [www.cadreworks.org/national-state-dr-data-dashboard](http://www.cadreworks.org/national-state-dr-data-dashboard) [https://perma.cc/9SWK-H4MR] (reporting 3.6 fully adjudicated hearings per 10,000 students nationally in 2021–22).

51. Perry A. Zirkel & Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings Under the IDEA: A Nationally Representative Analysis with and Without New*

State of Illinois do not appear to be outliers in the number of due process cases or parental success rates, while New York is.<sup>52</sup>

The questions posed in this study overlap to an extent with those in the Special Education Cause Lawyers study, a fact that facilitates some comparisons. Thus the respondents in both studies were asked about how they became involved in the field, how their practice situations are structured and how the economics work, how they choose cases and other projects, their connections to social movement organizations and professional organizations, and the strategies and tactics they pursue in litigation and other advocacy activities. The literature on the sociology of legal practice suggested additional questions for the current study that might be of special interest to those contemplating careers in parent-side special education law: what did the respondents study in law school that helped prepare them for the work;<sup>53</sup> what did the lawyers do to learn about special education and particular related services; what are the respondents' subjective levels of job satisfaction; what are their views about the intellectual demands of the work; and what are the challenges faced in doing the work. The Special Education Cause Lawyers study did not ask if the respondents self-identify as persons with disabilities. None of the attorneys in the current study volunteered that they self-identify as a person with a disability, so no light was shed on how the identification might affect the lawyer's work.<sup>54</sup> Another subject of concern in special

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York, 44 J. NAT'L ASS'N ADMIN. L. JUDICIARY 126 (2023). The higher percentage counts partial parental successes. These numbers exclude New York State. New York has a parent success rate of 84 percent, with an additional 5 percent mixed outcomes; the authors attribute the exceptionality of those results to cases concerning New York City. *Id.* at 135–36.

52. *See id.* at 128.

53. The questioning in this area was inspired in part by the literature on attorney identity formation. *See generally* Megan Bess, *Transitions Unexplored: A Proposal for Identity Formation Following the First Year*, 29 CLINICAL L. REV. 1 (2022) (discussing identity formation and law school activities in connection with it).

54. Attorneys with disabilities experience significant intentional and unintentional discrimination. *See* Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9 (2021) (collecting and analyzing reports of discrimination encountered by lawyers with disabilities as well as other minority-demographic lawyers, and by lawyers with multiple, overlapping identities). Beyond whatever challenges attorneys with disabilities face, both attorneys with disabilities and attorneys without disabilities may experience challenges in providing effective representation to families of children with disabilities. *See* Mark C. Weber, *Children with Disabilities, Parents Without Disabilities, and Lawyers: Issues of Life Experience, Affinity, and Agency*, in RIGHTING EDUCATIONAL WRONGS: DISABILITY STUDIES IN LAW AND EDUCATION 207 (Beth A. Ferri & Arlene Kanter eds.) (2013) (discussing potential conflicts of interests and attitudes between children and parents and between children or parents and their attorneys in disability-related cases). Taking up a topic with possible parallels to these

education law is that the legal rights the attorneys exercise on their clients' behalf may work more successfully for families with economic and cultural resources that other families lack.<sup>55</sup> The respondents had strong views on that subject, which emerge in the study's findings.<sup>56</sup>

#### IV. FINDINGS AND ANALYSIS

The questions posed to the respondents in this study covered a significant number of issues pertaining to their work. First was motivation, what drew the attorneys into the field and what connections they previously had with children with disabilities. Second was the background of the respondents, not only their education, but also how they got up to speed on the particulars of special educational practice and special education law. Questions about the nature of the practice came third; the answers showed that a variety of models appear to be sustainable. Fourth, and closely linked, were questions about the economics of the lawyer's practice and how the practice stayed afloat. Particular modes of advocacy favored by the lawyers became the fifth topic. Sixth was the connection to social movement organizations pursuing disability and education rights. The seventh area of inquiry covered attitudes about law reform efforts. Legal obstacles to the achievement of educational rights for children were the eighth topic. The ninth and final topic was the subjective job satisfaction of the lawyers.

##### *A. Motivation*

All respondents spoke of a longstanding desire to further civil rights of people subject to discrimination. Some had an interest in education of

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discussions is a thoughtful analysis of issues involved in the representation of clients of color by attorneys of color. See Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 MICH. J. RACE & L. 13 (2016). See generally Nancy D. Polikoff, *Am I My Client? The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L.L. REV. 443 (1996) (discussing conflicts experienced by a lesbian activist lawyer representing lesbian activists).

55. See, e.g., Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413 (2011); Stephen A. Rosenbaum et al., *How IDEA Fails Families Without Means: Causes and Corrections from the Front Lines of Special Education Lawyering*, 20 AM. U.J. GENDER, SOC. POL'Y & L. 107 (2011); see also RUTH COLKER, *DISABLED EDUCATION* 4–5, 153–60, 169–72, 184–87 (2013) (compiling anecdotes of successful and unsuccessful efforts to make claims under special education law, noting greater success by parents with resources). For a partial response to these concerns see Mark C. Weber, *In Defense of IDEA Due Process*, 29 OHIO ST. J. ON DISP. RESOL. 495, 503–08 (2014).

56. See *infra* notes 144–45, 154 and accompanying text.

children with disabilities that began as early as college or even earlier,<sup>57</sup> and several had experience as special education teachers or aides before beginning law school, or had worked in special recreation programs.<sup>58</sup> Four went to law school specifically to become parent-side special education lawyers.<sup>59</sup> Several mentioned starting to practice special education law after becoming a parent of a child with a disability,<sup>60</sup> while two others had children with disabilities after they had been in special education practice for a while.<sup>61</sup> As noted above, none of the respondents mentioned self-identifying as a person with a disability as part of their motivation.<sup>62</sup>

### *B. Preparation*

A number of respondents had worked as students in law school clinics where they did special education cases.<sup>63</sup> Few mentioned law school course work in disability law,<sup>64</sup> though some took Education Law, Juvenile Law, or Civil Rights.<sup>65</sup> Several had internships or worked as attorneys for Equip for Equality, which is the Illinois Protection and Advocacy Agency

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57. Anonymous Interview #3 (interest began in sixth grade); Anonymous Interview #4 (interest began from young age prior to college); Anonymous Interview #10 (interest began in high school).

58. Anonymous Interview #3 (special recreation and special education teaching); Anonymous Interview #4 (special education teaching); Anonymous Interview #5 (special education teaching). Special recreation programs offer adaptive programs, services and accommodations for leisure-time activities, including sports, games, day camps, and special events. The activities may be separate from or integrated with programs for individuals without disabilities. In suburban Chicago, the programs are typically run by cooperatives among park districts. *See generally About Us*, W. SUBURBAN SPECIAL RECREATION, <https://www.wssra.net/about/> [<https://perma.cc/3CBG-TREL>] (describing mission and operations of one special recreation association).

59. Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #4; & Anonymous Interview #5.

60. *See, e.g.*, Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #6; Anonymous Interview #9. One respondent mentioned that many parent-side special education lawyers came into the field with a personal story of some kind. Anonymous Interview #7.

61. Anonymous Interview #4; Anonymous Interview #10.

62. *See supra* text accompanying note 54.

63. Anonymous Interview #5; Anonymous Interview #7.

64. One who did was Anonymous Interview #9.

65. Anonymous Interview #2 (Education Law Seminar); Anonymous Interview #3 (clinical civil rights work); Anonymous Interview #4 (School Law, Juvenile Law, and Mental Health Law); Anonymous Interview #5 (Education Law classes); Anonymous Interview #7 (Civil Rights and International Commercial Transactions course covering negotiation techniques); Anonymous Interview #8 (Civil Rights).

for people with disabilities,<sup>66</sup> and another reported benefiting from training provided by Equip for Equality.<sup>67</sup> Several worked for other lawyers doing special education representation before striking out on their own or taking other professional positions in the field.<sup>68</sup> One attorney did extensive shadowing of an experienced special education lawyer.<sup>69</sup> Somewhat fewer attorneys had gone to elite law schools than was the case with the Cause Lawyers cohort. Not surprising, given the geographic focus of the study, Chicago law schools were well represented.<sup>70</sup> Two respondents had been judicial clerks in the state courts.<sup>71</sup> Some attorneys had done general practice or specialized work in areas such as commercial litigation, general business law, or antitrust before turning to special education law.<sup>72</sup> One had done considerable law practice concerning disability services and special education in another state.<sup>73</sup> One respondent had worked for the Illinois Attorney General's Disability Rights Bureau.<sup>74</sup>

Success at representing parents depends on knowing what to ask and how to support the ask, to the point where one respondent described the practice as 50 percent or less law and the rest applying knowledge about therapies and special educational practice and techniques.<sup>75</sup> A number of respondents mentioned doing their own research or attending seminars as a primary way of learning the education side of special education law.<sup>76</sup> Trainings from the Council of Parent Advocates and Attorneys (COPAA)

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66. Anonymous Interview #3; Anonymous Interview #5; Anonymous Interview #8. The federal government gives states federal money for improving care for persons with developmental disabilities and mental illness, conditioned on the state's establishment of a system to protect those individuals' rights and provide advocacy for them. 42 U.S.C. § 15043(a)(1). *See generally* Va. Off. for Prot. & Advocacy v. Stewart, 563 U.S. 247, 250–51 (2011) (describing Protection and Advocacy agencies).

67. Anonymous Interview #9; *see* Anonymous Interview #3 (describing benefits of volunteering or working for Equip for Equality). One lawyer had a law student internship at a service and advocacy center run and led by people with disabilities. Anonymous Interview #4.

68. Anonymous Interview #4; Anonymous Interview #7; Anonymous Interview #8; Anonymous Interview #10.

69. Anonymous Interview #4.

70. *See, e.g.*, Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #5; Anonymous Interview #7. The schools include IIT-Chicago Kent, DePaul, and Loyola-Chicago (data from public sources).

71. Anonymous Interview #1 (data from public source); Anonymous Interview #3.

72. *E.g.*, Anonymous Interview #3 (business); Anonymous Interview #4 (commercial litigation).

73. Anonymous Interview #6.

74. Anonymous Interview #3.

75. Anonymous Interview #1.

76. Anonymous Interview #1; Anonymous Interview #7 (also mentioning communications with other attorneys in the field).

were mentioned.<sup>77</sup> Respondents who had been teachers or aides drew on their own experience.<sup>78</sup> One did special education teaching while taking a multi-year break from legal practice.<sup>79</sup> Lawyers who were parents of children with disabilities described learning about special education as well as advocacy while advocating for their own children.<sup>80</sup>

### *C. Nature of Practice*

The firms the lawyers worked in were generally small,<sup>81</sup> and some lawyers were solo practitioners.<sup>82</sup> Several attorneys mentioned that their firms do legal work for service providers such as private schools or professionals who serve people with disabilities.<sup>83</sup> The work is done either by the respondents themselves or their colleagues. The work helps pay the firm's bills and leads to client referrals.<sup>84</sup> Respondents noted that parents who come to them often are under severe stress.<sup>85</sup> The lawyers made social work referrals for the clients. More than one expressed the wish for greater availability of affordable social work services and other family supports such as respite care.<sup>86</sup> One described having to take on the role of an informal therapist when the client may be in need of a real therapist.<sup>87</sup> Another talked of the need to provide balance for the strong emotions driving their clients.<sup>88</sup>

Several respondents mentioned the fact that the practice requires so much specialized knowledge and dedication that a near-singular focus is needed, leading them to not do other legal work or to shift that work to

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77. Anonymous Interview #7.

78. Anonymous Interview #2 (also citing experience with own child and talking with special education professional); Anonymous Interview #3; Anonymous Interview #4.

79. Anonymous Interview #3.

80. Anonymous Interview #1; Anonymous Interview #2.

81. *E.g.*, Anonymous Interview #1 (two lawyers, previously solo); Anonymous Interview #3 (three lawyers); Anonymous Interview #4 (two partners, one paralegal, one associate lawyer); Anonymous Interview #7 (one lawyer and one of-counsel); Anonymous Interview #10 (principal lawyer and several associates).

82. *E.g.*, Anonymous Interview #2; Anonymous Interview #7.

83. *See* Anonymous Interview #4 (mental health providers).

84. Anonymous Interview #4 (mentioning referrals). Service providers may also be a source of referrals for nonprofit advocates. *See* Anonymous Interview #8.

85. Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #7 (prospective clients are "often very agitated about the process"); Anonymous Interview #10.

86. Anonymous Interview #3.

87. Anonymous Interview #2 (drawing comparison to family law clients).

88. Anonymous Interview #4.



colleagues.<sup>89</sup> Others did a mix of cases, including family law,<sup>90</sup> mental health law, and juvenile law.<sup>91</sup> The lawyer who works at a law school clinic mentioned the clinic's ability to do education representation beyond special education cases.<sup>92</sup> The clinic students who do special education work receive one-on-one training and undertake a variety of projects, with teams typically assigned for cases involving hearing requests.<sup>93</sup> The advocacy agency lawyer described involvement of private practice *pro bono* attorneys, noting that some have done IEP meetings, mediations, and due process hearings.<sup>94</sup>

Case selection considerations mentioned by respondents included the clients' ability to pay,<sup>95</sup> geography,<sup>96</sup> and whether the clients' expectations are reasonable.<sup>97</sup> The attorney working at a law school clinic mentioned having priorities in pursuing cases involving bullying as well as cases involving disciplinary actions such as suspensions that lead to exclusion from school. The attorney also noted the importance of taking cases where development of literacy skills is at stake as well as the cases of children with severe disabilities who need residential or applied behavior analysis services.<sup>98</sup> The attorney working for an advocacy agency described an annual priority-setting process involving community stakeholders.<sup>99</sup> Priorities that have emerged from that process include least restrictive environment issues, restraint and seclusion, assistive technology, post-

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89. Anonymous Interview #1 (also noting that colleague does guardianship work); Anonymous Interview #3 ("At this point we have our hands full with our special education cases."); Anonymous Interview #4 (partner does guardianship work); Anonymous Interview #6 (not doing other areas); Anonymous Interview #7 (exclusively special education).

90. Anonymous Interview #2 (describing current practice as including more family law than special education law but noting overlap).

91. Anonymous Interview #4 (mental health, school law in general, juvenile).

92. Anonymous Interview #5 (mentioning discipline and bullying cases, school enrollment issues).

93. Anonymous Interview #5 (teams and individual assignments, and one-on-one sessions).

94. Anonymous Interview #8.

95. Anonymous Interview #2 (though accepting a certain number of *pro bono* and undercompensated cases); see Anonymous Interview #4 (saying they wish they could afford to take more *pro bono* cases); Anonymous Interview #10 (noting they could now afford to take a lot of *pro bono* cases, that they were more careful in taking a case where the client had fewer resources, but that they took some such cases anyway, if the case was reasonable and taking it could accomplish something).

96. Anonymous Interview #1 (mentioning increased flexibility conferred by videoconferencing and electronic payment); Anonymous Interview #2 (commenting on the need to bill for travel time).

97. Anonymous Interview #2.

98. Anonymous Interview #5.

99. Anonymous Interview #8.

secondary transition, and eligibility for services.<sup>100</sup> The attorney pointed out the role of an advocacy organization in taking on cases that are more difficult and less likely to be economically rewarding for a private lawyer.<sup>101</sup> At least one private practice lawyer also mentioned issues that they look for in an effort to contribute to improving education for children with disabilities: instances in which students flounder while the school district delays evaluation for special education, and cases in which high achieving students with poor social skills or executive functioning fail to receive services they need to prepare them for post-secondary education or work.<sup>102</sup>

The private practice respondents reported making some marketing efforts, but appeared to rely primarily on word of mouth or provider or other referrals to obtain new cases.<sup>103</sup> One lawyer mentioned receiving referrals from special education advocates, who take cases up to a certain point but then conclude that an attorney is needed for the next step; on the other hand, the lawyer might refer a client to an advocate for work improving an IEP or the like, rather than take on that task directly.<sup>104</sup> A lawyer mentioned that marketing takes time away from direct representation, as does running the business of the practice and training personnel.<sup>105</sup> For private practitioners, the need to be entrepreneurial is constant.<sup>106</sup>

As may already be clear from the nature of the study and the description of the responses to other questions, the special education bar is sharply divided between lawyers who represent parents and those who represent school districts. No respondent described working both sides of the street.<sup>107</sup>

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100. Anonymous Interview #8.

101. *Id.*

102. Anonymous Interview #10.

103. Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #7 (mentioning referrals from private schools, parent to parent word-of-mouth, and referrals from related service providers). The same may apply for non-private practice lawyers. See Anonymous Interview #5 (describing client intake procedures and arrangements with referral sources, as well as listing additional referral sources). One lawyer stressed the importance of marketing, including doing community education that has the side effect of getting one's name out. Anonymous Interview #10.

104. Anonymous Interview #4 (but cautioning that some advocates do much better work than others).

105. *Id.* (noting time required to run firm, train assistants, and do marketing); see Anonymous Interview #3 (describing stopping advertising because of the time needed to respond to prospective clients' calls).

106. Anonymous Interview #10.

107. Cf. HEINZ & LAUMANN, *supra* note 6, at 53–54 (discussing social differentiation between lawyers who typically practice within the same legal subject area but on different sides).

*D. Economics*

Some lawyers seemed happier with the economic rewards of the practice than others did. One respondent reported making a good living,<sup>108</sup> though some other lawyers' responses were closer to "[i]t's a living, not a killing."<sup>109</sup> Nearly all the private practitioners expressed regret about having to bill parents to achieve an appropriate education for their children,<sup>110</sup> though more than one pointed out that their work was highly cost effective in comparison to having to obtain services for their children outside the public school system.<sup>111</sup> Relying on court-awarded fees in successful cases is not a viable economic model.<sup>112</sup> One non-private practice respondent mentioned grant funding for projects and the building of a litigation fund from fees awards.<sup>113</sup>

Private practice respondents reported being cautious about bringing aboard staff who would need to be paid even if law firm income declined. Some small firms get along with just one staff person or paralegal;<sup>114</sup> some lawyers had none.<sup>115</sup> A few lawyers worked from home and only occasionally or never rented other space.<sup>116</sup> One mentioned going out to meet clients where they are, commenting that it is more convenient and less costly for clients.<sup>117</sup> A respondent cited the need to control costs and said their experience having managed a small business other than a law

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108. Anonymous Interview #1; Anonymous Interview #4 (saying they cannot imagine being in this field for the money).

109. See Anonymous Interview #7 (characterization by the interviewer); see also Anonymous Interview #3 ("not affluent" but "it's been okay"). One attorney was somewhat less positive on the economics of a law practice providing special education representation to parents. Anonymous Interview #6.

110. Anonymous Interview #2 (also noting that families with children with disabilities have many additional expenses); see Anonymous Interview #3 (regretting closure of clinic that served clients in need); Anonymous Interview #4 (stating they would like to do more to help people without charging for it). The fact bears repeating that under current conditions of support and accommodation, having a family member with a disability imposes significant costs on parents' time and resources. See Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329 (2021). That drain makes it even more difficult to afford an attorney.

111. Anonymous Interview #1.

112. Anonymous Interview #6 (saying only one practice managed to rely on fee shifting in Chicago cases).

113. Anonymous Interview #5.

114. Anonymous Interview #1.

115. Anonymous Interview #2 (but occasionally bringing on an assistant to help with discovery); Anonymous Interview #3; Anonymous Interview #7 (some part-time support).

116. Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #7.

117. Anonymous Interview #7 (also mentioning benefits of meeting clients in more relaxed settings).

practice had proved invaluable.<sup>118</sup> Doing work in areas related to special education may help a practice's finances,<sup>119</sup> though it may divert the attorney's efforts. The attorney who worked for a large firm and did special education work *pro bono* reported that the firm does not have a cap on *pro bono* hours, but there is a practical limit on how much *pro bono* work an attorney at a large firm can do because the attorney also needs to serve billable clientele and maintain a regular case load.<sup>120</sup> The attorney assists in screening clients for a nonprofit and has done IEP meetings and mediations as well as due process hearings for clients.<sup>121</sup>

### *E. Modes of Advocacy*

There was a division of views on how much the lawyer should look for compromise solutions for families before (or in lieu of) demanding a due process hearing or filing suit.<sup>122</sup> Some lawyers pointed out the desirability of getting parents and school authorities to engage in a constructive dialogue that would continue throughout the children's school careers.<sup>123</sup> They reported frequent successes in achieving that goal, but said creativity and communication skills were needed.<sup>124</sup> Some lawyers stressed the importance of relationships with attorneys who regularly appeared on the other side<sup>125</sup> and the importance of early preparation and careful discussion of benefits and risks with the client.<sup>126</sup> Some lawyers noted that it can be difficult to get a useful response from a school system without filing for a due process hearing,<sup>127</sup> even if the

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118. Anonymous Interview #3.

119. Anonymous Interview #10 (discussing early stages of establishing practice).

120. Anonymous Interview #9.

121. *Id.*

122. In general, claims under IDEA and those under other statutes seeking relief available under IDEA based on alleged denial of free, appropriate education must be pursued through the administrative due process hearing procedure before they may be brought to court. *See* 20 U.S.C. § 1415(i), (l); *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023) (holding that exhaustion requirement does not apply to claims for damages not available under IDEA); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017) (holding that exhaustion requirement applies only to claims of denial of free, appropriate public education).

123. Anonymous Interview #2; Anonymous Interview #3.

124. Anonymous Interview #2.

125. Anonymous Interview #3; Anonymous Interview #4.

126. Anonymous Interview #4.

127. *See* Anonymous Interview #2; Anonymous Interview #3; *see* Anonymous Interview #7 (preferring negotiation in light of litigation's burdens on parents, but filing due process requests or taking other action as needed). Two respondents mentioned the need to use due process requests to get any response at all from one particular school district. Anonymous Interview #5; Anonymous Interview #8.

parents ultimately give up the request as part of a settlement. One attorney talked about encouraging parents after an initial conversation to try to work out the problem with the school on their own and return if that does not work.<sup>128</sup> That lawyer said a lot of the work they did was obtaining reimbursement for private school placements undertaken by parents dissatisfied with the services their children received from the public schools.<sup>129</sup> Another said the majority of cases they did were placement disputes, and described one success in achieving a cash amount plus five years of private placement as compensatory education for a child who was reading seven years below grade level at the beginning of the case.<sup>130</sup> One lawyer commented that there sometimes is pressure on school districts to settle to avoid airing their problems in public, and pressure on parents because the child is getting older and will not recover the formative years lost during the pendency of the dispute.<sup>131</sup>

Unsurprisingly, the lawyers tended to describe cases that go to district or appellate court as unusual.<sup>132</sup> The settlements reached before, during, or after due process proceedings sometimes include amounts for attorneys' fees,<sup>133</sup> but that was described as not always being the case.<sup>134</sup> More than one attorney mentioned occasionally advising families to move to a different school district where services were better.<sup>135</sup> The Chicago Public School system came in for criticism. It was described as having improved after the Public Inquiry conducted by the Illinois State Board of Education concerning inadequacy of services, but still frequently ineffective at meeting children's needs.<sup>136</sup>

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128. Anonymous Interview #7.

129. *Id.*; see also Anonymous Interview #1 (reporting majority of cases as being over placements); Anonymous Interview #4 (reporting that many cases concern private placements).

130. Anonymous Interview #1.

131. Anonymous Interview #9.

132. Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #10; see also Anonymous Interview #5 (mentioning three federal cases).

133. Anonymous Interview #8 (noting success of other lawyers in obtaining fees in settlements); cf. *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Hum. Servs.*, 532 U.S. 598 (2001) (rejecting catalyst theory and disallowing attorneys' fees in absence of favorable judicial decision) (discussed *infra* text accompanying notes 153–55).

134. Anonymous Interview #6 (discussing settlements at mediation); see Anonymous Interview #4 (saying settlements rarely include fees).

135. Anonymous Interview #2; Anonymous Interview #4.

136. Anonymous Interview #1 (saying it is doing slightly better but “they just don’t have a clue”) (acknowledging work of Public Inquiry Proceeding).

*F. Connections to Social Movement Organizations*

The special education cause lawyers in the previous study reported involvement with a number of disability-focused advocacy organizations. These organizations form part of a broad social movement for disability educational rights that has experienced legislative and judicial successes as well as setbacks. The lawyers in the current study had connections to organizations as well. Respondents mentioned involvement with COPAA as well as specific parent organizations, though the involvement did not appear to be as pervasive as that of the participants in the Special Education Cause Lawyers study.<sup>137</sup>

A recent monograph on the social activism of parents of children with disabilities and organizations that represent them draws contrasts with the activism of self-advocating disabled adults and organizations they gravitate towards.<sup>138</sup> In their organizing and advocating, parents of children with disabilities often have different goals and less commitment to specific ideological positions than adults with disabilities who are advocating on their own behalf.<sup>139</sup> For example, the parents' efforts may emphasize medical research toward cures for disabling conditions, and often feature alliances with medical and other services providers.<sup>140</sup> Adult disabled activists are more likely to stress political and economic empowerment of people with disabilities and to emphasize the role of discriminatory attitudes and inaccessible environments in imposing disadvantage on people with impairments.<sup>141</sup> Nonetheless, parents and adult self-advocates may build alliances even when their interests diverge.<sup>142</sup> The lawyers in the present study did not discuss potential conflicts of interests and goals of parent and disabled adult organizations, and appeared to find involvement in both types of organizations worthwhile.<sup>143</sup> Of course, lawyers may have their own interests and goals, which have a potential to conflict with those of children with disabilities and parents.<sup>144</sup>

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137. Anonymous Interview #4 (COPAA); Anonymous Interview #10 (specifying consumer-driven disability support groups including COPAA, Learning Disabilities Association, CHADD, and NAMI).

138. ALLISON C. CAREY ET AL., *ALLIES AND OBSTACLES: DISABILITY ACTIVISM AND PARENTS OF CHILDREN WITH DISABILITIES* (2020).

139. *Id.* at 246.

140. *Id.* at 246–48.

141. *Id.* at 247–48.

142. *Id.* at 255–56.

143. *See* sources cited *supra* note 137.

144. *See* sources cited *supra* note 54. The need to collect fees from the client is one such divergence, but attorneys also mentioned such things as reasonability of parental expectations about outcomes. Anonymous Interview #2; *see* Anonymous Interview #3

*G. Attitudes Toward Law Reform*

Some respondents reported being on the lookout for test cases or other means by which law reform might be accomplished.<sup>145</sup> They described noteworthy work on impact litigation, legislative reform, and the Illinois State Board of Education Public Inquiry proceeding.<sup>146</sup> Others saw themselves more or less exclusively as lawyers who put rights into practice for individuals rather than lawyers who try to establish new legal rights.<sup>147</sup> The private practitioners were more likely to express that view than the lawyers working for organizations.<sup>148</sup> The respondents who said their practice does not include law reform did not express negative views about lawyers whose ambits do.<sup>149</sup> They tended to say that all aspects of special education legal practice on behalf of families were valuable.<sup>150</sup> Respondents also noted that individual successes, even non-litigation efforts, can have ripple effects, improving the opportunities for students who come later.<sup>151</sup> The lawyer who worked for a firm and did special education representation *pro bono* expressed admiration for those who

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(discussing clients who want to fix the system as a whole when the lawyer's judgment is that that is unrealistic).

145. See e.g., Anonymous Interview #8; Anonymous Interview #10.

146. Anonymous Interview #8; Anonymous Interview #10 (filing class administrative complaints, becoming involved with Public Inquiry, selecting cases to establish legal or operational precedent, and engaging with federal and state legislation processes). For more detail on the Public Inquiry, see Weber, *supra* note 2, at 398–400.

147. Anonymous Interview #1; Anonymous Interview #5; see Anonymous Interview #2 (describing focus on solving problems for the particular student); Anonymous Interview #7 (same).

148. One non-private practice lawyer mentioned work in connection with legislative initiatives. Anonymous Interview #5 (noting how cases may lead to advocacy for legislative solutions).

149. See sources cited *supra* note 147.

150. It might be noted that a good-sized fraction of the respondents, including those in their own small practices, had worked at one time either as students or attorneys at non-profit agencies that conduct law reform work, such as Equip for Equality. See *supra* notes 66–67 and accompanying text.

151. Anonymous Interview #3 (describing work on systemic issues through lawyer groups) (looking for ripple effects); Anonymous Interview #8; Anonymous Interview #10 (recounting instance of multiple cases leading to recognition of particular disabling condition and establishment of policy, specifically how individual cases led to change of state policy with regard to placement of children by school districts in unapproved facilities when approved facilities are not available); see Anonymous Interview #5 (noting cumulative effect of repeated cases on school districts); see also CAREY ET AL., *supra* note 138, at 206 (“Not everyone has the capital required to use the court system, but a single court decision potentially creates a ripple effect for many kids with disabilities . . .”).

engage in systemic reform, but remarked that doing so effectively would be a full-time job.<sup>152</sup>

### *H. Obstacles to Asserting Children's Rights to Education*

When pressed about particular legal developments that impede achieving children's rights to education, respondents split about evenly in naming *Buckhannon Board & Care Home v. West Virginia Department of Health & Human Services*<sup>153</sup> and *Arlington Central School District Board of Education v. Murphy*.<sup>154</sup> *Buckhannon* forbade court awarded attorneys' fees when the lawyer's work is the catalyst for a beneficial change in the client's position, but there is no "judicial imprimatur" such as a final decision in the parent's favor signed by a hearing officer, or a consent decree.<sup>155</sup> *Murphy* forbade awarding expert witness fees under the special education law when the client achieved victory in a hearing or in court.<sup>156</sup> Lawyers said that even in a city as big as Chicago and even when clients can afford to pay, experts can be difficult to find or they have long waiting lists for doing evaluations.<sup>157</sup> The evaluation, however, is likely to be of critical importance in building a case for services, according to the respondents.<sup>158</sup>

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152. Anonymous Interview #9. Despite the time commitment, some lawyers who work for business law firms take on major roles in special education law reform cases. *See, e.g., Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 143 (2023) (listing counsel appearing on behalf of parents).

153. *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Hum. Servs.*, 532 U.S. 598 (2001). *See* Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #8. One respondent commented on the challenge of obtaining fees from school districts but without specifically mentioning *Buckhannon*. Anonymous Interview #7.

154. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006). Two respondents named both cases as major obstacles; one rated *Buckhannon* as the greater problem, Anonymous Interview #8, while the other emphasized *Murphy*, Anonymous Interview #6. One lawyer mentioned the idea of having attorneys front the costs of private placements and proposed removing obstacles to that option. Anonymous Interview #5.

155. *Buckhannon*, 532 U.S. at 605. *See generally* Mark C. Weber, *Litigation Under the Individuals with Disabilities Education Act After Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Services*, 65 OHIO ST. L.J. 357 (2004) (reporting on post-*Buckhannon* fees litigation and predicting effects of the case on settlements in future cases).

156. *Murphy*, 548 U.S. at 295–304.

157. Anonymous Interview #3. One respondent noted that in cases where the parent can afford to place the child unilaterally in a private school, the school personnel often can provide expert testimony, something that strongly favors families that are better off economically. Anonymous Interview #5.

158. *See* sources cited *supra* note 157.



*I. Job Satisfaction*

Respondents reported strong satisfaction with their work.<sup>159</sup> They noted the intellectual stimulation presented by the cases and the stimulation of constantly learning more about education and the law itself.<sup>160</sup> One stressed that every case was different and the practice was never boring.<sup>161</sup> They nearly all commented on the reward of changing a child's life for the better.<sup>162</sup> They noted the special satisfaction of prevailing for the benefit of a child in a "David and Goliath" or "underdog" situation.<sup>163</sup> An attorney stressed the rewards of building personal relations with clients, while noting that it was hard to have to disappoint clients when the attorney could not succeed at obtaining what the parents wanted for their children.<sup>164</sup> When asked if they would encourage new lawyers to go into parent-side special education practice, a strong majority of the respondents said yes.<sup>165</sup> They did not seem concerned about additional competition,<sup>166</sup> though more than one pointed out that the biggest problem with obtaining representation was for parents without the financial resources to pay a lawyer.<sup>167</sup> What is needed, they said, is more publicly funded or other outside-funded attorney services for parents who have low or modest incomes.<sup>168</sup>

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159. Anonymous Interview #1; Anonymous Interview #2; Anonymous Interview #3; Anonymous Interview #5; Anonymous Interview #8; *see* Anonymous Interview #7 (noting favorable work-life balance given nature of practice).

160. Anonymous Interview #5.

161. Anonymous Interview #3.

162. *E.g.*, Anonymous Interviews #1; Anonymous Interview #3; Anonymous Interview #5; Anonymous Interview #7; Anonymous Interview #8; Anonymous Interview #9.

163. Anonymous Interviews #3; Anonymous Interview #5.

164. Anonymous Interview #4.

165. *See, e.g.*, Anonymous Interview #3; *see also* Anonymous Interview #8 (noting benefit of increasing the supply of available attorneys). One suggested doing so for a nonprofit rather than private practice. Anonymous Interview #6.

166. Anonymous Interview #2 ("There aren't a lot of us."); *see* Anonymous Interview #5 (describing increasing job prospects with public interest organizations).

167. *See* Anonymous Interview #7. This respondent commented that the system worked better for parents with resources, and that the lawyer's *pro bono* and low *bono* work ameliorated the situation somewhat but not enough. The lawyer remained troubled by the failure of the system for families who were not well off. *See also* Anonymous Interview #4 (agreeing that special education law works better for parents with resources); Anonymous Interview #5 (same). Another lawyer commented that the biggest ingredient for success is a motivated parent who is passionate for the interests of their child, but after that, money is the next biggest enabler because the parent can hire someone to fight their battles. Anonymous Interview #9. One lawyer lamented that the families with less ability to pay often had stronger cases and were generally easier to work with. Anonymous Interview #6.

168. Anonymous Interview #4.

## V. CONCLUSION

In this study, as in so many, it is largely up to the reader to draw their own conclusions. My dominant conclusion is that the lawyers studied are essentially functioning as they ought to. They are dedicated to pursuing the educational rights of children with disabilities and persevere through legal obstacles and the daily challenges of providing representation. They describe having reasonable incomes while still being able to prioritize goals they want to achieve through the law and presenting themselves with sufficient intellectual and other challenges to stay engaged with their work. One perhaps surprising finding is that the lawyers find themselves unable to rely on income from the fee-shifting provision of IDEA. The inference is that the Supreme Court's discarding of the catalyst theory for fees on settlements undermined IDEA's statutory right to fees to a significant extent. Similarly, the Court's rejection of expert witness fees for prevailing parents restricts the ability to achieve the entitlement to education that the statute imposed. Developing more publicly supported sources of attorney representation and revisiting the denial of fees for settlements and fees for experts are matters that merit attention of those who value the educational rights of children with disabilities.