Who Prevails?: Comparison of Special Education Due Process Hearings for Autistic, MR and SLD children.

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A diverse body of sociological work has underlined the significance and usefulness of disputes and controversies as a strategic research site to observe social processes that are typically protected from scrutiny (Berg and Ross 1982; Emerson 1992; Garfinkel 1967; Latour 1987; Boltanski and Thevenot 2006). The parties to a dispute act as the social scientist’s “probe”, disturbing the surface of business-as-usual to expose the assumptions and practices that lie just underneath it, and setting in motion corrective mechanisms that are the very fabric out of which business-as-usual is manufactured.

In this paper, we use special education due process hearings as such a strategic research site in order to shed light on the rapid increase in special education enrollments under the eligibility category of autism. In the 1992-93 school year, 15,580 students aged 6 to 21 in special education programs nationwide were identified as autistic. By 2008-09, this number had grown to 292,818 (IDEA Data). In California alone, the number of students aged 6-21 identified as autistic increased from 1,605 students in the 1992-93 school year (the first mandatory reporting year) to 41,826 by 2008-09 (IDEA Data).¹ While the controversy rages over whether there is an autism “epidemic” (Eyal et al. 2010; Shattuck and Durkin 2007), it might be useful to narrow the focus to the special education system and to ask: what does it mean to be classified as “autistic” for special education purposes, and how does it contrast with other disability categories? What differential qualities of autism as a special education classification may contribute to rising enrollments?

These questions may be approached by examining how disputes over autism and related disabilities arise, develop and are resolved. When disputes between school districts and students (most likely their parents) cannot be negotiated locally, one of the parties will file a request for due process hearing in front of a hearing officer who adjudicates the dispute. The record of the hearing typically includes the history of the dispute, testimony of relevant witnesses, explication of the legal standards and reasoning employed in resolving the dispute, and a decision explaining which party prevailed on which issue and what remedy must be given. The record of the hearing, therefore, is a stylized staging of the dispute at hand, where the combatants and their weapons are carefully constructed and then submitted to a test of their relative worth.²

¹ Overall enrollment in special education in California grew only from 466,058 in 1992 to 600,598 in 2008. Thus, the increase of autism percentage-wise was from less than 1% to roughly 7%. Numbers obtained from www.ideadata.org (last accessed October 5, 2010).
² Only a tiny minority of cases gets to a due process hearing. In school year 2008-09 for example, only 104 cases were resolved by a decision of a hearing officer, while 2560 cases were settled without a hearing: typically they were either withdrawn, or settled by mediation, or settled outside both mediation or resolution. Data retrieved from http://www.documents.dgs.ca.gov/oah/SE/Cases%20resolved%20without%20a%20decision.pdf (last accessed 5/17/2010). These 2664 cases themselves represent the tip of the iceberg of multiple disputes that are negotiated and resolved locally. Nonetheless, we argue that due process hearings, precisely because they are authoritative and iterative tests of relative worth, should be accorded special significance and can be studied as an indicator of the iceberg that lies underneath. In due process hearings, arguments...
It is crucial, of course, that such tests of relative worth are iterative and facilitate social learning on the part of the parties involved. From August 2007 to June 2010, for example, 30% of the requests for due process hearings filed in California were under the eligibility category of “autistic like behaviors”. The second largest category was “specific learning disability” with 16%. In this paper, we will consider also cases filed under the eligibility category of “mental retardation,” which is much smaller at 5%. Correspondingly, of the 243 cases that actually got to a due process hearing during this period, 23% were under the eligibility category of “autistic like behaviors,” 13% SLD and 9% MR. Through such repeated tests, school districts, parents, lawyers and hearing officers collectively discover what it means, concretely, to be classified as “autistic” for special education purposes, and how it contrasts with other disability categories. Through controversy they in fact collaborate in developing common tests that over time become black-boxed procedures that work to reduce the number of cases that arrive at due process hearings. The disproportionate share of autism cases among due process hearings (remember that in 2008 it constituted only roughly 7% of special education enrollments among students aged 6-21, while SLD and MR constituted 48% and 6% of enrollments respectively) indicates that such learning-through-disputation is still in its infancy and that comparatively more can be learned by analyzing these cases.

In this paper we compare due process hearings in California under three eligibility categories: autistic-like behaviors, specific learning disability (SLD) and mental retardation (MR). The two other categories were strategically chosen to maximize the power of the comparison. Although due process hearings involving mental retardation are uncommon, they are especially interesting because of the relative proximity between the two conditions: many autistic children also receive a concurrent diagnosis of MR; there is growing scientific and historical evidence that the two conditions are overlapping and hard to distinguish; and recent studies indicate that diagnostic substitution from MR made a significant contribution to the rise in the autism case load (King and Bearman 2009; Shattuck 2006; Eyal et al. 2010; Abrahams and Geschwind 2008; Laummonier et al 2004; Waterhouse et al 2007). In contrast to the MR-related substitution, which would tend to feed onto the “lower-functioning” pole of the autism spectrum, there is evidence of another substitution at the “higher-functioning” end (including Asperger’s Disorder) coming from SLD and related categories, especially because SLD – the largest eligibility category at 48% in 2008 – was itself the repository of earlier processes of diagnostic substitution (Bishop et al 2008; Shattuck 2006; Ong-Dean 2006).

The main empirical discovery we made in examining due process hearings is elaborated in the next section: not only is autism the largest eligibility category among due process hearings but comparatively speaking such hearings are more likely than hearings involving MR or SLD cases to be resolved in favor of the student. The significance of this finding should be obvious: if

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3 These calculations are based on aggregate data provided to us by the Office of Administrative Hearings, State of California, Special Education Division. Because requests for due process hearings can be filed under more than one eligibility category, such cases were counted multiple times under each relevant category and the percentages sum up to more than 100%.

indeed the growth in autism enrollments is partly attributable to diagnostic substitution, this
greater likelihood to prevail would be one reason why autism is more attractive for parents than
other eligibility categories. It would constitute evidence for a “demand-side” explanation of the
epidemic or, more likely, for a self-reinforcing mechanism that kicks in once autism enrollments
begin to increase.

Why is it, however, that the student (i.e. the parents) is more likely to prevail against the district
in autism cases as compared with MR or SLD? One entirely plausible theory is that parents of
autistic children are more likely than parents of MR and SLD children to be endowed with
attributes of social power – high income, high education, social connections: in short, the answer
is class. There are indeed multiple ways in which class advantages can be converted into clout in
special education due process hearings. Higher income would permit parents to hire better
lawyers. It would also permit them to provide their children with alternative, privately funded
services and then sue for reimbursement, a strategy that provides the distinct advantage of being
able to demonstrate that the child would indeed benefit from such services (Ong-Dean 2006).
Higher education would typically entail familiarity and relative ease with legal and bureaucratic
methods of disputation, as well as capacity to access influential expert witnesses. Social
connections with other well-educated and highly-paid parents who may have dealt with similar
issues has already been shown to strongly correlate with the likelihood of obtaining a diagnosis
of autism (Liu et al. 2010), and it is plausible that it would also facilitate social learning and
increase the efficacy of disputation. We dedicate the second section of this paper, therefore, to
examining this theory. Due process hearings do not contain explicit information about the
occupation and education of parents, but they do contain several types of indicators of social
position such as the ability to hire lawyers, the ability to privately fund services, the location of
the school district, the ability to enlist high status witnesses, etc. We leverage these indicators to
examine the plausibility of a social class explanation for the disproportion between hearings
dealing with autism, MR and SLD.

However plausible, a social class explanation is unsatisfactory as a standalone account. First,
because it is ad hoc, namely it could apply to any eligibility category and does not explain why it
is specifically autism where high-status parents cluster. When SLD enrollments went up back in
the 1970s and 1980s, this was also explained by the clout of middle or upper class parents,
inclusive of their clout in due process hearings (Ong-Dean 2009; Ong-Dean 2006; Carrier 1983;
Sleeter 1986; Kelman and Lester 1997; Marder and Wagner 2002; Wagner et al. 2003). A
complete explanation, therefore, cannot treat autism as a blank slate on which social clout can
freely re-inscribe itself, but has to attend to the specificity of autism as a psychiatric, educational
and legal object. Which leads us to the second problem with the social class explanation, namely
that it is reductionist. It ignores the relative autonomy of the law as an economy of worth
(Boltanski and Thevenot 2006). The due process hearing is not merely a boxing ring at which the
two sides arrive already equipped with everything that is necessary to fight it out. It is, as we said
before, a stylized staging of the dispute at hand, where the combatants and their weapons are
carefully constructed and then submitted to an autonomous test of their relative worth. Nowhere
is this more relevant or apparent than in how the law treats expertise and expert testimony.
Typically, as we shall see, hearing officers do not necessarily privilege the testimony of high-
status expert witnesses, but often accord more credibility (worth) to the testimony of low-status
experts with first-hand knowledge of the individual child.
We dedicate the third and final section of this article, therefore, to comparing autism, MR and SLD due process hearings in terms of the space they offer for the mobilization of different types of expertise. We argue that herein lies the main reason why the likelihood of the student prevailing is higher in autism hearings than in MR or SLD. Special education law, in fact, tends to rely more on expert testimony than other areas of law, where the status of expert testimony is highly contested (Faigman and Monahan 2005; Brewer 1998). This is true both because special education law seeks to balance the rights of the disabled student against the limited resources of school districts, and because disability is a spectrum category that runs the whole gamut from situations where the provision of a prosthesis suffices to reconstitute the student as equivalent to “able-bodied”, to situations which demand some form of permanent custody (Eyal et al 2010).

As a result, the law relies heavily on the notion of “potential.” Potential, by its very nature, cannot be observed, only “assessed.” Assessment can be done with standardized tests or by expert opinion. The obvious preference of special education law and the special education bureaucracy is for standardized tests, wherever it is possible. Standardized tests mean that assessment is objective, relatively independent of personal or disciplinary biases, and they can easily be incorporated in the IEP process of assessing and assigning students. Over time, therefore, the existence of standardized tests and procedures would tip the scales in favor of school districts because they would be incorporated in their very functioning prior to any dispute and it would be easy to show that school districts have not treated the student differently than others and that overall such treatment conforms to what is required by law. Special education procedures for assessment use multiple standardized tests in many areas of development and functioning – intelligence, receptive and expressive language, adaptive life skills, and many others – yet to a significant degree these tests do not exhaust the assessment of potential. First, even when such tests are administered, they need to be administered by an expert, and interpreting their results (or judging whether they were administered correctly) is a matter of expert opinion. Second, judging whether a given standardized test is the correct method of assessing the potential of a specific child can itself become a matter of expert opinion and disputation. For these reasons, special education law has to rely heavily on expert testimony, and as we shall argue below, such reliance is maximal in autism, not only because it is a relatively late addition to special education eligibility categories (dating from 1993), but also because ambiguity about potential is built into the very diagnosis of autism. Put differently, its spectrum covers the whole spectrum of disability mentioned before, from prosthesis to custody. Since the prevalence of standardized tests tips the scales in favor of school districts, it stands to reason that the greater the reliance on expert opinion the more this imbalance is corrected and the greater the likelihood that students will prevail.

Another aspect of the mobilization of expertise relates to the incorporation of new techniques into educational programs, either because of legal requirements or because districts begin to accept the parents’ claims about the state of autism knowledge. We show how students and school districts use the due process system to negotiate the programmatic decisions within the context of the existing research. It is far from clear that the programs created as a result of the process are superior in all respects to what came before (cf. Edmond and Mercer 2000), but it does seem fair to say that the effect of these iterative challenges is to fundamentally reshape school programming.

I. Measuring the Likelihood of Success Across Eligibility Categories
To compare outcomes in disputes involving autism to those in disputes involving related disabilities, we construct a dataset of California hearing officer decisions. The dataset includes a random sample of 300 opinions from three disability categories: (1) autistic-like behaviors (AU), (2) specific learning disabilities (SLD), and (3) mental retardation (MR). The sample is drawn from opinions issued between 1995 and late 2009. Because we are interested not only in cases involving an undisputed determination as to the applicable eligibility category but also cases for which that matter was in dispute, the cases are not uniquely associated with a single category. Thus, after identifying a population of nearly 1000 cases that involved one or more of the three categories, we allocated the cases in the population into subgroups (for example, autism, autism-mental retardation, etc.), and then sampled from each subgroup. To obtain a dataset of exactly 300 cases roughly balanced across the three categories, we drew separate samples from each of those subgroups, using approximately 90 percent of the cases from all of the subgroups involving mental retardation, 33 percent of the cases involving autism but not mental retardation, and 25 percent of the cases involving specific learning disabilities but neither mental retardation nor autism.

We collected the following basic information about each case: the case number, date of hearing, and the names of the school districts. A principle explanatory variable of interest is the current and any previous eligibility determinations indicated in the opinion. Twelve percent of the cases involve concurrent disability categories within the three categories of our study (see Table 1 below).

We also identify several measures of the resources of parties. The first measure is whether a lawyer represented the student at the hearing. Lawyers presumably have better familiarity and success with the dispute resolution process, so the ability to hire a lawyer should signal a higher likelihood of success. The second measure of resources relates to the witnesses for the parties.

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5 California’s special education system has been characterized by three distinct administrative periods. From 1989 to 1995, the Special Education Hearing Office held the state contract to process cases. From 1995 to 2005, the Office contracted with McGeorge School of Law to manage the due process hearing system. In 2005, the Office of Administrative Hearings assumed responsibility for the process pursuant to an Interagency Agreement with the California Department of Education. We limited our analysis to the period from 1995 to 2009 to increase comparability and because autism was underreported before it was added to the IDEA as a primary eligibility category in 1991 (Shattuck 2006).

6 The population includes more cases with specific learning disabilities than any other eligibility type; however, in recent years autistic-like behaviors have been identified more frequently. Although diagnostic substitution between SLD and autism is a possible explanation, the downward trend in SLD prevalence after 1999 coincided with and is likely related to a memo from the federal OSEP instructing schools to use the OHI category for children with ADHD (Shattuck 2006).

7 Other eligibility categories through which children may be identified for services under IDEA include emotional disturbance, speech or language impairments, hearing impairments, visual impairments, orthopedic impairments, other health impairments, traumatic brain injury, multiple disabilities, deaf-blindness, and developmental delay.

8 Part of this success might stem from mediating the claims of the parents. For example, in a 2006 case from the Cupertino Union School District in Silicon Valley, a 9-year-old boy with Asperger’s Syndrome, represented by his father, claimed that his behavior problems were attributed to the school’s decision to place him in a multi-teacher classroom and that this justified his father’s decision to enroll him in private school (2006090422). The district prevailed in full in the hearing, and the analysis in the opinion suggests that the father’s decision to represent the child and to serve as the sole witness were contributing
A significant departure from a typical number of witnesses (6 per side in 2008-09) could indicate case complexity or a disparity in resources. We differentiate between school-based and independent experts. As Part III explains, this is an important issue in many of the decisions and reflects an underlying tension both between types of expertise (educational versus medical and/or therapeutic) and between the potential for bias and the need for experts that are familiar with the child.

The premise of our study is that the outcomes in contested due process hearings provide useful information about the resolution of disputes about autism and related disabilities. To that end, we start by identifying the prevailing party in each case. Because that determination is surprisingly complex, detailed explanation is appropriate. First, it is important to understand that “prevailing party” is a legal term of art, with a defined set of meanings in the legal system, as well as monetary consequences. Importantly, the Individuals with Disabilities Education Act (20 U.S. §1415(i)(3)) mandates an award of attorneys’ fees “to a prevailing party who is the parent of a child with a disability.” California Education Code §56507(d) implements the federal requirement by requiring the State’s hearing officers to indicate the “prevailing party” on the issues they decide. This means that the use of the term “prevailing party” in the cases we studied is subject to a set of practical considerations that may not be in agreement with our own analytical interest, and it has to be taken with a grain of salt. Nonetheless, we felt relatively confident that we could adopt the hearing officer determination in cases where he or she indicated that one party prevailed on all of the issues decided in the case. This left us, however, with 115 cases where the hearing officer indicated that each party prevailed on some of the issues decided in the case (see Table 1).

In these split cases, however, we felt we could no longer use the hearing officer’s determination of who prevailed. The legal concept of a prevailing party is designed to balance the incentives for appropriate conduct in litigation against the interest in ensuring vigorous enforcement of the IDEA. It also carries monetary consequences, as indicated above. Thus, it does not necessarily align with our goal of understanding parental success in improving the educational opportunities and outcomes of their children. For strategy-related reasons, a hearing officer determination might not match the parents’ views regarding success. For one thing, litigants might overclaim, so that a decision that the hearing officer regards as split actually provides relief the parents regard as important. IDEA’s fee-shifting provision also differentially incentivizes the parties to pursue hearings: school districts can recover their fees only if the parents’ claims are “frivolous,” but parents are able to obtain fees whenever they prevail. Further, an imbalance of power between parents and school districts in terms of resources and expertise within the special education system might justify treating any level of parental success as unexpected: presumably,

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districts are better situated to gauge the probability of success and thus make more informed settlement decisions.

The subjectivity and variability of the issues – running the spectrum from purely procedural to substantive – also complicate the measurement of success. For example, a common issue in our dataset was the propriety of assessments on which the school district relied in making programming decisions (see IDEA §1414(a)-(c)). This can involve questions about whether school districts satisfied their obligations to locate children with disabilities and used skilled personnel or appropriate test instruments to conduct the assessments. The procedural aspects of the IEP process also were at issue in most of the cases. To secure parental participation in decision-making, the IDEA imposes detailed procedural requirements (see IDEA §1415(a)-(d)), including specific roles for parents, teachers, and experts, extensive notice requirements intended to facilitate participation, and an overarching mandate that the parents and experts have a real opportunity to influence the outcome. We were reluctant to consider any of these procedural issues as a dispositive indicator of success unless it led to concrete determination on substantive issues such as programming, eligibility and remediation.

An important issue that blends the procedural and substantive aspects of IEP development is the process of setting goals for each student. That topic was highly contested in some of the cases because it is so closely connected with an assessment of student’s potential. Determination of goals reflects an assessment of student’s potential and over time becomes a way to measure progress. Thus, in the case of a four-year-old student who qualified for special education because of mental retardation (1345-02), the hearing officer examined closely the language of IEP annual goals that the plaintiffs claimed were vague and deficient, while the district deemed them appropriate. The hearing officer sided with the parents, emphasizing that the goals did not meet the child’s needs and did not anticipate any significant progress over earlier IEPs. A related issue is eligibility; in many cases the parties could not agree on the eligibility category. Thus, in the case of a six-year-old boy who was eligible for special education under the categories of autism and mental retardation, his parents claimed that he was denied a free and appropriate education because the district refused to reclassify him also as OHI (“Other Health Impaired”) in view of his medical diagnosis as suffering from Fragile X Syndrome (2007070251). While in this case the parents’ claim was rejected by the hearing officer on the basis that eligibility group should not affect determination of the child’s needs, in other cases the eligibility category often proves central to the process not only because it provides a baseline expectation about appropriate treatment but also because it influences the perceptions of student’s potential (Eyal et al. 2010).

Not surprisingly, the most common area of dispute involves the substance of the programs included in the IEP. Despite the attention to eligibility categories, the purpose of the federal statute is to individualize the educational environment to meet each child’s “unique” needs, so that each child will receive some educational benefit from the programs and services. Thus, the substantive decisions involved many different types of programs and services. Still, some generalizations are apparent. Special education students can be taught in many ways — in a regular class with an extra teacher or aide, in small classrooms with a small number of similarly disabled students, or by being pulled out of a regular classroom to receive extra services like speech or physical therapy. But variations on the pattern are extensive. Some children attend their local schools and receive services in one of those forms, and others attend specialized
(public or private) schools. Some children receive additional specialized services outside the school environment from private providers under contract with school districts. Some students require aides or teachers with more particularized skills than do others. And many of the children have particularized curricular plans that differentiate them from their classmates. We had to read the decisions quite carefully to determine whether the choice of program indicated in the hearing officer’s decision responded to the parents’ demand to improve the overall level of services provided to their child.

Finally, the remedial aspects of the decisions often complicate what otherwise might appear to be straightforward decisions on substantive claims. One of the key fissures is whether the parents obtained the desired assessments or programs independently. For parents that are able to acquire private education, the remedy is monetary – reimbursement – assuming the private program was appropriate (Forest Grove School District v. T.A., 129 S. Ct. 2484 (2009)). Thus in the case of a child eligible for special education under the category of mental retardation, whose privately obtained “educational therapy” consisted of “crossword puzzles, mazes and word searches,” the Hearing Officer did not grant the parents’ request for reimbursement, because the program was judged inappropriate (951-96). Nonetheless, this case was rare and normally most privately obtained services were deemed appropriate. In cases where the hearing officer determines that a student was denied free and appropriate education by the school district, this remedy, therefore, is potentially more complete and easier to obtain (Ong-Dean 2009), and it also is easier to measure, thus in general conferring multiple advantages to parents who possess the means to obtain private services. For example, a common scenario occurs where the offered placement was held to be inappropriate in part, and the parents receive reimbursement of some portion of the costs of a private school. Thus, the parents of a child eligible for special education under the category of mental retardation were able to obtain $11,650 in reimbursement for one-half the costs of a nonpublic school where they enrolled their child, because the hearing officer determined that “49% of the proposed placement [i.e. what the district proposed] constituted a procedural and substantive denial of FAPE.” (1939-00)

Where reimbursement is not a possible remedy, the remedy is more difficult to measure. One form of remedy is a prospective alteration of the district’s treatment of the student – ordering assessments to occur at district expense, ordering the IEP to include certain elements, or ordering prospective placement in a private school until the next IEP. Another form is compensatory. Compensatory relief becomes important when the student has been denied an appropriate education for a period of time. The presumption is that programs and services in addition to what otherwise would be required are necessary to make up for the lost educational opportunity. For either prospective or compensatory relief, it can be difficult to measure the result. For example, in 2269-04, the hearing officer denied a student’s request for prospective placement at a private school, but granted compensatory relief of 150 hours of ABA therapy, 21 hours of speech and language services and 17 hours of OT services. In that case, it is at least possible to measure the relief received, although it cannot be readily compared to the prospective placement sought. But in other cases the form of compensatory relief is left to the district’s discretion, making it exceedingly difficult to assess the outcome. A further complication is introduced if the assumption is made that parents are concerned about achieving better results in some future IEP by signaling a willingness to pursue the dispute, i.e. the hearing itself has a deterrent effect.
For all these reasons, we were not able to rely only on how the hearing officer apportioned “prevailing party” to the two sides, nor to simply count the number of issues on which the two sides prevailed, but had to read the cases carefully to develop several rules-of-thumb as to what constituted success for the litigants. We first looked carefully at the relation between success and eligibility category (Table 1) as indicated straightforwardly by the hearing officer’s assignment of “prevailing party”. The first three rows show that districts are less likely to succeed in autism cases than in mental retardation and specific learning disabilities cases, but students are not more likely to prevail in those cases ($\chi^2(12)=22.60$, p-value < .05). What is most notable is that the autism cases are much more likely to involve split decisions (51% for autism only compared to 30% for mental retardation only, $z = 2.76$, p < .01, and 28% for specific learning disability only). This is consistent with several features of autism disputes: a greater number and variation in issues and greater complexity in educational research and programming.\(^{10}\)

<table>
<thead>
<tr>
<th></th>
<th>MR</th>
<th>MR/AU</th>
<th>AU</th>
<th>AU/SLD</th>
<th>MR/AU/SLD</th>
<th>SLD</th>
<th>MR/SLD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student</td>
<td>11 (16%)</td>
<td>3</td>
<td>9 (9%)</td>
<td>0</td>
<td>0</td>
<td>11 (11%)</td>
<td>1</td>
</tr>
<tr>
<td>District</td>
<td>37 (54%)</td>
<td>9</td>
<td>38 (40%)</td>
<td>3</td>
<td>1</td>
<td>61 (61%)</td>
<td>1</td>
</tr>
<tr>
<td>Split</td>
<td>20 (30%)</td>
<td>16</td>
<td>49 (51%)</td>
<td>1</td>
<td>0</td>
<td>28 (28%)</td>
<td>1</td>
</tr>
<tr>
<td>Student</td>
<td>6</td>
<td>7</td>
<td>22</td>
<td>1</td>
<td>0</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>District</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Complex</td>
<td>9</td>
<td>8</td>
<td>23</td>
<td>0</td>
<td>0</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>68</td>
<td>28</td>
<td>96</td>
<td>4</td>
<td>1</td>
<td>100</td>
<td>3</td>
</tr>
</tbody>
</table>

To better understand the split decisions, our next step was to read the decisions, attempting to assign prevailing party status to the party that achieved the most substantial relief. This more complex and subjective procedure was far superior to any simple decision rule we tested. For example, counting which side prevailed on more issues was unsatisfactory because many cases involved a long list of issues and sub-issues of disparate magnitude and hearing officer’s determinations of prevailing party status did not always breakdown sub-issue rulings to a binary outcome.\(^{11}\) Instead, we each read and coded the cases independently, classifying them as either student-prevailed, district-prevailed or a complex resolution where no side clearly prevailed. In accordance with the analytical question guiding this paper, we agreed in advance that the proportionality of measureable relief should be a central factor in deciding who prevailed. Similarly, in cases involving qualitative comparison among issues, we treated substantive IEP

\(^{10}\) Differential costs of programming might alter the scope or intensity of the administrative process, as it is estimated that the annual costs of educating an autistic child in California are more than 7 times the costs of educating an SLD child (Lipscomb 2009). In this context, one would expect hearing officers to be more reluctant to let students prevail on all matters in autism cases, as compared with SLD. However, this is just as likely to be a result of the process we describe in Part III as complexity and ambiguity is inherent in how autism is currently defined and treated.

\(^{11}\) Assuming comparability of issues, with sub-issues treated as components of issues, and assuming that partial success on issues or sub-issues reflects a 50-50 determination, we constructed a quantitative estimate of student success for each case. The estimates varied considerably from the interpretations summarized in Table 2, the correlation with our measure being only .48.
violations as more important than procedural violations\(^{12}\) and placement and eligibility as more important than assessments. Finally, with regard to remedial issues, we deemed monetary relief as more important than compensatory education, and both as more important than future effects on participants (unless those effects were very clear, as in the case of a change in eligibility category). For example, in a case where the parents’ request for compensatory education was denied, but they were granted reimbursement for psychotherapy, occupational therapy and various assessments worth more than $26,000, we deemed the parents to have prevailed (2005080264). We then compared our results.\(^{13}\) In cases where we both agreed that the district or student substantially prevailed, it is likely that many informed readers would agree with our assessment and we treated that party as prevailing. In cases of disagreement or where either of us decided that the case was so complex that it could not fairly be coded, we labeled the case as complex resolution.

The bottom rows of Table 2 summarize our secondary coding of the split decisions. Table 2 combines the primary and secondary coding of prevailing party determinations by eligibility category. Once we include the secondary coding, it appears both that the districts are more likely to prevail in MR and SLD than in AU cases and that students are more likely to prevail in AU cases than in the other two groups. Those findings hold whether or not pure autism cases are combined with multiple category cases.\(^{14}\)

<table>
<thead>
<tr>
<th></th>
<th>MR</th>
<th>AU</th>
<th>SLD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student</td>
<td>17 (25%)</td>
<td>31 (32%)</td>
<td>23 (23%)</td>
</tr>
<tr>
<td>District</td>
<td>42 (62%)</td>
<td>42 (44%)</td>
<td>63 (63%)</td>
</tr>
<tr>
<td>Complex</td>
<td>9 (13%)</td>
<td>23 (24%)</td>
<td>14 (14%)</td>
</tr>
</tbody>
</table>

Districts are, therefore, on the average less likely to prevail against the parents of autistic children as compared with the two other eligibility categories. Was this the case throughout the period we are examining, from 1995 to 2009, or are there significant trends over time? Figure 1 presents a breakdown of the districts likelihood to prevail by the three eligibility categories and over three different periods. The general pattern is of a significant increase in the districts’ likelihood to prevail over the long run in all eligibility categories. This is especially true for the period after 2005. In 2005, the California Department of Education hired the Office of

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\(^{12}\) In cases where the district prevailed except with regard to a procedural violation, the outcome typically was recorded as a district success (see, for example, 2866-04 where the district was ordered to accurately record the oral offer made at the IEP, and 2008080580 where the district was ordered to train employees on IEP protocols).

\(^{13}\) Zirkel (2002) follows a similar strategy, having coders utilize a 7-point scale for each liability and remedial issue. The main difference is the use of 2 extra bins (ours has up to 5) and the separation of liability and remedial issues.

\(^{14}\) Where the district prevails, the difference in proportions between autism only (.44) and mental retardation only (.62) is statistically significant (z = -2.27, p-value < .05). Where the student succeeds, the difference in the proportions within eligibility category is not significant; however, that is due to the significant difference in the proportion of cases that remain in the complex category for autism. Comparing all autism cases with non-autism mental retardation cases, the difference in proportions for the subset of cases where the district succeeds remains significant (.61 to .43, z = 2.32, p-value < .05).
Administrative Hearings (OAH) to manage dispute resolution. This seems to have been part of an attempt by the state to streamline and standardize administrative hearings, rein in litigation and reduce costs, in the contexts of statewide school finance reform. For our purposes, however, what happened before 2005 is more significant. During the 5 years from 2000 to 2004, the districts’ chances of prevailing against the parents of autistic children increased significantly, from 25% to 41%, as compared with the previous 5-year period from 1994 to 1999. There was a similar, but smaller increase in MR hearings, from 36% to 46%, and a small decrease in SLD, from 60% to 52%. It seems clear, then, that in both absolute and relative terms the chances of the parents of autistic children to prevail have diminished over time, though they seem to have taken the smallest hit later, under the new OAH regime: from 41% to 48%, while for MR it went up from 46% to 62% and for SLD from 52% to 85%!

In the next section, we test the plausibility of a class-based explanation for these findings. It must account for both the greater likelihood of prevailing enjoyed by the parents of autistic children, and for the fact that such likelihood diminishes over time in both relative and absolute terms.

**II. Explaining Parental Success Using Class-Based Measures**

The existing literature suggests that parents with greater resources are more likely to prevail in special education cases (Ong-Dean 2009). Using our measures of resources – legal representation and independent experts – we confirm that resources are related positively to success (Table 3). In cases where districts prevailed, less than half of the students had legal representation; the probability of having legal representation increases substantially where the student prevails, even in part. The same type of result holds for expert assistance. Thus, where districts prevailed, the parents were substantially less likely to have hired expert witnesses than in cases where parent prevailed in whole or in part.
Table 3: Prevailing Party and Class-Based Measures

<table>
<thead>
<tr>
<th></th>
<th>Legal Rep</th>
<th>Expert Asst</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>District</td>
<td>66 (41%)</td>
<td>75 (47%)</td>
<td>161</td>
</tr>
<tr>
<td>Complex</td>
<td>39 (70%)</td>
<td>43 (77%)</td>
<td>56</td>
</tr>
<tr>
<td>Student</td>
<td>68 (82%)</td>
<td>65 (79%)</td>
<td>83</td>
</tr>
<tr>
<td>Total</td>
<td>173 (58%)</td>
<td>183 (61%)</td>
<td>300 (100%)</td>
</tr>
</tbody>
</table>

The sample is too small to permit us to conduct robust multivariate analyses of the separate contributions of legal representation and independent experts or how those variables operate in different eligibility categories. Thus, the quantitative data do not allow us to disentangle whether the patterns we detect actually explain the eligibility disparities described in Part I. Nevertheless, the data strongly suggest that resource advantages can translate into greater likelihood of success.

From that perspective, if autistic students are more likely to come from wealthier backgrounds than SLD or MR students, then school districts would have less success in autism cases without regard to the legal definitions, historical background, educational research, or existing and emerging therapies.

The existing research supports the idea that the prevalence of disabilities, selection into the special education process, and selection into eligibility categories vary with race/ethnicity and class background (Palmer et al. 2005; Marder and Wagner 2002; Wagner et al. 2003). The aggregate data (from California and the United States) confirm the disparate selection mechanisms for students enrolled in special education. As shown in Figure 2, black and Hispanic students are disproportionately represented in the special education context as a whole, and also in the categories of mental retardation and specific learning disabilities. However, white students are more prevalent within the autism category, especially as compared to Hispanics, and at rates that have nearly doubled since 2004.
There also is evidence at the aggregate level of the disparate environments into which eligible special education students are placed. The 100% stacked bars in Figure 3 show the racial composition of each special education environment, with the total row representing the racial composition of overall enrollments (allowing visual comparison of the proportionality of each racial group within each environment). So, even though the number in correctional facilities, for example, is quite low as a percent of overall placements, black students are disproportionately likely to be found in this environment. Conversely, white students are more likely to be reimbursed by the State for the expense of attending private schools (representing the private placement group). Although these data do not account for the extent or nature of the disability, the overall pattern is consistent with the idea that greater resources produce better outcomes within the special education system (at least to the extent that mainstream school and private placements are considered superior to more restrictive or less selective environments).
An examination of due process hearing records provides a novel way to explore this hypothesis at the level of the individual. Our approach is to examine both the accuracy of the hypothesis in general and, more specifically, to understand the causal links through which class might relate to success in the special education process. Class advantages might be translated into success in the special education process through some combination of resources to retain an attorney, social networks that assist parents in identifying a uniquely qualified attorney, and as we shall explain later, resources that permit parents to present school districts with a \textit{fait accompli} of their children already enrolled in and benefitting from private services. The data present several different measures we can use to explore that possibility. Because information about parental occupation, education or income is absent from the proceedings, the most direct measure we possess is the extent to which students are represented by legal counsel. As shown in Figure 4 below, roughly 72 percent of autistic students are represented by counsel in due process hearings, compared to only half of the students in SLD or MR eligibility categories.
The next two plots in Figure 4 show the number of witnesses appearing on behalf of students and districts, respectively, across eligibility categories. The class-based advantage argument suggests that more witnesses would appear in due process hearings on behalf of autistic children. Again, the data support that argument, suggesting a larger average number of witnesses in cases involving autistic students than in cases involving students in the MR or SLD eligibility categories. For several reasons, however, the number of student witnesses is a crude measure of parental ability to influence outcomes. Among other things, it does not account for the perceived ability of the district to defend its position or the types of witnesses that are likely to be most useful. A district with greater resources might have a greater ability to obtain qualified counsel and might have more qualified educators on staff. Similarly, in some cases, the student might

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15 It is also important to understand that the opinions do not always make evident the number and affiliations of testifying witnesses and the party for which the witness testified. Further, in some cases, both parties examined the same witnesses or the student’s attorney examined district personnel as “hostile” witnesses. However, in a substantial majority of the cases, we were able to make objective determinations of the number of student witnesses, and there is no reason to believe that the extent of missing information is anything other than random for our purposes.

16 Table A.1 shows district characteristics by eligibility category and prevailing party status (for the cases in our sample) compared to similar characteristics for all California school districts. The districts in the sample are larger, poorer in terms of revenues and expenditures per average daily attendance, and more racially diverse than California school districts overall. From our sample, the autism and SLD cases generally involve smaller school districts with fewer minorities, English learners, and students receiving
present testimony from a number of witnesses who are family or friends, but no witnesses who have expertise in the subject matter (beyond familiarity with the student). Accordingly, when we look at the data for the number of district witnesses, we see the same pattern across eligibility categories as the number of student witnesses, i.e. there are typically more witnesses for the district in autism hearings as compared with hearings for MR or SLD. Indeed, on average, the number of district witnesses is greater than the number of student witnesses; because districts tend to have more witnesses than students across categories, we assume this suggests the greater need to defend the IEP by offering school personnel responsible for all aspects of the programming.

A better measure that relates to both resources and networks is access to medical and educational experts (Smardon 2008). To ensure that our measures of student witnesses account for the expertise of the witnesses, we include a binary measure of whether the student had independent experts. For this measure, we treat independent experts as including diagnostic experts (typically those who have conducted independent assessments); treating physicians, psychologists, or therapists; and private educational, therapeutic, and medical experts hired to examine current and prospective placements, to participate in the IEP, or to testify in the due process hearing.

Independent experts are distinguished from district-based experts (e.g., a teacher, the school’s psychologist, etc.) as well as from lay witnesses (the parents themselves) because for parents to obtain their opinion requires a significant outlay of monetary resources. Using this measure, we see that parents of autistic children are substantially more likely to present the testimony of independent experts at due process hearings than are parents of SLD or MR children (78 percent compared to 56 percent and 46 percent, respectively).

A separate way through which class position can influence legal success in due process hearings is through the ability of wealthier parents to obtain privately funded assessments or to provide their children with privately funded education and then to seek reimbursement from the school district. Thus, our final measure of social position is whether the parents obtained monetary relief. This measure combines success and class advantage. As Part I emphasized, seeking reimbursement often is a superior strategy as compared to claims for compensatory education or prospective relief in many respects. For students outside the special education system or for those whose eligibility is in dispute, having the resources to obtain private assessments can have a strong influence on the IEP process. An independent expert can challenge the propriety of assessments conducted by the school and can provide new information to influence the perception of student’s needs. Even more importantly, having the resources to fund a private school placement provides substantial evidence that the student would benefit from the parents’ preferred placement (Ong-Dean 2009). Moreover, it provides indisputable evidence about the strength of the parent’s dissatisfaction with the district’s proposed program. Using this measure, we see that parents of autistic children are substantially more likely to obtain monetary relief than are parents of SLD or MR children (12.5 percent compared to less than 8 percent).

free or reduced lunch than the MR cases. Similarly, in cases where students prevailed, the districts generally were smaller than in cases where districts prevailed, but there were no significant differences in terms of resources or composition between cases where districts or students prevailed.
To test the robustness of our findings, we examined parallel data collected by the OAH. The OAH began to collect administrative data on IEP challenges in August 2007. Thus, although the temporal overlap is limited (our dataset goes back to 1995), the administrative data afford a set of comparable findings for the more recent period. Moreover, the OAH data have the additional advantage of information from the complete population of disputes against which we can situate our findings from a sample of due process hearings.

OAH annual reports are consistent with our findings. For this recent period, autism cases still present far more IEP challenges and far more due process hearings than any other eligibility category, clearly disproportionate – as noted earlier – to their representation in overall special education enrollments. Over the past three years, the percentage of due process hearing requests involving autism has ranged from 30-31%, while the percentage of enrollments involving autism has not exceeded 7%. Interestingly, though, the autism cases (once filed) are not more likely to go to hearing than other categories. Over this same period, the percentage of due process hearings involving has ranged from 26% to 32%, roughly the same as the proportion of hearing requests. This is consistent with a class-based explanation: parental resources could affect settlement in two contrary ways. On the one hand, if the parents of autistic children are more likely to have resources, we might have expected autism disputes to be overrepresented in due process hearings. On the other hand, resourceful parents might be better situated to handle settlement negotiations and mediation short of a hearing. Similarly, the school districts might be more receptive to more favorable settlements if they understand that the parents are well placed to pursue litigation vigorously. The latter explanation better fits the data, but we cannot rule out the first account.

OAH data on attorney representation and the number of witnesses follows the same patterns as the hearing data that we collected, though the average number of both student and district witnesses in the OAH data is somewhat larger across eligibility categories, particularly for students. During the past three years, the average number of student witnesses per hearing has ranged from 5 to 6.3, and the average number of district witnesses has ranged from 5 to 5.8. This might reflect the different samples (our sample of MR, AU, and SLD compared to the sample of all hearings). Or it could be a period effect – consistent with the idea that due process hearings are becoming more like judicial proceedings (Zirkel, Karanxha, and D’Angelo 2007) – or it might reflect the fact that the opinions do not provide a complete accounting of the testifying witnesses – a point that was apparent from the face of the opinions in a small number of cases.

We have established that the parents of autistic children differ indeed from the parents of MR and SLD children on several measures of class advantage. Recall, however, that what needs to be explained is not only a disproportionate likelihood to prevail, but also how this likelihood has changed over time, the fact that, as we saw, it diminished in both absolute and relative terms. What could explain this change? Perhaps the class composition of the parents of autistic children has changed over time? As the number of diagnoses continued to increase, and as the parents of autistic children have been particularly successful in litigation, this has created a “pull” force attracting also parents of lower SES to the diagnosis and emboldening them to dispute the decisions of school districts. Ong-Dean (2006) has claimed that something similar happened with learning disability. In the 1970s, the diagnosis was innovated by a relatively small group of privileged parents, but this eventually led to influx into the category in the 1980s from less
privileged parents, completely changing the class composition of the category. To test this interpretation, Table 4 compares our two measures of class advantage for each eligibility category over time.

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<tbody>
<tr>
<td>Autism</td>
<td>0.92</td>
<td>0.77</td>
<td>0.67</td>
</tr>
<tr>
<td>MR</td>
<td>0.82</td>
<td>0.36</td>
<td>0.5</td>
</tr>
<tr>
<td>SLD</td>
<td>0.69</td>
<td>0.52</td>
<td>0.44</td>
</tr>
<tr>
<td>Total</td>
<td>0.76</td>
<td>0.57</td>
<td>0.6</td>
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<tr>
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<td>0.65</td>
<td>0.65</td>
</tr>
<tr>
<td>MR</td>
<td>0.64</td>
<td>0.46</td>
<td>0.54</td>
</tr>
<tr>
<td>SLD</td>
<td>0.54</td>
<td>0.41</td>
<td>0.56</td>
</tr>
<tr>
<td>Total</td>
<td>0.65</td>
<td>0.52</td>
<td>0.61</td>
</tr>
</tbody>
</table>

Superficially, the results reported in Table 4 would seem to lend support to the argument that the class composition of the autism has changed in tandem with the decrease in the chances of the parents of autistic children to prevail. During the earlier period, 1994-1999, the proportion of autism hearings where the parents are represented by an attorney or have secured the testimony of independent experts is very high, 92%, and clearly larger than for MR and SLD. In the following 5-year period, however, a much smaller proportion of parents of autistic children are represented by an attorney or supported by independent experts, 65% and 77% respectively. The readers can ignore the column for the third period, 2005-2009, since as we explained earlier in 2005 due process hearings were taken over by a new administrative agency, and it is impossible to disentangle the effects of this change from changes in measures of class advantage.

On second look, however, the best we can say about Table 4 is that it does not permit us to reject the argument that changes in the class composition of autism explain the diminishing chances of the parents to prevail, but that ultimately it raises more questions than provides answers. First of all, declines in measures of class advantage happen across the board for all eligibility categories, therefore they cast doubt on the argument that the decline for autism is explained by the specific “pull” it exerts, since no such pull should be anticipated for the two other categories. Second, while the proportion of SLD hearings with independent expert witnesses and attorneys representing the parents goes down during 2000-2004, Figure 4 has documented that the chances of districts to prevail against SLD parents actually decreased during the same period. Finally, in Figure 4 we have seen that the chances of the districts to prevail against the parents increased the most for autism, and much less so for MR, yet in Table 4 the most striking change in class composition is actually for the parents of MR children. For all these reasons, we must conclude that analysis of the change over time in the likelihood to prevail lends only qualified support for the class explanation, and provides strong indication that this explanation is, at best, incomplete.

III. Due Process Hearings as an Economy of Worth
There are other reasons, moreover, why we are dissatisfied with explaining the outcome of due process hearings as solely a function of parental characteristics such as class position, education, resources, etc.

The main theoretical reason is that this sort of explanation is reductionist. Even if parents of autistic children prevail disproportionately because they are able to hire superior attorneys and expert witnesses, they must do so through the medium provided by the specific language and procedural aspects of special education law and by the specific characteristics of autism as an eligibility category. Neither law nor the discourse about developmental disabilities is an inert medium merely transmitting parental clout. As noted earlier, the hearing is a stylized staging of a dispute where the combatants and their weapons are carefully constructed and then submitted to an authoritative test of their relative worth. The resources that the two sides bring to this staging are certainly important in determining the outcome of the test, but no less important is the specific mode according to which the dispute is staged, and especially the specific rules for apportioning worth.

Methodologically, as well, the class explanation is unsatisfactory in how it treats causality. Parental class is artificially constructed as an “independent” and antecedent variable, impinging from without on the special education hearing. Yet, one could easily argue that the causal sequence is, in fact, inverted: it is not parental class that explains why due process hearings involving autism are more likely to be decided in favor of the parents, but the specific characteristics of autism as a diagnostic and eligibility category – characteristics which also tend to increase the likelihood of prevailing against the district – which attract to it middle- and upper class parents. This argument is supported by several studies demonstrating increased diagnostic substitution from mental retardation to autism (Shattuck 2006; King and Bearman 2009), explained, at least partly, by parental interest in a diagnosis that is less stigmatizing and affords greater access to services. Which, then, is the antecedent and independent variable? We tend to think neither. We tend to think, with Weber (1949), that what sociologists explain are historical events, not natural facts, and that to explain such events is to isolate, within a complex and interactive causal series, the unique and “differentiating” elements that therefore carry specific “liability” – to use a legal metaphor that is very close indeed to how Weber thought about this (Turner 2000) – for the event having taken place in this way, and not another.

This methodological consideration leads us to observe that the class explanation is ad-hoc. It can apply to any eligibility category, regardless of its content, if empirically one finds it to be disproportionately middle class. Ong-Dean (2004, 233) has expressed this rationale succinctly: who prevails in the due process hearings tells us more about the parents making the challenge than about the conditions being challenged. Paradoxically, this shifts the burden of explanation completely to what makes autism disproportionately middle- and upper-class, i.e. the burden of explanation swings back to rest completely with the content of the eligibility category, with whatever aspects of the diagnosis make it attractive to middle- and upper-class parents. It is highly unlikely that these aspects are not also intimately related to how autism figures in due process hearings and how districts respond to the configuration of autism as a disability in the

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17 The class advantage argument is a species of the broader perspective of “judicial decision-making as politics,” a perspective that has been criticized by legal scholars as failing to account for the way that law constrains judicial decision-making (Tamanaha 2009; Posner 2008). See also Latour’s (2010, 62) ethnography of the French Conseil D’Etat, which makes a similar point.
school setting. So we are back to square one: to know why the parents of autistic children are disproportionately likely to prevail in due process hearings we need to examine the specific logic according to which such disputes are staged and resolved, and how autism, as an object of expert knowledge and testimony, figures into it.

To do so, we can start with an empirical finding that constitutes an anomaly for a class explanation and which, to our minds, indicates that it is incomplete. As the reader surely recalls, we have used the capacity to mobilize independent expert witnesses as an index of the parents’ resources and have shown indeed that the parents of autistic children were disproportionately likely to secure such witnesses. The obvious implication is that such witnesses are able to sway the opinion of the hearing officer and thereby increase the parents’ likelihood to prevail. While this certainly happened in some of our cases, especially in the earlier ones (more about this below), the opposite was also true: there were many cases, and more so over time, in which the hearing officer doubted the credibility of independent expert witnesses and downgraded their worth. In these cases, when doctors, psychiatrists and independent psychologists testified about their assessment of the child or about the state of knowledge in the field, the hearing officer would point out that they had relatively little experience and interaction with the individual child involved, they only saw the child for an hour or so in their office or were speaking about general issues and not specific individual needs. For example, in one hearing involving an autistic boy, two independent psychologists to testified on behalf of his claim that he needed 25-40 hours of ABA-DTT and that the programming offered by the school was inadequate. The hearing officer found that “their opinions are not persuasive” because they only “met Student one time for approximately an hour and a half” and did not base their assessment on “Student’s unique needs per se, but on the body of literature that…supports the view that only an ABA-DTT program is the most effective intervention for autism” (2007080932-2008010). In this case and others, the hearing officer would explicitly grant more credibility to the testimony of relatively “low” experts such as teachers and occupational/physical/speech therapists to the extent that they had daily interaction with the child and hands-on knowledge of his or her needs. Some of this dynamic may be endemic to the nature of expert witnessing and not unique to the case of autism or to special education law more generally. The more prestigious the independent expert witness, the more likely she is to be perceived as a “hired gun” and the hearing officer to suspect that the payment she receives undermines the credibility of her testimony. The teacher, on the other hand, is a public servant and receives no testimony-related compensation. Nonetheless, we observed the bias in favor of hands-on “low” experts also in cases where they were employees of a private agency serving the child, or even directly employed by the parents, i.e. in cases where they were handsomely compensated by one of the parties prior to testimony.

In one spectacular case involving a child with the dual diagnosis of autism and mental retardation (595-98), the school district called as its witness Professor Edward R. Ritvo, MD, the famous UCLA autism expert who participated in writing the diagnostic criteria for autism for the DSM-III-R and who for years led the advisory board of the National Society for Autistic Children (NSAC), with numerous articles and cutting-edge research on autism to his name. The hearing officer, however, indicated in his summary that he found Ritvo’s testimony less credible and relevant than the testimony of the child’s teachers and therapists at the private school where the child was taught at parents’ expense. Ritvo did not have first-hand knowledge of the individual child and his needs, and he did not observe the classroom environment, while the teachers and therapists, though they had an indirect monetary interest in the matter, were more
credible because they were thoroughly acquainted with both child and classroom environment. While in this case it was the district that called on high status independent experts and lost as a result, the general point is that the due process hearing does not merely transmit advantages and powers constituted elsewhere, but refracts and inverts them according to its own mode of apportioning credibility, or as Boltanski and Thevenot’s (2006) put it, its own “economy of worth”. The point is that the class advantage that permits certain parents to mobilize high status expert witnesses is not a reliable source of clout at the due process hearing, and cannot by itself explain why parents of autistic children have a greater likelihood to prevail.

So to the initial task of explaining the greater likelihood to prevail possessed by the parents of autistic children we have to add two additional puzzles: Why is the testimony of teachers and hands-on therapists often treated as more worthy than the testimony of scientific experts? Why would the parents’ clout weaken over time? It is not impossible to accommodate the puzzles within a class explanation, but as we saw earlier these answers tend to raise even more puzzles than before. One begins to stretch the paradigm and introduce residual categories (Leigh Star and Bowker 2000) to the point that one is no longer advancing understanding but “saving the phenomena” (Duhem 1969). It is perhaps time to begin afresh. We will offer an alternative account that does not reject the insights offered by class explanations, but comprehends them within a less reductionist framework. In the final part of this paper, we would like to show that the capacity of the parents of autistic children to prevail at the due process hearing, while not independent of class status, is crucially related to the specific character of special education law as an economy of worth. Within this economy, the due process hearing functions as a test situation where the worthiness of different actors, arguments, states and things is measured in order to rank them against one another and thereby produce agreement in a situation of endemic controversy and limited resources. Since the task at hand is to show how this economy works, we will shift gears from the largely quantitative method we have employed up till now, to an interpretative mode of investigation and exposition. The presentation of the data is necessarily going to be less systematic and we will be drawing on specific examples in order to illustrate the argument without providing quantitative estimates.

Let us begin with the anomaly of expert witnesses. Why the testimony of teachers and hands-on therapists is often treated as more worthy than the testimony of scientific experts? Because, as we saw, the former were better acquainted with the unique individual needs of the student involved, and with the specific programming designed to meet these needs. In Boltanski and Thevenot’s (2006, 140-142) terms, the “investment formula” that links a state of higher worth with a certain cost or sacrifice required for access to that state, is an investment of time and proximity required to become acquainted with the unique needs of the individual child involved. The goal of special education law is to guarantee that each student is the recipient of “free and appropriate education” (FAPE), defined as education specifically designed to meet the unique needs of each individual student (20 U.S.C. §§ 1401, 1412). What does it mean to meet the needs of a student? When is education appropriate? The key is to provide “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child” (Board of Education v. Rowley, 458 U.S. 176, 201 (1982)). How much is sufficient? The sufficiency of educational benefit necessary to satisfy IDEA varies with the potential of each pupil, as “[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite
variations in between” (458 U.S. at 202). To put it in Boltanski and Thevenot’s (2006, 76, 140-142) terms, “potential” is the “higher common principle” of the due process hearing, a “convention for establishing equivalence among beings” and for ordering them in a hierarchy of worth. The notion of potential, after all, is key to all educational endeavors as indicated by the etymology of education, from the Latin educere, namely to draw out something hidden or latent. Potential is something that everybody has – by definition, since it is hidden or latent – hence it establishes an equivalency between multiple disabilities, from the purely sensory to the developmental and the cognitive, as well as between the able-bodied and the disabled. Yet, potential is also something that by definition is individual and variable and permits us to rank individuals according to their worth.

Since potential is hidden or latent, procedures must be developed to test for its existence, to measure its quantity, to weigh who has more or less potential, i.e. more or less worth, or, which is the same thing, to determine when the efforts undertaken to realize this potential have been sufficient. This is exceedingly difficult and contentious. In some cases, notably sensory disabilities such as deafness or blindness, the task is made simpler by the assumption that there are no inherent limitations to the potential of the student involved, only external and temporary ones that may be removed with the correct intervention. In this case, support services are prosthetic, i.e. they complete the disabled individual and turn her into the equivalent of a fully able-bodied person. In the case of severely retarded students, however, an opposite simplification seems to guide legal reasoning: “For a severely retarded pupil, IDEA requires more than a trivial or de minimis educational benefit but rather mandates meaningful benefit which generally implies progress as opposed to regression. However, the State is not required by IDEA to maximize the child’s potential.” This means that the goals annually set must show only some incremental gain or, put differently, that the only potential ascribed to the severely retarded is the potential to have a potential at all, that is, not to regress or stay the same from year to year. To use a mathematical term, potential is equal to delta (Δ), i.e. the smallest possible increment.

In between these two poles, there are no clear signposts, and the law has to rely heavily on experts: “A determination as to the adequacy of an IEP is a matter of expert opinion.” Expert assessment, however, can be standardized and turned into a bureaucratic procedure. A good example is the “discrepancy clause” which underlies most procedural definitions of learning disability. To be classified as learning disabled for special education purposes, a “severe discrepancy” between tested intelligence and academic performance must be demonstrated. (Ong-Dean 2004, 3-4) Put simply, if IQ scores are higher than grades, then one is learning

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18 Rowley is cited in nearly all due process hearing decisions, because it is the seminal decision in which the Supreme Court defined IDEA’s statutory language “free appropriate public education.” For a California example giving substance to the notion of potential, see K.S. v. Fremont Unified School District, No. 3:06-cv-07218-SI (2008), where a district court remanded to OAH a determination that a child eligible as autistic was sufficiently cognitively impaired to be “incapable of more significant progress then she has made to date.” The court observed: “Such a finding creates a low expectation of plaintiff and will affect the educational programs she receives for the rest of her life. Therefore, this finding must be based on more evidence than the testimony of a single and apparently unqualified witness.” (p. 10)

Note that the logic behind the procedure is to assimilate the learning disabled to the pole represented by sensory disabilities. The IQ score indicates pure potential. The grades indicate actual performance. If potential is markedly higher than performance, it is hindered by external and temporary causes, and efforts to assist the learning disabled pupil are simply prosthetic. Note, moreover, that the standardized procedure severely limits expert discretion and judgment and, we would argue, makes it harder for parents to successfully contest the decisions of the educational bureaucracy. Essentially, the investment formula that apportions worth as a function of proximity to the individual child’s needs and potential is balanced by the requirement to detach legal reasoning, as much as possible, from the substantive details of any given case, so as to preserve legal stability (Latour 2010). The assessment of potential is folded into standardized tests, which themselves are folded into a procedural decision rule, so as to forestall, as much as possible, a risky decent back into the ambiguous presence/absence of potential.

In accordance with this reasoning, the SLD hearings in our data presented some fairly uniform characteristics: the issues in dispute in these cases were almost always whether the student is eligible or not for special education as SLD, and/or whether they should be placed in a regular classroom or not. The factual and legal findings almost always centered on the discrepancy clause, and consequently the scope and impact of expert opinion was fairly limited. To give but one example among many: a child with a medical diagnosis of ADHD was deemed nonetheless ineligible for special education under the category of SLD, because the district’s expert testified that the discrepancy between his scores on WAIS-R IQ test and Woodcock-Johnson achievement test was not large enough. He further testified that (based on his observations) there was little evidence of an attention problem. The hearing officer deemed this evidence more credible than the testimony of the child’s psychiatrist, who gave him the ADHD diagnosis on the basis of some fairly standard psychiatric tools (1170-96). We see, therefore, that when a procedural decision rule like the discrepancy clause is well-entrenched it tends to trump even the authority of medical experts. In other hearings, this same procedural rule trumped expert testimony that compared the child’s performance with other children (354-00), or which urged placement outside a regular educational setting (449-00).

No less importantly, the resort to standardized tests and procedural rules reduced the ambiguity about the child’s potential. Thus in the case of a 13-year-old boy eligible for special education as SLD, who was seeking placement in a program specifically designed for dyslexics, the hearing officer rejected the petition because the student was found to have derived educational benefit from the program offered by the district. The student, however, was making C and D grades in his courses, but the hearing officer noted that “[a] below average student is likely to remain below average as compared to his classmates while he makes progress at the same rate they do.” Put differently, the standardized assessment of potential meant here that even the weakest possible evidence of “educational benefit”, the smallest delta (Δ), was taken as sufficient (2006010033). To put it bluntly, what we witnessed in SLD hearings is that the question of what

20 The federal requirement looks to a “severe discrepancy between achievement and intellectual ability.” 34 C.F.R. 300.541. The state requirement in California is similar (Education Code 56337; 5 CCR 3030), but further specifies that a "severe discrepancy" is defined, in terms of standardized test scores, as a difference of greater than 1.5 standard deviations, adjusted by one standard error of measurement, between ability and achievement scores. 5 CCR 3030(j)(4)(A).
are the child’s unique individual needs was rarely addressed. Instead, the hearings revolved around issues of measurement, and measurement functioned as a “black box” that preempted controversies about the assessment of needs.

Now we get to our main point. Compared with all other disabilities, including retardation and learning disability, the diagnosis of autism maximizes ambiguity regarding potential and consequently increases the reliance on experts. Autism comes packaged together with the idea of a critical window of opportunity in early childhood when it is still possible to “get in there and re-wire the circuits or re-write the software.” (Stacey 2003; Siegel 1996: 84) In one hearing, dealing with a high-functioning girl who was diagnosed at the age of 4, the hearing officer noted that she needed intensive ABA (Applied Behavioral Analysis) therapy because of a “narrowing window of opportunity”. (00-2128) When this idea was originally formulated it meant the first three years of life during which the brain is still enormously plastic, and during which intensive intervention may rearrange neural pathways to foster normal development. However much this “myth of the first three years” has been criticized and debunked (Bruer 1999), the effect has been simply to extend it over the whole of childhood and beyond. For example, in the case of a 6-year old high-functioning autistic boy (95-548), the hearing officer relied, in part, on the testimony of a prominent developmental psychologist, Bryna Siegel, who supported an intensive one-to-one home-based ABA program. Siegel explained that early intervention for children with autism is extremely important because, during the first six years of a child’s life, it is easier to “mold the child neurologically.” This extension into later childhood and beyond is possible, because at its core the idea of a narrowing window of opportunity represents not scientific knowledge but an ethical commitment. Essentially it represents an ethical, legal and political “right to normal development”, and seeks to include the training of developmentally disabled children within the ethical economy of restorative treatment, though what is to be restored is a certain quotient of potential for development. Add to this the notion (and institutionalized reality) of the spectrum, i.e. that autism can appear in various manifestations and various degrees of severity ranging from individuals who are severely disabled and retarded to others with Asperger’s disorder whose intelligence is above normal, i.e. that autism comes packaged with built-in heterogeneity and ambiguity about potential.21 Add also the fact that whether IQ tests can be administered to autistic children is strongly disputed (Bolte et al 2008; Dawson et al 2007; Dawson et al 2008; Edelson 2006; Hertog 2007), and that autism was only added to IDEA in 1990 and therefore still lacks clearly defined institutionalized procedures to determine its presence and “worth”. Add all this together and you get a maximal degree of ambiguity regarding the potential of the autistic children affording parents greater flexibility to maneuver against the educational bureaucracy by mobilizing the testimony of experts.

We consider the following hearing as an exemplary demonstration of the greater flexibility afforded to parents by the ambiguity of autism. In this case, the parents of an autistic boy prevailed against the district and won a compensatory education program including an

21 This ambiguity was built into the diagnosis from very early on. In Bernard Rimland’s Infantile Autism (1964) – a book acknowledged by all experts to have shifted the field of autism research and treatment into its current direction – we find the following quote: “an infant’s road to intelligence lies along a knife-edged path, and the higher the potential intelligence, the steeper and more precarious the slope” (127). Put differently, precisely when autism is the most severe and the child would seem the most intellectually disabled, one should detect behind actual performance an even greater potential intelligence.
unspecified number of hours of ABA provided at home. During the hearing, both sides called upon expert witnesses who disagreed, among other things, about how to interpret the child’s demeanor at school – where the district’s experts saw “compliance,” the parents and their experts saw him “tuning out” – and about the necessity for home-based services. Essentially, the district’s experts argued that the child was meeting his behavioral goals at school, and so the school-based program must be adequate. The parents’ experts countered that the child was not meeting the same goals at home, and that this was evidence of the failure of the program to foster “generalization” of what was learned at school to other contexts. One expert averred that such failure to generalize was characteristic of high-functioning autistic children, who would behave well at school for fear that their peers would deem them odd, but their behavior at home would show that they haven’t really learned to behave normally. The hearing officer agreed and required the district to provide in-home services. (1359-01) Note how the notion of “generalization of skills” replaces a determination of potential with an expansive interpretation of the environment for which the school is responsible. The school is required to construct a “prosthetic environment” (Holmes 1990) enveloping the student in multiple sites.

As a rule, the issues dealt with in autism hearings where much less uniform that in SLD hearings, though many centered on the question of methodology, i.e. whether the child should be provided with ABA therapy and for how many hours. Unlike SLD hearings, determining the child’s individual needs was fore-grounded in most of these hearings precisely because of the built-in ambiguity of autism. One fairly typical hearing involved a six-year-old autistic child with significant cognitive potential, but with deficits in attention and fine-motor planning and processing. The parents’ expert recommended an intensive ABA program, explaining that the diagnosis had come "late." The district disputed the severity of the disability, and offered a regular classroom with IBI services and without an aide. The parents prevailed, since the hearing officer found that the child needed an intense level of services in light of his attention, behavior and language needs and the relatively late diagnosis. The goals offered by the district were deemed too low because they were based on present levels of performance, which were deemed to not represent the child’s true potential because he had only begun to work on the underlying skills (577-05). In a similar case, a 9-year-old autistic child sought a regular classroom placement using computer technology and a full-time aide that would allow him to “access his cognitive potential”. The hearing officer seemed unwilling to prejudge the child's potential. It was “one of those difficult cases”. Ultimately the parents prevailed on most issues, and the hearing officer explained that his decision was calculated to make sure that the child would obtain “an education that...reflects his cognitive potential.” He concluded with the following sage advice that would have been unthinkable in an SLD hearing: “Nevertheless, findings of fact and conclusions of law arising from the record of a due process hearing are but modest clues to reality. What works, works. What doesn't, doesn't. Even diagnostic tests must yield to what STUDENT can and cannot do” (1207-97).

The ambiguity of potential, the lack of standardized procedures, the newness of the category, all mean that in autism cases there would likely be a greater tendency on the part of the hearing officer to defer to expert opinion. We already saw that compared with MR and SLD, more expert witnesses and specifically more independent experts are mobilized in autism hearings. It seems fairly safe to conjecture that the greater number of expert witnesses in autism hearings reflects the greater ambiguity about potential in autism. Since the category is so heterogeneous regarding
potential and severity, the hearing officer is more dependent on expert opinion in trying to determine the individual needs and appropriate programming goals for autistic children than with other categories.

A good example of the reliance on expert opinion is the case involving a six-year old autistic student whose parents had procured one-to-one intensive behavioral intervention services several years earlier in addition to enrolling their child in private preschool (548-95). The parents argued that the program offered by the district – a special class/Head Start program - did not provide their child with appropriate education suited to his or her needs. They hired a prominent autism expert (Dr. Bryna Siegel from the autism clinic at the University of California, San Francisco) to conduct an assessment of their child and to evaluate the district program. At the hearing, Dr. Siegel testified that she had found the district’s program to be unsuitable for the child because it was unfocused, child-centered, and lacking a behavioral intervention component. She further testified that her research showed that children who participated in intensive, home-based treatment programs made significantly greater progress than children with the same characteristics who participated in group-based programs such as the district. The implication was that the district’s program would not realize the child’s potential, assessed by Dr. Siegel to be comparable to other autistic children she observed. Another autism expert (Dr. Tristram Smith, a psychologist from Washington State University who previously worked with the renowned Dr. Lovaas) supported Dr. Siegel’s testimony, opining that research shows that students involved in an intensive treatment program that consists of one-to-one instruction for 30 to 40 hours per week made greater progress than children receiving less intense services in a public school classrooms. Compared to the testimony of district employees (who had little to say about the connection between their program and autism-related teaching methods), this expert testimony was more compelling to the Hearing Officer.

This case is from 1995, the year our data begins. We have seen that over time, however, districts have become more likely to prevail in autism hearings than before, and that the proportion of independent experts at these hearings also decreased. If the ambiguity of potential in autism gives the parents greater flexibility of maneuver against the districts, and makes the hearing officer more dependent on expert witnesses, why would parental clout weaken over time? Why would there be less independent experts at the hearings? We argue that over time districts responded to their relative weakness in autism hearings in a way which meant that worth begun to be allocated differently between independent and school-based experts, and consequently increased districts’ chances to prevail. The issue of methodology was central to this response. In the earliest period (the mid to late 1990s), some parents were able to achieve noticeable success by hiring independent high-status experts to testify that district programming was not designed to meet the unique needs of autistic children. Even though the law does not require school districts to implement any particular teaching methodologies, the effect of the early cases was to privilege the home-based ABA methods supported by the parents’ experts. School districts ultimately responded, however, by hiring autism experts to assist in the development of autism-specific programs, train school personnel, and then to testify at due process hearings in support of these new programs. These programs generally did not involve the exclusive use of intensive ABA methods, but instead used ABA behavioral methods in conjunction with other educational
methods including TEACCH (structured teaching methods developed at the University of North Carolina), PECS (augmentative communication methods), and others.  

At first, this meant that the hearing officers had little guidance in how to weigh the conflicting testimonies of autism experts and consequently rendered quite a few decisions in which they accepted fairly expansive definitions of the child’s individual needs and potential. In 1996, the aforementioned Dr. Smith was able to persuade the Hearing Officer that a district program with less than 30 hours of one-to-one therapy per week was inadequate (478-96). We already saw how in another hearing, the parents’ experts were successful in establishing that a school-based behavioral program without a home-based component was inadequate because it did not foster “generalization” (1359-01). Other early cases demonstrate that school-based programs were still in their infancy, struggling to catch up with the high bar set by the parents’ experts. In a 1999 hearing, the district had a program that incorporated TEACCH, ABA therapy, and PECS, designed in part by Elizabeth Zastrow (who trained at the University of North Carolina in implementing the TEACCH program). Ms. Zastrow and other district witnesses emphasized the effectiveness of TEACCH in promoting independence. However, the child’s assessors and experts successfully testified that independence was not an immediate goal for the child, and that the child was not making progress with these methods (1853-99). In another case (2314-01), the district used a clinical psychologist (Dr. Sandra Kaler) to establish that a multi-method program was adequate in addressing the needs of autistic students, but the proposed district program still did not include any of the methods that Dr. Kaler described and the proposed teacher had no training in any of them.

From the early 2000s onwards, however, as school-based autism-specific programs multiplied and their track record lengthened, when the parent and school district experts faced off, school districts now had the benefit of the legal framework behind them: the law does not require the hearing officer to decide which party proposed the best placement, but merely to ascertain whether the district’s proposed placement was “appropriate” (see Board of Education v. Rowley (1982)). Appropriateness could be demonstrated by the programs’ track record with similar children, and bolstered by the program’s staff autism-specific training and extensive familiarity with the individual child. With expert involvement in the development of programs, presentation of research at the hearing, and testimony about the needs of the child, the districts began to develop an advantage that often surpassed parental resource-based advantage. Similarly, this period is when worth begins to be apportioned differently and the school’s hands-on “low” experts (teachers and therapists) begin to be accorded more credibility than independent “high” experts (psychiatrists and psychologists).

Starting around 2002, we see that school districts began to win more autism hearings than before, and especially those that involved decisions about the appropriateness of methodology. To understand why, consider a case (1703-02) in which the parents (who favored a 20 hour/week CARD program) challenged the school district’s 5 hour/week “Intensive Behavioral Intervention” (IBI) program on the grounds of inadequate training of the instructors and the lack

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22 IDEA requires that an IEP define a program based on “peer-reviewed research to the extent practicable,” 20 U.S.C. § 1414(d)(1)(A)(i)(IV). Part of what we describe here is the content given to this requirement, although it is not usually expressed as such.

23 The Center for Autism and Related Disorders, Inc. (CARD) is an organization founded by Dr. Doreen Granpeesheh that follows the principles of applied behavior analysis.
of intensity of the program. District witnesses were able to establish the overall success of the program, the rigor of the training required for the instructors, and the benefits of the other components of the structured program, so that the hearing officer concluded there was little difference between the student’s CARD program and the district’s IBI program. Similarly, Dr. Edward Ritvo successfully supported the district in a number of cases, by arguing against the need for intensive DTT programs in favor of more eclectic programming. In 1795-02, the parents’ expert (the clinical director of CARD, Dr. Granpeesheh) testified in support of a 40-hour per week DTT program for the child. Dr. Ritvo, who had visited the proposed classrooms and exhibits but had not met the child, testified that the district’s program (including 10 hours of DTT a week) was appropriate. In 899-03, Dr. Ritvo successfully advocated in favor of a similar program on the basis of the same review of the classroom setting, even though the parents’ wanted an intensive ABA program. See also 2956-04, where the Hearing Officer found the district testimony more persuasive. The parents’ expert witnesses did not have teaching experience, did not know the student at the time in question, and did not observe the classroom. Reliance on general findings from research studies was not seen to be directly relevant to the student’s unique needs.24

Having created autism-specific programs and accumulated some track record, school districts were able to define a standard against which the adequacy of programming would be judged. This standard was typically presented as an eclectic combination of programs tailored to the individual needs of the student, which accorded well with the legal emphasis on each student’s unique needs. Against this standard, a petition for ABA-only methodology would appear dogmatic. Thus, in a 2006 hearing the district described the way it had revamped its preschool program for autistic children three years previously by engaging numerous outside experts, including Dr. Bryna Siegel. This task force developed an eclectic program based on a model recommended by the National Research Council and Dr. Siegel’s work. Although the director of the ABA-only school [Dr. Long] that the student attended presented research that an ABA-only program is the most effective program for autistic preschool children, he was unable to say whether the district’s program was effective. Ultimately, the Hearing Officer concluded:

When the District created its eclectic preschool program for preschoolers, it did so based on the available research and recommendations by acknowledged experts in the field. The testimony of [district employees] established that the three important components of the District’s comprehensive program – ABA, TEACCH, and PECS – are supported by peer-reviewed research. The scientific research regarding the various methodologies to teach autistic children is still emerging and inconclusive at best. Based on the current ambitious efforts underway to study the various methodologies, establishing the relative efficacy of current methodologies in a manner which comports with scientific principles has thus far

24 Around this time, the OAH decisions began to be appealed to district courts and appellate courts. In general, these decisions resulted in deference to OAH. For example, Adams v. Oregon, 195 F.3d 1141 (1999), where the Ninth Circuit deferred to the administrative determination that an autistic child was not entitled to an intensive ABA program, because the school district had offered a diverse program that followed the early intervention research of Dawson and Osterling. The court noted that “the Lovaas program which Appellants desired is an excellent program. Indeed, during the course of proceedings before the hearing officer, many well-qualified experts touted the accomplishments of the Lovaas method. Nevertheless, there are many available programs which effectively help develop autistic children... While Appellees' experts may not have been as highly qualified as Appellants' experts, they nevertheless were qualified to give their expert opinions as to the appropriateness of Lucas' IFSP program.” See also Joshua A. v. Rocklin Unified School District, 319 Fed. Appx. 692 (2009).
been impractical. Additionally, Dr. Long’s testimony and the Howard Study did not establish that the District’s program is not effective in meeting the individual needs of a student (p.9).

IV. Conclusion

In conclusion, let us suggest a different way to understand what due process hearings are; what the disputation around autism meant and accomplished; and why district success rates changed over time. The class interpretation sees the due process hearing as a situation of conflict over scarce resources between social actors with opposing interests. While this interpretation can make sense of some of the evidence, it is ultimately incomplete. We suggest to think of due process hearings also as iterative tests of relative worth where parents and school districts collaborate through disputation. Through repeated tests, the parties discovered what it means to be classified as “autistic” for special education purposes, something that was ambiguous and ill-defined to begin with. They crafted a new standard of appropriate education in the form of the new autism-specific but methodologically eclectic programs. Comparing the poorly defined programs offered in the 1990s to the autism-specific program at issue in the late 2000s, a strong case can be made that even as the parents begun losing more battles than previously, they have won the long war of attrition through collective insistence on behavioral remedies and autism-specific programs. Ultimately, however, the language of war is ill-equipped to make sense of what happened. While each due process hearing ends with a decision about “who prevailed”, collectively they represent an iterative process in which hearing officers, attorneys, behavioral and educational experts, as well as the lay expertise of parents, work together to produce legal stability and continuity (Latour 2010). Through their combined work the ambiguous category of autism is gradually “digested”, so to speak, detached from its substantive ties to specific forms of expertise, and turned into a legal category.
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Data retrieved from [http://www.ed-data.k12.ca.us/welcome.asp](http://www.ed-data.k12.ca.us/welcome.asp)
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IDEA Data. Annual report tables. Available at:


Children 3 to 21 years old served under IDEA, by type of disability:
Selected years, 1976-77 through 2007-08

Digest of Education Statistics 2009 (Table 50)