
Privileged Advocates: disability and education policy in the USA

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ABSTRACT Since the establishment of educational rights for children with disabilities in the 1970s, special education in the US has included a growing share of students and has constituted an ever-growing share of education budgets. Previous research has focused on the disproportionate assignment to special education of low-income and minority students, concluding that special education mainly reproduces social disadvantages. This article argues that privileged parents – by virtue of their ability to navigate complex legal and scientific practices and discourses that are seen as guarantees of fairness and neutrality in special education – are able to secure advantageous resources for their children through special education. Through analysis of the distribution and content of ‘due process’ hearing requests in the California special education system, this article shows how advocacy in this part of the system depends on parents’ cultural and economic capital. Specifically, reimbursement claims in due process hearings show how having economic capital can be used to leverage public education resources, while parents’ testimony in hearings shows the importance of having cultural capital. In concluding, the emphasis on parental involvement in both regular and special education is discussed and alternatives to the individualized system of rights in special education are considered.

With the passage of the Education for All Handicapped Children Act of 1975 (EAHCA), the right to a public education was extended to children with disabilities, many of whom had been entirely excluded from US public schools. According to the 1975 estimate of the US Congress, roughly one million children with disabilities were being excluded. In the years following its passage, the number of children served under the EAHCA (and its 1990 successor, the Individuals with Disabilities Education Act [IDEA]) continuously expanded, due not only to the integration of children with disabilities, but also to continual growth in the number of children identified with disabilities. Thus, in the 1976-1977 school year, 8.3% of public school students received special education services, while 13.6% did in 2006-2007, representing a 64% increase in the percentage of children in special education (US Department of Education, 2009).

Thus, while the initial thrust of the EAHCA was to integrate children with disabilities into the public schools, the expansion in the number of children diagnosed with disabilities signals a growing tendency to manage educational needs through identifying particular cases of disability and the educational needs related to disability. By locating problems in the individual child and attempting to remedy them on an individual basis, EAHCA/IDEA embodies, in some respects, what disability theorists refer to as a medical model of disability, a model that ultimately limits and stigmatizes people with disabilities as it defines them as disabled. These same theorists challenge the medical model by articulating a social model of disability that locates disability in institutional

and cultural practices that arbitrarily limit impaired individuals, practices whose alteration could render the differences between people with disabilities and those without disabilities unimportant.

Without disputing the significance of a social model of disability, we argue that the expanding use of disability diagnoses as a means of determining how children will be educated has also created new opportunities for families with exclusive resources – the material, cultural, and social resources associated with membership in dominant racial-ethnic groups and social classes – to seek particular educational benefits for their children. As such, we argue that while the medical model of disability may disadvantage children with disabilities in some respects, it also privileges some children with disabilities in other respects. This, in turn, points to a further sense in which educational practices and policies tend to provide greater benefits to children from privileged backgrounds and, by clothing these benefits in the language of universal legal rights and scientific objectivity, tend to obscure their own socially biased nature. In order to explore the role parents' resources play in their ability to advocate for their children's needs in the special education system, we analyze quantitative and qualitative data on parents' challenges to schools in the special education due process hearing system in California, following a brief review of previous research and theory on disability and education.

Background

The EAHCA was passed in 1975, following years of litigation by parent and advocacy groups demanding equal access to public education for children with disabilities. The legal precedents for this activism, as well as some of its ethical rationale, originated with the civil rights activism of the period – in particular, the push to end racial segregation in the public schools in both its legal and *de facto* forms.

However, disability rights are also supported by distinct intellectual approaches to disability as a phenomenon articulated within the disability rights movement. While these approaches are not homogeneous, at their core is a common distinction between a medical model of disability and a social model. The medical model describes an understanding of disability that explains difficulties in the disabled person's life as the inevitable consequence of his/her physical or mental impairments and, accordingly, seeks to remedy the problem of disability through forms of rehabilitation or 'cures'—medication, prosthetic devices, or genetic screening (Longmore, 1995; Campbell & Oliver, 1996). In contrast, a social model of disability, advocated by disability activists and disability studies authors, reveals the ways in which disability is a consequence of the social environment – physical, organizational, or cultural – impinging on people with impairments in discriminatory and essentially arbitrary ways. Proponents of the social model of disability call for an approach to disability that focuses on changing the social environment, an approach that improves the life circumstances of people with disabilities and, in so doing, undermines the belief that disability is innate to the individual. By locating disability in the social environment, the social model calls into question the individual-level distinction between disability and nondisability, as well as distinctions among disabilities, suggesting that rigidly categorized disabilities are merely artifacts of the medical approach to disability (Campbell & Oliver, 1996; Linton, 1998).

In the context of education, the social model of disability would identify the exclusion of children with disabilities from education as a fundamental condition of the social environment limiting the life outcomes of people with disabilities. As such, integrating children with disabilities into the public education system represents a necessary first step in recognizing a social model of disability. Beyond this, however, a social model of disability calls for revising the educational environment – with respect to its physical structures, its internal organization, its curriculum, and its pedagogy – in ways that accommodate a diversity of student needs and abilities, rather than focusing on the student's individual disabilities and the means for remedying these disabilities. In its purest form, this is what is meant by 'inclusive education.'

The emergence of disabled children's educational rights initially reflected the ideology of the disability rights movement. In addition to the US, Italy, France, and the UK all established universal educational rights for children with disabilities in the 1970s, and many more countries have recognized these rights since then (Barton & Armstrong, 2007; Plaisance, 2007; Ferri, 2008). In 1994, UNESCO's Salamanca Statement affirmed, *inter alia*, the need for educational systems to

provide all children with disabilities access to education, when possible in a regular setting, and to provide parents with choices regarding their children's education. Particularly noteworthy is the Statement's apparent call for inclusive education, which is cited as an influence on international trends in education for students with disabilities (Badza et al, 2008; Halinen & Järvinen, 2008).

In the US, the influence of a social model of disability could be seen in the arguments made by supporters of the EAHCA. Simply asserting the right of all disabled children to a public education was grounded in a 'normalization' philosophy, which essentially held that the limitations of children with disabilities were caused, in large part, by their exclusion from mainstream education, not the other way around. Furthermore, the EAHCA's 'preference' for educating children with disabilities in the same settings as other children (i.e. in the same schools and the same classrooms) was justified not only on the grounds that it would benefit the children with disabilities, but also on the grounds that it would increase other children's understanding of disability and promote a more diverse, tolerant society. Over the years, revisions made to the EAHCA's successors have also reflected an awareness of the tenets of inclusive education – for instance, the 2004 re-authorization of IDEA included support for technology, curriculum, and assessments that follow 'universal design' principles, which allow for use with the 'broadest range of individuals' without the need to make specific adjustments for individual students (Gabel, 2008; Ong-Dean, 2009).

At the same time, current US special education policy and practice embody, in important respects, a medical model of disability. In the EAHCA and its successors, a mainstreaming preference is presumably asserted by its call for educating students in the 'least restrictive environment' (LRE). However, as Gregg Beratan (2006) observes, LRE is defined as the appropriate level of accommodation within an assumed setting of regular education, a non-inclusive approach to educating children with disabilities. Furthermore, children's educational rights are grounded in individualized education plans (IEPs). As such, disability is recognized and accommodated in the classroom primarily through individual-level diagnosis and plans that connect educational needs to the individual child's disabilities.[1] Parent participation is largely channeled through the IEP process. Parents give their consent to evaluations that lead to an IEP, are invited to annual IEP meetings, and have the right to approve the IEP or challenge it in due process hearings or in the state and federal courts. In effect, the IEP process has become the only site where schools can be challenged on their approach to children with disabilities. Thus, although the basis for the EAHCA can be found in collective action, particularly in class-action lawsuits, and pressure for system-wide changes, the legacy of its provisions, reinforced by judicial interpretations of these provisions, has been to limit challenges to schools largely to individual-level disputes about appropriate diagnoses and accommodations (Ong-Dean, 2009).

Critics of the special education system have tended to focus on the disadvantages imposed on students within the system and the ways in which this serves the interests of educational institutions and the groups to which they are beholden. Critiques of the medical model of disability merge with arguments about special education's promotion of a lay-professional hierarchy and of institutional racism. One vein of research notes the failure to incorporate special education students into the educational mainstream, indicated by unchanging rates of students assigned to segregated schools and classrooms or, more subtly, by the failure to incorporate students with disabilities through an inclusive educational model (Danielson & Bellamy, 1989; McLeskey & Pacchiano, 1994; Barton & Armstrong, 2007; Gabel, 2008). Others focus on the ways in which the identification of disability itself rationalizes segregation, stigmatization, and failure for some students in ways that, at best, are arbitrary and, at worst, perpetuate other types of discrimination, particularly through the over-identification of minority students with stigmatizing disability diagnoses (Mehan et al, 1986; McDermott & Varenne, 1995; Agbenyega & Jiggets, 1999; Artiles et al, 2002; Eitle, 2002; Losen & Orfield, 2002).

Without dismissing these concerns, we suggest that the association between special education and the oppression of students with disabilities should not be seen as absolute. Indeed, in some cases, identification with disabilities is associated with privilege – for instance, white middle-class students have been found in various cases to be over-represented with learning disabilities, ADHD, and autism (Croen et al, 2002; Centers for Disease Control and Prevention, 2005; Ong-Dean, 2006).

We argue that this greater prevalence of disability can be understood as one indication of the ways in which privileged parents may use a medical construction of their children's needs in pursuit of valuable services and accommodations that might not otherwise be available.

This argument is based on two related observations about the current special education system. On the one hand, current special education policy makes parental advocacy crucial, so that in some cases children gain access to valuable goods within the system because their parents are able to argue for the necessity of a disability assessment, a disability diagnosis, or a particular set of services and accommodations. On the other hand, such advocacy, within the special education as it is currently constituted, often presupposes a high level of resources – for instance, to be successful, parents may need to understand and use legal and educational jargon, make persuasive claims, or pay for outside legal or other services.

This is not to defend the medical model of disability or the current arrangement of the special education system. Indeed, by channeling parent involvement in special education through an individualized and highly technical process, that system may be seen as both providing unequal educational opportunities by design, and shrouding that inequality in the language of universal rights and scientific objectivity. However, we believe that this particular critique – i.e. of parents' unequal opportunities to advocate and obtain benefits for their children within the special education system – has been largely ignored in the literature on disability and special education, perhaps because it is not in keeping with the predominant narrative in disability studies in which people with disabilities are unified in their interests and in their oppression by institutional authority.

Our point, then, is that in special education parents, not just schools, have some power, but only if they possess relatively exclusive resources, particularly those associated with middle-to-upper-class backgrounds. Whether or not they want the system to work this way, parents who draw on these resources have an advantage over those who do not. In the following, we examine evidence that parents are able to use exclusive resources in the special education system by focusing on 'due process' hearings, after first explaining how these hearings fit within the broader call for parents to be involved in the special education decision-making process.

Parent Participation in Special Education

In contrast to much of the history of public education, parents are now routinely encouraged to be actively involved with their children's education. However, while official calls for parental involvement emphasize direct interaction between parents and their children, and parents and the school, the effectiveness of these interactions often depends on parents' prior knowledge of academic subjects and pedagogy, as well as their understanding of institutional power. The highest levels of parental involvement in children's education are thus conspicuously associated with a high level of parental education and parents' own efforts at self-education about their children's educational needs. Parents teach themselves about child development and educational practices, observe and talk to their children's teachers about curriculum and pedagogy, and exchange information with other parents about schools and teachers. Because these behaviors often depend on parents' educational background, skills and knowledge associated with high-prestige professional careers, and class-based attitudes about parents' role in the educational system, middle-to-upper-class parents are far more likely to play an active role in their children's education than parents with a lower social-class position (Lareau & Shumar, 1996; Reay, 1998; Lareau, 2000).

The expectation for parental involvement in special education is, if anything, even greater. When the EAHCA established the educational rights of children with disabilities in 1975, it also established an elaborate framework of rights for parents of children with disabilities. This included the rights to request and give consent for a disability evaluation; to participate in yearly meetings on the child's IEP, including an assessment of the child's needs, specific services and accommodations to meet those needs, and long-term and short-term goals and measures of progress; to appeal school decisions about the child's disability diagnosis and educational placement in a due process hearing with an independent hearing officer; and to appeal decisions of the due process hearing in the federal courts. Since the Supreme Court's 1982 *Rowley* decision (458 US 176) holding that within the EAHCA parents' procedural rights were more important than children's

substantive rights, the law and regulations establishing parents' rights have become more entrenched and more elaborate. To give a particularly significant example, in 1985 Congress reacted to the Supreme Court's finding that parents could not recover attorneys' fees under the EAHCA in *Smith v. Robinson* (468 US 992) by passing the Handicapped Children's Protection Act, which ultimately provided for the recovery of attorneys' fees when parents prevailed in a due process hearing or court case.

Parental Participation through Due Process Hearings

Within the framework of parental rights in special education, the right to a due process hearing may be the least exercised, next to the right to appeal decisions in the federal courts. As shown in Table I, hearing requests are rare events, and actual hearings are even rarer, despite the fact that parents often complain that their knowledge and preferences are not respected in IEP meetings. The hearing process is a daunting course to follow for many parents. Some parents will tolerate years of neglect by the school without requesting a hearing, either unaware of their rights or fearing conflict and retaliation from the school (Engel, 1993). Other parents, however, go to due process hearings and win substantial claims against school districts, resulting in reimbursement for private educational costs incurred, compensatory education, and/or the future provision of particular services and accommodations. For still others, merely requesting a hearing, or threatening to, may be enough to leverage what they believe their children need from the school.

In this last sense, analyzing the characteristics of parents who bring due process challenges to schools and who are effective in these challenges not only shows that a small subset of privileged parents predominates in the due process system, but also indicates the symbolic power that privileged parents may generally have when challenging their children's schools. Whether they request a hearing or not, their words and actions are backed up by material and symbolic power, which may be effective in the moment or may stand as a reminder of what could happen if they chose to fully exercise their rights. As the well-resourced mother of a child with a diagnosis of Asperger syndrome explains, 'They [school personnel] know that I know people who have gone through due process ... They know that I've educated myself about this stuff. They know that I know who to talk to and what ... resources are available to me to make this happen.' When problems come to a head, she simply needs to say, 'It doesn't serve any of our purposes to have to take this into litigation' (Ong-Dean, 2009, 55).

In the following, we show both that privileged parents are much more likely than other parents to be actively involved in the hearing system and that, when they arrive at a hearing, their relatively exclusive resources are a crucial foundation for their claims. By breaking down school districts into demographic types, we show that both hearing requests and hearings are far more likely to occur in districts with the most privileged parents. We then examine two particular opportunities in the due process system for parents to use their resources: reimbursement claims and parental testimony. While reimbursement claims may fairly obviously depend on parents' material resources, inasmuch as parents must first have the money to pay for services, sometimes tens of thousands of dollars, before they can claim reimbursement, parental testimony draws on less obvious resources of cultural capital [2], giving parents the opportunity to display their understanding of complex legal rights and scientific and institutional modes of reasoning. Yet such understanding may complement parents' use of economic capital and, by grounding their claims in the neutralizing language of law and science, a language that is paradoxically beyond the reach of many parents, obscure the ways in which claims are grounded in privilege.

Table I shows the number of due process hearing requests made across school districts in California in the 2001-2002 school year using data from the California Special Education Hearing Office (SEHO). Because the overwhelming majority of hearing requests are made by parents, not schools, these numbers can be taken as a measure of *parents'* tendency to make requests. For purposes of this analysis, all California school districts were first categorized into three types: 'wealthy white' districts, 'middle-class' districts, and 'poor minority' districts. Based on 2000 census data, 'wealthy white' districts are those with an annual median family income of more than \$60,000, with more than 30% of parents holding a bachelor's degree or higher, and with less than 15% African American or Hispanic parents. 'Poor minority' districts have median family income

lower than \$35,000, less than 10% of parents with a bachelor's degree, and more than 50% African American or Hispanic parents. 'Middle-class districts' are defined only with respect to median family income (between \$35,000 and \$60,000) and education (between 10% and 30% of all parents holding a bachelor's degree). Finally, a fourth, residual category ('unclassified'), comprises all districts that do not fit into any of the first three categories; for instance, Mount Pleasant Elementary School District, which has a relatively high percentage of minority parents (61.3%), an average level of education (17.9% of parents with a BA or higher), and a rather high median family income (\$75,320). Clearly, these labels should not be taken too literally. For instance, it would be more accurate, yet cumbersome, to refer here to 'wealthy white districts' as 'predominantly middle-class to upper-class, white or Asian American districts.' Similarly, 'middle-class' districts could, in theory, comprise both 'wealthy white' neighborhoods and 'poor minority' neighborhoods.

District type (<i>n</i> = 913)	Total districts	Percentage of districts with 1 or more hearing request	Total requests for hearings	Number of requests per 1000 parents
Wealthy White	102	64.7	332	0.75
Middle-Class	319	41.1	657	0.33
Poor Minority	114	14.9	86	0.19
Unclassified	378	42.6	1787 ^a	0.59

^aOf these 1787, 968 are from Los Angeles Unified School District (LAUSD). If these requests and the corresponding 665,255 parents were removed from the sample, the rate of requests per thousand parents for unclassified districts would only be 0.35. On the recent history and the class-race dynamics of special education in LAUSD, see Ong-Dean (2009).

Table I. Number of due process hearing requests by district type, California School Districts, 2001-2002.

When data on hearing requests for the 2001-2002 academic year are broken down by districts fitting into these categories, a clear pattern emerges, as Table I shows. Wealthy white districts have the largest percentage with one or more requests (64.7%) and the highest rate of requests per thousand parents (0.75); poor minority districts have far smaller values; and middle-class districts (as well as unclassified districts) fall between the extremes in both categories. At only 0.75 requests per thousand parents, the 'high' rate of requests in wealthy white districts might still seem quite low. It should be remembered, however, that this is the proportion among all parents (not just parents with children in special education), and that it represents only a single school year. Furthermore, while a hearing request might seem like a minor event from the outside, for parents it can represent the culmination of months or years of conflict with the school. In this sense, hearing requests and due process hearings can perhaps be taken as a proxy for much more common, everyday conflicts between parents and schools. Finally, however unlikely it may be that any given parent in a wealthy white district will request a hearing in a given year, parents in poor minority districts are clearly far less likely to do so, making requests at roughly one-fourth the rate of parents in wealthy white districts.

It should also be noted that, while hearing requests are rare, actual hearings are even rarer. Data from SEHO show that of 2831 hearing requests made in the 2001-2002 school year, 2785 were first sent by SEHO to mediation, where the underlying dispute could be resolved by the parties negotiating an agreement.[3] In the same year, 2280 cases reached a resolution, were withdrawn, or were dismissed prior to or after mediation, while only 123 reached a hearing that resulted in a hearing decision.[4] As such, it is clear that unusual circumstances must impel parents to persist in these claims.[5] As the events at hearings often suggest, these circumstances include parents' possession of elite economic and cultural resources.

Parents' Resources in Due Process Hearings

Although the public record of due process hearings provides no direct evidence that privileged parents are the main advocates in the hearing system – inasmuch as names and personal information such as race, income, and occupation are left out of the record – turning to these records allows us to see where hearing requests proceed beyond the request phase and, when requests reach the stage of a hearing, how parents' resources may play a crucial role in the process.

Within the district categories of 'wealthy white,' 'poor minority,' and 'middle-class,' districts were randomly selected and then looked up in an online database of hearing orders and decisions created by SEHO. This search produced an even more unbalanced distribution than the distribution of hearing requests, as the data in Table II show. Counting both cases that reached a hearing and those that did not – i.e. those that produced a hearing decision and those that only produced a hearing order – there were 41 cases in 20 randomly sampled wealthy white districts.[6] Only 24 cases came from the 20 sampled middle-class districts. This contrast is all the more striking when one considers that there are only 68,900 parents in the 20 wealthy white districts, but 129,040 parents in the 20 middle-class districts. In order to increase the chances of locating a significant number of cases in poor minority districts, 50 were sampled instead of 20. In these 50 districts (representing 158,265 parents), only four cases were located. Because none of the four cases in poor minority districts actually reached a hearing (i.e. they only appeared in the database because they resulted in a hearing order), a meaningful comparison of cases across demographic types is not possible; indeed, it might be more appropriate to see due process hearings as more-or-less exclusively an arena for middle-to-upper-class parents.

District type	Total parents	Number of cases (hearing orders & hearing decisions)	Total hearings	Number (%) of hearings involving reimbursement
Wealthy White (n = 20)	68,900	41	22	16 (73%)
Middle-Class (n = 20)	129,040	24	8	2 (25%)
Poor Minority (n = 50)	158,265	4	0	-

Table II. Hearing Office cases by district type, California School Districts, 1995-2003.

Data sources: California Special Education Hearing Office and National Center for Education Statistics.

One sense in which this inequality is based in parents' social class resources is evident. Among the 22 cases in wealthy white districts in which a hearing reached a decision, 16 (73%) involved parents' claims for reimbursement. In short, parents who reached a hearing had typically already made monetary investments for which they sought reimbursements. These investments ranged from \$1350 to somewhere over \$54,000 and included expenses such as private evaluations and tuition at private schools for children with special needs. While reaching a hearing is no guarantee of reimbursement, these parents were presumably motivated by their awareness that, without reaching a hearing, they would almost certainly lose this money in addition to any claims to diagnoses, services, or accommodations they sought through a hearing.

Obviously, there may be greater benefit to a child when his/her parents obtain needed services immediately and seek reimbursement later. Ignoring this potentially crucial issue of timing, one could argue that parents unable to afford the cost of reimbursable services ultimately have a fair chance to obtain needed services by proving their necessity at a due process hearing. This, at least, is the assumption in IDEA's provisions for reimbursement, which calls for the same determination of whether a district has made an appropriate placement offer to the child – i.e. has not denied any necessary services or other accommodations – regardless of whether a new placement is sought or reimbursement is sought after the fact. However, if proving the necessity of services denied by the district at a hearing is difficult, it may be especially difficult when the student has not had the chance to benefit from them.

A particularly convincing demonstration of the difference between services sought and services already obtained is seen in a hearing in the wealthy white Palos Verdes Unified School District. In this case, Case 1073-02, the specific controversy centers around the parents' claim that their seven-and-a-half-year-old daughter, diagnosed with autism at the age of two, is experiencing difficulties in producing speech due to verbal apraxia, 'a speech production disorder.' The district, claiming that the girl's speech production difficulties are due to dysarthria, a weakness in the tongue and jaw muscles similar to multiple sclerosis, denies that the student has apraxia and therefore denies her related 'extended school year' (ESY) services, which are provided over the summer to prevent regression in skills. The parents provided these services at their own expense and claimed a right to reimbursement at a due process hearing. In the final hearing decision, the hearing officer grants

reimbursement, noting that the district's own testimony has unwittingly demonstrated the effectiveness of the services and thereby supported the parents' claim for an apraxia diagnosis:

The Hearing Officer notes that District speech pathologist Susan Weber testified with respect to ESY 2001, 'I do not think that services beyond the regular summer program were necessary.' In support of that conclusion, she testified that she observed 'impressive' improvement in STUDENT's skills when she was reassigned as STUDENT's therapist in September 2002. Since Ms. Weber was not Petitioner's therapist during the entire period from June 2001 until September 2002, she did not know until the hearing that a significant part of STUDENT's speech and language treatment during that period was the supplemental treatment privately provided by Janice DeMore for apraxia. It follows, therefore, that Ms. Weber's approval of STUDENT's improved skill levels is an unknowing endorsement of the apraxia therapy as an integral component of STUDENT's eleven week summer treatment plan, the service provided by Ms. DeMore during the summer recess.

From this and other testimony, the Hearing Officer concludes that the student does, in fact, have apraxia. Therefore, not only are the services the parents provided reimbursable, but, precisely because they worked as the parents believed they would, they have also helped to demonstrate a need that might not otherwise have been recognized. These services would not have been provided, and the need would not have been recognized, if the parents had lacked the economic capital to hire outside evaluators and to purchase private treatment services.

A case in the middle-class Calaveras Unified School District (Case 867-898) shows what can happen when children's educational needs are not met because their parents cannot pay for reimbursable services, and must seek compensatory education. The parents of a nine-year-old boy, diagnosed as autistic at age three, requested educational services to compensate for their son's lack of public education services for five months, during which the parents and the school were unable to reach an agreement about an appropriate public school placement. The Hearing Officer denies the claim to compensatory education, finding that 'Petitioner has not demonstrated that he suffered any significant harm as a result of the loss of about five months of classroom time.' Notably, the mother had personally taught her son at home with the help of an instructional aide, and her son did not show significant improvement in most areas of academic achievement. Ironically, this lack of improvement, which was not taken as a sign that the student required educational compensation, *was* taken as a sign that the mother's services did not qualify as a reimbursable service. While it is possible that this would have been the result even if her son had been receiving professional services, it is also quite conceivable that if her son had been provided such services, they would have provided benefit, and *these* services would have been found to be necessary and, therefore, reimbursable. In effect, as in the previous example, he would have shown by experience that being denied such services would have been inappropriate.

While these examples clearly show the potential for money to leverage services from the special education system, it is not as if money alone will guarantee that a student will get what he or she needs in a public or private setting. Parents must also have the knowledge and judgment to make decisions that are effective – both with respect to the child's needs and with respect to the expectations of the special education system – and, just as importantly, to persuade others of the correctness of their decisions. This is not to say that parents are encouraged to act as experts at due process hearings, although their formal knowledge of disabilities is clearly helpful. Rather, it is to say, more often, that their actions and words must reflect an implicit 'lay expertise' (Epstein, 1995) – that is, a self-taught understanding of disability and child development, the special education system, its concerns, and the expectations it holds for parents. This kind of lay expertise is more likely from parents who have the cultural capital associated with upper-TO?-middle-class status.

Parents' possession of the relevant knowledge and the lack of this knowledge are revealed in countless ways in due process hearing decisions. We offer here only two examples, the first a case in the middle-class Moreno Valley Unified School District (Case 1382-97) in which the mother effectively testifies about her son's need for sign language instead of a picture exchange communication system (PECS):

MOTHER testified that signing is more universal and allows for greater range of communication than PECS. She also testified that when STUDENT understands, he is more

cooperative and compliant. MOTHER related a recent incident to illustrate her point. She stated that one morning, STUDENT had one of his socks on backwards. He refused to allow her to change it until she signed that she was going to turn it around. He apparently did not understand what was going on and may have assumed that by her wanting to take off the sock, he would not be going out. MOTHER testified that a PECS would not have allowed for this type of communication. MOTHER testified that the ultimate goal for STUDENT is to be as independent as possible, given his disabilities. She stated that the ability to communicate in sign language promotes this goal. MOTHER additionally testified that if STUDENT is not spoken to, he will 'tune out'. (Case 1382-97)

This mother's claims are upheld by the Hearing Officer, partially because of her effective testimony. Upon close examination, the testimony is remarkable. The mother uses a personal observation, but abstracts this from her relationship to her son to make a generalized conclusion about appropriate and inappropriate accommodations for her son. Her son becomes, in effect, a student with predictable behaviors that can be managed through appropriate treatment. Relating these behaviors to institutional concerns with cooperation, compliance, and a tendency to 'tune out' makes clear the relevance of her claims to her son's education. The proposed treatment, in turn, is described in abstract terms; that is, sign language is not simply something she shares with her son, but a communicative technique with advantages that are recognized in schools – i.e. its universality, its wide range of communication, and its tendency to promote independence.

Parents who lack this sophistication may be less successful in their use of testimony. For instance, the mother of a girl diagnosed with a learning disability in the wealthy white Oak Park Unified School District is unsuccessful in her claim that the school should have assessed her daughter for a 'disability in the area of memory' (Case 1599-00). The Hearing Officer dismisses the mother's testimony in support of this claim, noting that 'the anecdotal testimony of Petitioner's mother, who testified that STUDENT did not remember certain lessons she had been taught in class after returning home from school' is best explained by the district's claim that 'STUDENT's medication for ADHD, which is designed to remain effective during the school day to control hyperactivity, no longer controlled hyperactivity by the time STUDENT was home from school.' In direct contrast to the previous case, it is the district that makes a general observation that extends to the home context and explains the child's behavior there, while the mother's isolated observation of the child at home is dismissed as 'anecdotal.'

As these last examples show, parents do not need to claim expertise overtly in order to testify successfully in the hearing system. If, however, they articulate their parental knowledge with the standards and expectations of the special education system, they can make a crucial contribution to their children's education. Similarly, spending money is not a guarantee of public support for extra services; that is, reimbursement is granted only with a showing that the services obtained were reasonably calculated to bring the child a benefit. However, as shown above, spending money on services may bring to light needs that would otherwise go unrecognized. Together, money and knowledge (economic and cultural capital) may also reinforce each other, as parents use money to apply their knowledge and use the same knowledge to justify their use of money. Thus, while there is no visible requirement that parents have a high level of education or income in order to make effective demands in the special education system, success in making their claims may presuppose they have both.

In short, in keeping with an official ideology of individual rights, which holds that rights create equal opportunity, one might claim that effective advocacy for children in special education does not require any special knowledge or economic resources. Yet the emptiness of any claim to equality in special education can be seen not only in dramatically unequal rates of hearings and hearing requests across different social groups, but also in the ways in which parents with different resources are able to make claims. In due process hearings, which are, of course, rare, but likely a proxy for more everyday conflicts between parents and schools, the right to make claims and support these claims in personal testimony is much more meaningful for parents who have the cultural capital represented in the ability to construct arguments and produce evidence that are persuasive in an institutional context. Similarly, the right to question the adequacy of services offered by the school is available to all parents, but those parents who can afford to provide

external services at their own expense and to hire attorneys and outside experts to back up their claims may often be in a better position to make that challenge.

Discussion

The fact that parents with greater economic resources and elite cultural capital appear to be more involved in the special education decision-making process will come as no surprise to anyone familiar with the broader research on social class and home-school relations. Researchers have argued that highly educated, professional parents have a range of advantages when it comes to involvement in their children's education. On the basis of their own education and through their day-to-day work, middle-to-upper-class parents are likely to be comfortable with the technical and legal language used by teachers and by schools. By social position, they are likely to see themselves as social equals or superiors to their children's teachers and to share knowledge about schools and pedagogy with similarly situated parents. As such, they are more comfortable than working-class parents in questioning teachers' practices or in challenging schools' decisions (Reay, 1998; Lareau, 2000).

In many respects, this simply illustrates the particular salience of the rise of special education to these arguments. While most parents may feel intimidated by the IEP process – due to the legal complexities of special education law, the technical complexities of test scores and reports produced by school psychologists, and the typical imbalance at IEP meetings between one or two parents and the array of school representatives with institutional authority and technical expertise – parents with higher amounts of income and formal education are much more likely to assume an assertive role in special education decision-making. Indeed, it could be argued that special education holds a privileged place among examples of privileged parents' high involvement in education. In *Home Advantage*, for instance, Annette Lareau (2000) finds not only that upper-middle-class parents are more involved in their children's education than working-class parents, but that in contrast to working-class parents they are *most* involved when their children are struggling. If this finding can be generalized, it tells us that privileged parents' involvement helps to reproduce social-class position across generations, not so much by creating stratospheric successes, as by preventing catastrophic failures.

While preventing academic failure is a laudable goal, it is worth noting here that the class-specific nature of this endeavor is not simply an artifact of a system that established rights whose meaningful exercise happened to depend on the possession of elite resources. Rather, the very creation and expansion of the special education system has been supported by the high expectations that privileged parents *generally* have for their children. Not simply academic failure, but the academic failure of culturally mainstream, middle-to-upper-class children, provokes a crisis. This crisis leads to the search for an explanation that, increasingly, results in the finding of a disability, the drawing of a line between disability and nondisability, a line between acceptable, expected failure and failure that can and must be remedied.

We have described above the limitations of a simple opposition between a medical model of disability and a social model of disability, with the medical model representing able-ism and institutional discrimination, and the social model representing the interests of people with disabilities. In light of the findings just presented, it should be clear how a medical model of disability may also be a source of benefits for people with disabilities. The fact that disabilities not only *can* be claimed, but, in some sense, may *need* to be claimed and linked to specific disadvantages in order to determine how the individual can be helped, also points to limitations in the social model of disability. In other words, not all cases of disability are equally reducible to social causes, in part because impairments are not always readily distinguished from the disadvantages they produce. In some respects, these limitations have already begun to be acknowledged in disability studies literature (Hughes & Paterson, 1997; Shakespeare, 1999; Humphrey, 2000), but they seem not to have taken hold in disability studies in education.

A related problem that disability studies may need to grapple with is suggested by the fact that disability labels and treatments may be embraced by those groups who have the resources to take full advantage of those labels and treatments. As it is typically presented, the medical model of disability assumes that people with disabilities are unified in their common oppression by an able-

ist society. Yet the foregoing suggests potentially conflicting interests among actors defined not only by disability but also by social class and race-ethnicity, among other distinctions. This fragmentation of an assumed common identity and common interests strongly suggests parallels in feminism, which, in its so-called 'third wave,' began to criticize earlier attempts to generalize to all women experiences and concerns that seemed, upon reflection, to depend on the white, upper-middle class perspective of the movement's leaders (see, for example, [Moraga & Anzaldúa, 1981](#)).

With respect to special education policy, it will be important to consider in the future how the current educational system could be made more equitable. In keeping with the broader trend in education, parent involvement in special education is often seen as the key to problems in the educational system. With the goal of promoting parental involvement in special education, IDEA provides funding for Parent Training Institutes, where parents can learn about disabilities, special education policy, and other matters related to their children's education. The diverse array of these institutes and the services they provide make it difficult to assess their impact on parent involvement, although this may be an important topic for future research. However, it may be overly optimistic to expect that the creation of such organizations will substantially reduce the gaps that exist among parents in their ability to advocate. The type of cultural capital we have described may not be readily conveyed in a public organization's workshop. First, it consists of the disposition to acquire knowledge about children's disabilities and special education practices, and to apply that knowledge in an assertive and perhaps critical way. For a variety of reasons, this kind of disposition is much more likely to be found among highly educated, upper-middle-class professionals ([Lareau, 2000](#)). Second, even assuming the presence of these dispositions, parents with a lower level of formal education may lack the ability to acquire and apply knowledge that emanates from complex policy and pedagogical discourses and that may be needed to play an assertive role in their children's education.

Even in regular education, the potential to increase involvement of minority and low-income parents has been shown only in a modest number of small-scale studies ([Chrispeels & Rivero, 2001](#); [Colombo, 2006](#)). Dramatic claims for the potential to increase parental involvement seem to be grounded mainly on relational studies and optimistic recommendations for removing barriers to parental involvement. Such optimism, which does little to acknowledge the mutually reinforcing problems of teacher attitudes toward parents from disadvantaged backgrounds, geographic concentration of parents with limited resources and negative perceptions of school, and limited institutional resources, seems even more questionable in the context of special education, where the expectations for parent knowledge and involvement are even greater than in regular education.

Two other general approaches to increasing equity in special education seem promising. First, although more inclusive education will surely not address the needs of all children with disabilities, progress could certainly be made in this area. The experience in Italy, where a highly inclusive educational model has been implemented, shows that inclusive education does not have to be prohibitively expensive, benefits a broad range of students, and can also 'work' for a broad range of teachers ([Ferri, 2008](#)). To the extent that an inclusive model is successfully implemented across schools with students from diverse backgrounds, equity is promoted by minimizing the need for individual-level advocacy.

Second, opportunities for public and collective actions challenging special education practice could be enhanced. This would presumably mean rethinking IDEA's exclusive emphasis on IEPs, which has been one basis for legal decisions barring special education class-action lawsuits. Most obviously, expanding opportunities for collective actions would help parents with limited economic and cultural resources to overcome these limitations by pooling resources. Perhaps just as significantly, it could also change the content and impact of their challenges. The content of IEP challenges are, by definition, only about the school's treatment of individual students. As such, they usually cannot address schools' systemic practices or seek system-wide reforms as a remedy. Effective due process challenges are also limited in their impact on future decisions. For instance, in California, hearing decisions have no precedential value, meaning that parents cannot use the success of other parents' challenges to support their own. Class-action lawsuits in the courts, by contrast, do have precedential value, so that they could benefit, not only the families involved, but other families in the same jurisdiction. For all of these reasons, revisions to the current system that

allowed for more collective and public actions hold promise for reducing the inequities in special education.

Conclusion

Ironically, the individualized system that currently exists in the USA was created through the collective action of parents. Class-action lawsuits such as *PARC v. Commonwealth of Pennsylvania* (343 F. Supp. 279) and *Mills v. Board of Education of the District of Columbia* (348 F. Supp. 866), which were the basis for the EAHCA, combined parents' resources to create a systemic challenge to the practice of excluding children with disabilities from public education. Because these cases were public, they also created important legal precedents for other parents, so that parents not involved in these actions also benefited. Writing in the *California Law Review* shortly before the EAHCA was passed, David Kirp, William Buss, and Peter Kuriloff (1974) warned that if due process rights were created in such a way that children had only their parents as advocates and that the outcomes of parents' advocacy only extended to their own children, then the only children to benefit would be those whose parents had the resources to advocate.

Supporters of the EAHCA tended to be more optimistic than Kirp, Buss, and Kuriloff, seeing the due process system as the beginning of a democratic and equitable special education system. If the collective experience over the past 30 years tells us that this optimism was unwarranted, that individualized procedures benefit some students more than others because some parents make more effective use of them, we should not conclude that the intention all along was to further privilege the privileged. Parents who first advocated for passage of the EAHCA expressed a desire to create a system that not only benefited their children, but that made schools more tolerant and equitable. The limitations of that system are now apparent to many, though certainly not all, parents. Disadvantaged parents perhaps see these limitations most directly, but so do many privileged parents, who may be privileged advocates without relishing that role. Some of these parents, though certainly not all, recognize quite clearly that if it is difficult for them to act as effective advocates for their children, it is nearly impossible for parents without the same resources. This recognition may be crucial, since, as in the past, effective reform in special education may depend on the involvement of well-resourced parents.

Notes

- [1] In 2004, schools were allowed to use 15% of IDEA funding for pre-diagnostic early interventions in a Response to Intervention (RTI) process. Although the RTI process identifies need without respect to disability, this is still done through an individual-level process of screening and intervention.
- [2] Definitions of cultural capital vary. We have in mind something like Lamont and Lareau's (1988) version, which expanded it beyond the realm of high culture to include things such as parents' knowledge of schooling. Their definition is as follows: 'institutionalized, i.e. widely shared, high-status cultural signals (attitudes, preferences, formal knowledge, behaviors, goods and credentials) used for social and cultural exclusion' (156).
- [3] The fact that 31 more requests are reported in Table I is presumably due to the fact that, in rare cases, more than one district is named as a respondent, so that a single request would be represented more than once in the table.
- [4] The total number of cases with a final outcome in the 2001-2002 year is, of course, different from the total number of requests, as many outcomes would be the result of requests made in earlier years, while many requests made in that year would not reach an outcome in the same year. It should be noted that, unlike the court system, SEHO produces publicly available decisions for all hearings that reach a conclusion.
- [5] In contrast, when school districts refuse to settle a complaint prior to a hearing, they may be considering system-wide consequences of such a settlement, and their side of the dispute will be supported by economies of scale.
- [6] Note that this search was conducted in December 2003.

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