

The Special EDge

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Alternative Dispute Resolution

Solving Problems and Resolving Conflict: Another Way

Over the past thirty years, parents and schools have collectively spent millions of dollars in court trying to resolve special education disputes. The Individuals with Disabilities Education Act (IDEA), however, recognizes formal legal proceedings as the option of last resort. The law requires that two other methods for resolving disagreements be available as intermediate steps between formally filing a complaint with the Office of Administrative Hearings (OAH) and setting a court date: a resolution session and formal mediation.¹ School districts conduct resolution sessions; and, in California, OAH manages the formal mediation process and ultimately hears cases in a manner similar to civil court trials.

In its reauthorization in 2004, IDEA encouraged additional, less formal approaches to resolving differences between parents and schools. These approaches are what constitute ADR: alternative dispute resolution. While not an IDEA mandate and therefore not subject to compliance procedures, ADR is a very good idea. In fact, many states have voluntarily chosen to entertain the benefits of going

beyond strict compliance, and they are adopting various alternative and informal mechanisms for resolving disagreements about special education services. These states “appear to be using ADR with promising results.”²

Formal Complaints

The formal complaints filed with OAH involve disagreements over due process for students in special education, specifically disagreements between parents or guardians and a school district about assessment, identification, or placement of a student with disabilities. These disputes are different from **compliance complaints**, which allege that there has been a violation of state or federal requirements regarding the education of a student with a disability. A compliance complaint might allege, for example, that a school is not fulfilling the terms of a child’s IEP.

See also the insert to this issue of *The Special EDge*, which features a profile of the Procedural Safeguards Referral Service, the entry point for compliance complaints within the California Department of Education’s Special Education Division.

Judith Kopec, presiding administrative law judge at OAH, has participated directly and indirectly in both mandated and voluntary dispute resolution, and she has seen the cost—both emotional and financial. As a result, she has become “a firm believer and advocate in participating in any alternative form of dispute resolution. When you get through anger and lack of trust,” she says, “you really find that the parties are not that far apart in what they want for the child.”

1. For information about the differences between resolution sessions and mediation, download www.cde.ca.gov/sp/se/qa/documents/pseng.doc or go to www.dredf.org/special_education/dueprocess.pdf.
2. IDEA “provides for several distinct dispute resolution processes including mediation, filing of a due process complaint, which may lead to a resolution meeting and/or an impartial due process hearing, and civil action [P.L. 108-446 §615(e)(i)]. IDEA regulations also specify procedures for filing a state written complaint against an education agency by an individual or organization [34 CFR §§300.151 through 300.153].” From *Optional IDEA Alternative Dispute Resolution*, found at www.projectforum.org/docs/OptionalIDEAAlternativeDisputeResolution.pdf.

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Informing and supporting parents, educators, and other service providers on special education topics, focusing on research-based practices, legislation, technical support, and current resources

ADR encompasses numerous ways to work through strong feelings, establish trust, and focus on what is best for each student—all without having to go to court or even to leave a school district. Here's how it's working nationally and in California.

The National Perspective

According to Marshall Peter, Director of the National Center on Dispute Resolution in Special Education (CADRE), "Over the last decade there has been a major national investment in developing ADR options and equipping people with the ability to settle disagreements before a conflict blows up. It often involves training school staff to conduct better IEP meetings and training people who can come into IEP meetings and help the process get unstuck, working so that everyone can agree to a program for the student."

Peter confirms that the growing use of ADR is yielding positive results. "Nationally there has been a reduction in the number of due process³ complaints being filed and hearings being held." He is particularly enthusiastic about the role that parent training and information centers⁴ are playing in this trend. These sources of support are "providing school staff and parents with the skills they need to help them sit down when there is a disagreement and work things through. Oftentimes both parents and educators misunderstand what the law requires of the schools. These centers offer training so that misunderstandings can be avoided and time not wasted in misplaced expectations." Peter believes that increasing the number of people with training in collaboration and facilitation has resulted in a net "decline in the demand for and use of adversarial procedures" and ultimately justifies "the increased

investment in early dispute resolution options."

This promising outlook, however, is tempered by the current financial challenges that face so many states. "Money has become an issue," says Peter. "I've been working in dispute resolution and advocacy for 34 years. The fiscal challenges that states, counties, and schools are facing are unprecedented and significantly challenge the capacity of schools to deliver services." Because ADR "can help to avert due process hearings and lessen the need for the engagement of attorneys," he says, "it is my hope that people will see ADR as an investment that will more than pay for itself. How financial problems will affect demand and the capacity to prevent and capably respond to conflict remains to be seen."

What may not be so uncertain is how the next reauthorization of IDEA addresses ADR. Peter believes the law will continue to encourage dispute resolution strategies at the local level. "For a long time, Congress has been interested in encouraging early resolution meetings. I believe that interest will continue and that there could be additional emphasis on processes that create opportunities [for parents and schools] to work things out." Peter expects to see some clarification and simplification of timelines related to due process in the new law, as well,

3. Due process refers to the formal complaint procedures that IDEA has established to help parents and schools find agreement when members of a student's IEP team (parents, teachers, school administrators, services providers, etc.) disagree over the contents or implementation of the IEP.
4. Download a complete and updated directory of parent centers in California at www.calstat.org/specialEdgeOld.html (scroll down to Winter/Spring 2009 Special Insert).

but “my hope is that things do not get too codified. It’s important for people to have maximum flexibility and encouragement to work together in creative ways to solve problems.”

The CADRE Web site (www.directionservice.org/cadre) features numerous sets of training materials for developing the skills that Peter believes both parents and teachers need in order to engage in constructive dialogue, find common ground, and resolve conflict—regardless of what the problem is or where it occurs.

ADR in California

Numerous Special Education Local Plan Areas (SELPA) across the state have been working for more than a decade to develop local, alternative approaches to resolving disputes while maintaining working relationships between parents and school staff.

Although these approaches take on the flavor of the individual regions, they all seem to work with a three-pronged focus that involves training school staff, providing school staff and parents with intermediary support to address potential conflict, and helping parents gain knowledge and parity.

Training School Staff

Training related to ADR generally focuses on helping general education administrators and staff learn about special education and stay current on legal requirements. In many California SELPAs, everyone involved in IEP meetings also receives training on how to facilitate potentially

contentious situations and find common ground. These facilitation skills usually revolve around the kinds of communication strategies that Marshall Peter promotes—those that help one person better understand the position of another. According to Jill Heuer, SELPA director in San Luis Obispo County, “The important thing is that everyone be heard, that trust be established, and that everyone gets a chance to speak honestly so that everyone can focus on the student.”



Providing Supporting Structures

The second ADR strategy involves developing a SELPA’s internal structure for addressing and mitigating conflict. Mt. Diablo, Solano County, and San Luis Obispo County SELPAs all have facilitators who are neutral third parties trained to help an IEP meeting if a prior one was contentious or if an IEP team member anticipates a problem. Mt. Diablo SELPA also has an individual who serves as an “ADR Administrator,” who, according to SELPA director Mildred Browne, supports parents and staff in “setting up local mediations long before parents resort to filing a formal complaint.” The

ADR administrator is also “part of our first-aid meetings,” says Browne, where special education staff, parent liaisons, and school principals sit down to talk about potentially “hot cases” that could be heading for due process. Together the members of this team strategize about how to keep the situation from escalating. “Before a case becomes even warm,” says Browne, “people know they can get help. We involve school site principals, teachers, case managers. Everyone does everything possible to

resolve conflict at the local level.”

One SELPA in Solano County employs a dispute resolution intake coordinator who takes calls from anyone in the area. This SELPA’s response is similar to Mt. Diablo’s: “When there is a dispute, we sit down and meet with the district having difficulty, and we brain-

storm solutions,” says Solano SELPA director Sam Neustadt.

Supporting Parents

The third ADR strategy involves helping parents: giving them information about their child’s legal and educational rights, offering training in advocacy, and making available peer-to-peer support. “We work to empower parents,” says Neustadt. “We know that parents often ‘lawyer up’ because of a perceived differential in power. They often don’t feel that it’s a level playing field.” His Solano SELPA offers parent academies every year, where parents can learn about special education law. These free events are scheduled on

Saturdays and include such sessions as “Beyond Grief,” “Special Education 101,” and “Behavior Basics, De-escalation,” as well as opportunities to network with other parents and learn about resources.

This SELPA also supports parents by providing a child advocate,⁵ who is contracted through a local parent training and information center. The advocate takes referrals directly from the ADR intake coordinator, contacts the family that has a disagreement with a school, and provides family members with information about their legal rights and procedural safeguards.

The Mt. Diablo SELPA directly supports parents by providing a parent liaison who knows the law and “makes sure we’re providing FAPE,” says Browne. This liaison “walks a tightrope,” according to Browne, “between being responsive to parents and being mindful of the needs of the district—although she leans toward the parents first.” The advocate also trains parents to provide support to other parents and “she works with our preschools and provides assessment information. We’ve had a parent liaison for 11 years,” says Browne, “and the results of her efforts in avoiding due process have paid [the salary for the position] over and over again.”

5. A special education advocate works on behalf of children with disabilities (and their parents). Ideally, an advocate knows special education and the applicable federal and state laws, informs parents of their child’s educational rights, and assists families in negotiating and resolving conflicts with school districts to secure appropriate educational services for children. Advocates most commonly work with schools and families at the district level. When a difficulty is brought to OAH, parties involved most commonly employ trained mediators or lawyers.

Focusing on the Student

Throughout all of the ADR approaches in these SELPAs, there is a singular focus: the child. Browne asks angry parents, “What does your child need?” This one question seems to re-set the tempers of parents and teachers alike and dissipate any anger. In San Luis Obispo, “We bring a picture of the child to IEP meetings,” says Heuer, “so we all remember why we are there. Also, through the Tri- Counties Regional

Special Education Rights

The special education rights of parents and children include a “free appropriate public education” (FAPE), determined through appropriate evaluation, provided in the “least restrictive environment” (LRE), and guided by an individualized education program (IEP) that includes parents as active participants and decision makers. For specific information about these rights, go to www.cde.ca.gov/spl/se/qa/documents/pseng.pdf.

Center we have had training in person-centered thinking, and we’re working to develop the one-person profile, which helps to keep the focus on the child.”

The Financial Picture

In general, SELPA directors regularly echo Marshall Peter’s concerns about finances, and they wish more money were available for ADR in financially strapped California. But the commitment to ADR remains, and for good reason. In Heuer’s experience, “We have had so many IEP meetings that are resolved positively with relationships restored. It’s impossible to know what cost we have averted by keeping lawyers out of the mix, but we have to think that we have saved a lot.” Neustadt speaks for many SELPA directors

when voices his commitment to avoiding and resolving disputes in order “to steer every dollar we have to appropriate services for kids and as little as possible to expensive disputes that always come at the expense of relationships. If we can save one case from going to due process, we’ve earned the money back that we spend on ADR services.”

This claim may be something of an understatement. Perry Zirkel, a leading scholar in special education law at Lehigh University, writes about a special education litigation case that cost “over \$20,000 just for the stenographer.” If the average hearing takes between five and six days, and the average lawyer in California charges \$300 an hour, these SELPA directors make a strong case for advising other school districts and SELPAs to “spend a little to save a lot.” If, through ADR efforts, each of California’s 119 SELPAs can stop one due process case from going to court, the state has easily saved millions of dollars. Spending a little to save a lot does not just sound like a good idea. Reasonably considered, it sounds like the only idea. ♦

From CADRE

The National Center on Dispute Resolution in Special Education, features resources on alternative dispute resolution and mediation.

The following are a small sample.

www.directionservice.org/cadrel/pdf/ParentGuide.pdf

Special Education Mediation: A Guide for Parents is an eight-page document that describes the mediation process and defines key terms within that process.

www.directionservice.org/cadrel/PAvideo.cfm

A Tale of Two Conversations offers video examples of effective strategies for communication between parents and teachers.