



*Initial Review of
Research Literature
on
Appropriate Dispute
Resolution (ADR)
in Special Education*

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Disputes between parents and school personnel are an unfortunate and often costly reality in special education. Recognizing this, Congress set forth formal procedures and mechanisms for dispute resolution, initially in 1975 with the Education for All Handicapped Children Act (PL 94-142), then in 1990 with the Individuals with Disabilities Education Act (IDEA) (PL 102-119), and most recently with 1997 and 2004 versions of IDEA (PL 105-17, PL 108-446).

During the past 10 years, as the costs of adversarial procedures have become more apparent and collaborative practices have emerged, interest has evolved regarding the efficacy both of dispute resolution processes prescribed by IDEA (e.g., due process hearings, written state complaints, mediation) and other more informal and less adversarial dispute resolution processes. Interest has grown particularly in how dispute resolution processes contribute to parent–school relationships that effectively support student-centered educational service planning. As a result, a broad continuum of appropriate dispute resolution (ADR) procedures has emerged, adding a range of less formal preventative processes to the required formal legalistic procedures. Many states and school districts have implemented innovative strategies to prevent conflict from escalating and to manage disputes as they arise.

As new processes have developed and older processes have been refined, questions have emerged about “what works” and about the underlying research base that informs policy, system design, practice, practitioner training, and consumer choice. Web sites, brochures, monographs, conference proceedings, essays, and opinion papers describe these formal and informal processes.

This article describes a literature search process employed to identify research in ADR and special education, organizes some initial search results, briefly summarizes them, and raises important questions (many of which reflect the current national dialogue) for the purpose of generating a future research agenda. The authors hope that this examination of literature at the nexus of special education and ADR provides a springboard for future investigations in service of children with disabilities, their families, and the professionals who work with them. Conspicuously absent from the review herein is a needed body of research literature that addresses the actual practices employed in special education ADR. This void must be filled if we are to advance our capacity to implement practices that build and support parent–professional collaboration.

Identifying and Gathering Research

Literature was identified through systematic searches of the PsycINFO, ERIC, Academic Search Premier, Professional Development Collection, and LexisNexis databases. These provide access to multidisciplinary sources and academic and scholarly journals in education, psychology, and law. Literature was also identified through professional networking,

listserv communications, and dialogues within practitioner groups. Independent queries conducted over a year-long period utilized varying forms and combinations of the following terms: “participant training,” “stakeholder training,” “stakeholder council,” “collaborative rule making,” “parent-to-parent assistance,” “case manager,” “telephone intermediary,” “facilitation,” “ombudsperson,” “third-parties,” “complaint,” “hearing,” “mediation,” “conflict,” “dispute resolution,” “arbitration,” “negotiation,” “facilitation,” “IDEA,” “IEP,” “due process,” “education,” “special education,” and “school.” In addition, reference lists from relevant articles were crosschecked for additional sources that may not have been found through the electronic searches. The researchers attempted to identify the complete body of literature related to the field of ADR in special education as well as an initial sampling of ADR research outside the field of special education. Searches were limited to studies conducted in the United States within the past 25 years. Search variations were undertaken until no new results were returned. Articles were subsequently retrieved and examined for relevance. Articles were then read and catalogued into CADRE’s Research in Appropriate Dispute Resolution in Special Education (RAISE) database, an on-line searchable compendium of literature related to special education ADR. The database is publicly accessible via CADRE’s Web site at <http://www.directionservice.org/cadre/raisearch.cfm>.

Articles were catalogued as either *research* in ADR-special education or *policy and practice* in ADR-special education. If categorized as a research article, the methodology or type of research (i.e., qualitative or quantitative) was identified. Subject categories were selected for both research and policy and practice articles. Multiple subject categories can be selected for a particular article including: Administrators, Arbitration, Attorneys/Advocates, Costs/Finances/Fees, Due Process Hearings, Early Dispute Resolution, IDEA/Legal, IEP/IFSP Facilitation, Mediation, Multicultural/Diversity, Negotiation, Parents/Family, State Written Complaints, System Design/Administration, and Theory/Sources of Conflict.

Search Results

While collection is ongoing, in March 2007, the RAISE database contained abstracts and citations for 150 articles and monographs specific to the field of ADR in special education (46 research and 104 policy and practice). An additional 33 abstracts and citations for research addressing ADR outside of special education brings the total to 183. Article publication dates range from 1981 to 2006 with 107 of the articles published in 2000 or later. Authors of over half of the articles, including dissertations, were affiliated with a university. Less than one quarter were peer reviewed. Articles were found in a variety of publications including, but not limited to, *Special Education Report*, *Education Week*, *Principal Leadership*, *School Law News*, *Journal of Law & Education*, *NASSP Bulletin*, *Education Digest*, *Teaching Exceptional Children*, *Remedial and Special Education*, *Exceptional Children*, and *Education Leadership*.

From work identified as research, several thematic content areas were initially identified and are grouped below. Many of the articles in the database can be organized under multiple content areas. CADRE, through its RAISE database, made no effort to judge the quality, veracity, or potential contribution of studies identified. The reader must exercise judgment in drawing conclusions.

The content areas presented below, and their associated articles, represent an early and noninclusive effort to briefly summarize a limited body of literature. The following schema organizes under headings a body of work that may be categorized differently as it matures.

Satisfaction

Kereshian (1994) found that mediation correlates more highly with parental satisfaction than due process hearings. Lake (1991) reported that parents were dissatisfied with both mediation and due process because they lose 86% of due process hearings and usually compromise during mediation. However, Lake's study also revealed that when the two forms of dispute resolution were compared, mediation was less costly and less legalistic, fostered more cooperation, recurred less frequently, and resulted in greater satisfaction on the part of parents and schools than due process hearings. Turnbull and McGinley (1987) used a parental satisfaction survey to query over 80 parents from 10 states. Their results indicated that parents who took part in mediation reported experiencing significantly lower emotional costs. Kuriloff and Goldberg (1997) reported that, on average, parents and school officials expressed only modest satisfaction with the fairness of the mediation process and only slightly greater satisfaction with the resulting agreement and its implementation. In one study based on more than 2,000 parent and school district postmediation participant questionnaires collected over a 3-year period, 82% indicated that they were satisfied or very satisfied with the results. Participants scored mediators highest on process startup, expression of nonverbal empathy, and management of personalities and lowest on moving the parties toward an improved relationship (D'Alo, 2003).

Welsh (2004), through postmediation interview research, reported that regardless of whether the ADR intervention is facilitative, evaluative, or transformative, the following process characteristics are essential: dignity, thoroughness, fairness, progress toward resolution, and adherence to procedural justice. She further noted that disputants valued mediation both for the procedural justice it provided and for its assistance in helping them achieve resolution, or progress towards resolution. According to Forbis (1994), parents and administrators similarly indicated favorable perceptions of both the mediation process and its outcomes. Parental satisfaction was related to whether mediation outcomes supported what parents originally proposed or desired, whether escalation of the conflict was halted, whether parents perceived receiving support from others during mediation, and whether the other party seemed open to compromise (Hansen, 2003).

While not particular to dispute resolution, the literature search identified several articles on the Individualized Education Program (IEP) that may be relevant. Engel (1991) found that some parents viewed themselves as inarticulate, intimidated, and outnumbered during IEP meetings. A survey- and interview-based study (Miles-Bonart, 2002) on parental satisfaction with IEPs in the Southwest border region indicated that professional etiquette, procedural elements, demographic characteristics, and child eligibility code influenced satisfaction with IEP meetings. The study also found that ethnicity had no effect on satisfaction scores.

Socioeconomic Status (SES)

Regan (1990) reported that cases from high SES communities were resolved more frequently at hearings, while cases from low SES communities were resolved more frequently at mediation conferences. The same study found that, overall, parents and school districts prevailed equally at hearings, though whoever filed the request prevailed more often. Opuda (1997) found that families who reported higher annual household income were more often inclined to withdraw their due process request rather than receive a decision, while parents with lower household income levels tended more often to receive a decision rather than withdraw their request for due process. Furthermore, in a study conducted by Kuriloff and Goldberg (1997), parents from poorer school districts seemed more satisfied with mediation

agreements, and parents with attorney advocates reported higher levels of satisfaction, viewing the mediation process as more fair than did those with lay advocates or no advocates. Shemberg (1997) reported that if parents were unable to use the hearing process to their advantage when they were unable to afford counsel, lacked financial support, or obtained poor quality legal advocacy, due process was not found to promote objective justice (i.e., the feeling that the process itself was equitable).

Procedural Safeguards

Some of the foundations of contemporary and future research efforts in special education ADR include earlier data-gathering endeavors. While not research per se, the systematic collection of national data has led to increased understanding of ADR processes. Data gathered in 1994 and 1996 showed that due process hearing requests increased at an average rate of 7.5% from 1991 to 1995, while the actual number of hearings held grew at an average rate of 16.5% during the same period (Ahearn, 1997). Chambers, Harr, and Dhanani (2003) reported that 98% of due process hearings were resolved, and fewer than 2% went unresolved. Over 55% were resolved in favor of the district, over 34% were resolved in favor of the family, and 8% resulted in a split decision. Approximately half of the cases that went on to litigation were resolved, usually in the school district's favor.

In a 2002 article, Zirkel and D'Angelo used the *Education of the Handicapped Law Report (EHLR)/Individuals with Disabilities Education Law Report (IDELR)* database to determine the frequency of occurrence and outcomes of published K–12 student special-education decisions. Their analysis revealed two findings worth noting in this review: first, that the frequency of hearing or review officers' decisions and court decisions showed an overall upward trend during 1977–2000; second, that outcomes for the time period of 1989–2000 were stable, on average, with school districts being more likely to prevail in both hearing and review officers' decisions and court decisions. These findings were in agreement with the results of other similar studies.

A number of studies present findings related to special education ADR under the broad heading of procedural safeguards. In a survey of complaint managers across 35 states (Suchey & Huefner, 1998), most respondents reported that neither educator nor parental awareness of the state written-complaint procedure had increased since it was integrated into the IDEA Regulations in 1992, and a majority concluded that complaint procedures reduced the number of due process hearings. Scheffel, Rude, and Bole (2005) found rural districts particularly vulnerable to parent-initiated due process hearings. Using a qualitative methodology, they triangulated and summarized data into five key principles to help rural districts avoid due process hearings: teacher understanding of laws and regulations, IEP team member expertise, director and administrator behavior, school district expertise, and parents having relevant data describing their child's learning. Harbin and Rzepski (n.d.) identified a number of factors that increased adversarial procedures within the due process system, including ineffective parent–school communication, unrealistic expectations that the due process system will yield mutually satisfying outcomes, ambiguity between state and federal special education standards that leads parties to the due process system for clarification, the threat of due process by all parties as a coercive bargaining tool, and an “us versus them” relationship (parents and advocacy agencies pitted against state and local educators) resulting from the failure of state education agencies (SEAs) and local education agencies (LEAs) to sufficiently advocate for the education of students with disabilities.

Schiller, O'Reilly, and Fiore (2006) reported on the findings from the 6-year Study of State and Local Implementation and Impact of IDEA (SLIIDEA). Among other questions, the survey sought to investigate the use of alternative dispute resolution procedures. SLIIDEA found that almost all states had conducted at least one formal dispute resolution procedure to resolve conflicts with parents of students with disabilities in every data collection year, but each state reportedly conducted very few. The study also found that the rate of disputes at the district level was consistently low. In 2004–2005, 12% of districts conducted or participated in one or more formal mediations following a due process request, and 10% engaged in impartial due process hearings. Other findings concluded that at both the state and district levels the most frequent topics of concern in formal or informal dispute resolution procedures focused on students' educational placement and on students' education programs as set forth in the IEP, and they also indicated that district administrators and school staff members perceived a need for excessive documentation of compliance with IEP requirements to protect the district and staff in case of a due process filing or litigation.

Process Efficacy

Symington (1995) reviewed mediation models, roles, and training across five states and found that disputes were often resolved prior to hearings, whether a formal mediation session was held or not. Mediations conducted in 1993 that failed and resulted in a request for a due process hearing ranged from 10% in Connecticut and Pennsylvania to 36% in New Jersey. In the same study, agreement between parties was often reached prior to a decision being rendered by the hearing officer. In Connecticut, of 77 hearings held, only 44 were decided by the hearing officer, with agreements reached by the parties for the remaining 33. Schrag and Schrag (2004) linked seven state dispute resolution databases together to form a master database containing 9,839 cases. Their analysis revealed that three states had 50 or more dispute resolution cases per 10,000 special education students, and the remaining four states had between 3 and 33 dispute resolution cases per 10,000. A consumer satisfaction questionnaire was also sent to 250 randomly selected parents and school officials. Results indicate that (a) approximately half of state written complaint filings were decided in favor of the parents (28.9% being declined, dismissed, or withdrawn); (b) cases predominantly involved males in their early teens; (c) a disproportional number of cases in the dispute resolution system involved children diagnosed with autism, deaf-blindness, emotional disturbance, hearing impairment, traumatic brain injury, and multiple disabilities; (d) approximately 55% of the cases related to IEP, identification and evaluation, or placement; and (e) 19% of due process hearing requests reached a decision. Talley (2001) reported that of more than 2,000 requests for due process in California in 2000, 97% went through mediation and most were resolved with fewer than 100 hearings needed.

System Design/Components

Ahearn (1994) found that, overall, state personnel favored the use of mediation as a mechanism under federal special education statute, but they maintained that the use of due process should be kept in place. In 2002, Ahearn compared a one-tier system (i.e., hearing initiated at state level with no formal hearing at the school or district level) with a two-tier system (i.e., hearing takes place first at the school or district level with a right of appeal to the state level) and found annual increases in the number of initial hearing requests, a decline in hearings held, and increased use of mediation. Markowitz, Ahearn, and Schrag (2003) collected complaint, mediation, and due process data from 10 states and found that (a) SEAs directly administered state complaint procedures and began by contacting the special education administrator and superintendent at the local school level; (b) states varied considerably in the length of time they have provided mediation and did not have a strict set of mediator prerequisites; and (c) states

used either a single-level or two-level system for due process hearings. They concluded by stressing the need for an integrated data collection system. Ahearn's 1997 study of all 50 states' due process hearings found that data to assess current systems and procedures were seriously lacking.

At the local level, Falsetto (2002) utilized a demographic questionnaire and survey to develop a blueprint of components necessary for a successful ADR process/system. Highlights of the 15 identified components are that (a) it is essential to establish a monitoring system for implementation of agreements; (b) parent disputants require an explanation of ADR processes; (c) district administrators should receive an overview of ADR process training; and (d) both parties to the dispute must feel they have a part in creating the solution. Shaw (2001) conducted a survey to uncover and delineate best practices in nonmandated local-level (as opposed to mandated state-level) due process. Best practices included designing an effective local ADR program, creating a local ADR design team, committing the monetary and personnel resources necessary to support an ongoing ADR effort, and inclusion of parents on mediation panels, advisory committees, and in training activities. Kosier (1997) described Nebraska's Special Education Option, a collaborative effort by the state Department of Education, the state Office of Dispute Resolution, and local mediation centers to provide public outreach, conflict resolution skills training, and mediation services for schools and families. Costs for the service were covered by the Department of Education. Data revealed a 567% increase in the number of cases referred over three years, with a 74% agreement rate.

Parent–School Conflict

Lake and Billingsley (2000) interviewed 22 parents, 16 school officials, and 6 mediators and identified eight parent–school conflict escalation factors relevant to special education: discrepant views of a child or a child's needs, knowledge, service delivery, reciprocal power, constraints, valuation, communication, and trust. Neely (2005) used multi-vocal synthesis methods to analyze literature for a more complete picture than that afforded by a strictly quantitative analysis. She identified factors that help pave the way for successful school-based conflict management: implementing the IEP in the classroom; providing accommodations; ensuring that staff are knowledgeable about providing an inclusive environment; ensuring that administrators are knowledgeable about compliance issues; and holding staff accountable for their services and behavior. Prevention and resolution of future conflicts were addressed in a study by Bradley and Monda-Amaya (2005), who reported positive effects of an instructional package designed to help preservice special educators to understand, analyze, and resolve conflicts.

Student Involvement

Interviews of 35 students participating in student-led IEP meetings, as well as observations of five others, confirmed the students' ability to describe the purpose/benefits of an IEP, their disabilities, and their rights (Mason, McGahee-Kovac, Johnson, & Stillerman, 2002). Test, Mason, Hughes, Konrad, Neale, and Wood (2004), in an investigation of interventions designed to increase students' involvement in their IEPs, analyzed 16 studies in terms of six variables and reported that both published participation-enhancing curricula and person-centered planning strategies were effective in enhancing involvement. Results were substantiated through direct observation, scores on measures of self-determination, and feedback from participants, parents, and teachers.

Costs

Chambers, Harr, and Dhanani (2003) explored the fiscal implications of providing procedural safeguards in special education and found that during the 1999 to 2000 school year, school districts spent at least 0.3% of total special education expenditures or \$24 per special education pupil on due process, mediation, and litigation. Schools were surveyed and reported as spending \$146.5 million on special education mediation, due process hearings, and litigation during 1999–2000. Daggett (2004) reported that the average costs for mediation and due process cases were between \$8,000 and \$12,000 per case, compared with \$95,000 for litigation per case.

Advocates

A study of 100 cases in New Jersey found that lay advocates were equally effective as trained attorneys in assisting parents in resolving disputes (Vitello, 1990). According to Seven and Zirkel (2002), a survey sent to state special education directors and associations of parent advocates on the use of lay advocates to represent parents in due process hearings revealed that half of the states reported that attorneys were available when parents could afford them, but were less available when cost was a factor. Forty-six percent of state directors and 74% of parent advocates reported that lay advocates were only sporadically available when attorneys were insufficient. Seven percent of state directors and 3% of parent advocates stated that lay advocates were fully or substantially available. Kuriloff and Goldberg, in a 1997 study, reported that the presence of advocates overall did not affect parental satisfaction with process, agreement, or implementation, but that parents with attorney advocates viewed the process as more fair than those with lay advocates or no advocates. Ahearn (2001) reported survey data indicating that some states did not gather formal information about the use of attorneys or nonattorney advocates to assist parents in due process hearings, and that use of advocates varied from state to state. Six states reported that there were an insufficient number of attorneys for parents, regardless of cost, in more than 60% of their state, while 15 states indicated that over 60% of their state lacked sufficient reduced-cost or free attorney services.

Questions for Future Research

While meaningful work has been conducted, the overall literature base addressing dispute resolution in special education is exceedingly thin and does not reflect a field that has experienced two decades of rapid growth. While the studies above answer a small number of questions related to current ADR research, policy, and practice, they stimulate a host of additional ones for future investigation and, perhaps, for consideration in setting up data-based program evaluation. Some of these additional questions fall into five categories:

General

- Why has there been so little research on the important and active topic of special education dispute resolution?
- What are the barriers to conducting research in this area?
- Because procedural safeguard mandates under IDEA are intended to ensure fair procedures and free appropriate public education (FAPE), should research examine whether and how well these procedures achieve results?
- Are analyses of practices at the process level (e.g., mediation, facilitation) desirable or possible?
- Are analyses of outcomes such as improved services to the student, better student achievement,

durability of the agreement or decision, and school–family relationships appropriate outcome measures for each type of dispute resolution?

- Are cases involving children with low incidence disabilities disproportionately entering special education dispute resolution systems?

Evaluation

- Should standardized performance evaluation instruments be developed for mediators, IEP facilitators, and other practitioners?
- Can ADR special education program evaluation data be made more consistent by utilizing more uniform comparators (e.g., common criteria for successful mediation)?

Satisfaction

- Is research needed to compare participant expectations and perceptions before and after intervention?
- High rates of settlement and high parental satisfaction ratings are promoted by the presence of an attorney who advocates for the parent. Should we investigate the factors responsible, the types of settlements achieved, and the durability of the agreements?

Implementation

- Is follow-up research necessary to investigate whether, and to what degree, agreements are actually being implemented?

Practice

- Is mediation an *educational intervention* that warrants randomized studies? Would closely matched comparison group studies (USDE/IES, 2003) be more relevant given the confidential and unique context of mediation?
- Do mediated agreements or due process hearings reveal that families with differing socioeconomic statuses have power advantages and disadvantages (i.e., how do participants differ/fare across processes)?
- Is there any evidence regarding the relative merits of a co-mediator versus single mediator model, or of specific practitioner characteristics?
- Is there evidence favoring any particular dispute resolution tactics and strategies such as caucusing, premediation participant preparation, and practitioner preparation?

For some of these questions, answers might be found in the ADR research outside of special education.

Non-Special-Education ADR Research

Given the ubiquitous reality of historic and recently emerging practice and policy in special education and ADR, surprisingly little rigorous research has been conducted. Midway through 2006, CADRE/RAISE staff initiated a new expanded set of searches for studies on ADR *outside* of special education. We wondered whether other content areas and fields within ADR engaged in empirical investigations. The query was phrased by using varied forms and combinations of the terms “clinical trial,” “random assignment,” “sampling methods,” “empirical,” and “experimental” in conjunction with terms related to ADR. The date range was limited to the last 5 years. Since expanding our search protocol to include literature outside of special education, we have retrieved and catalogued an initial sample of 33 ADR-related research articles (see list of non-special-education ADR research literature below). Many of these employ more rigorous experimental designs and methodology than do the special education ADR studies we located. Our intention is not to present an exhaustive collection of non-special-education ADR research, but instead to present a glimpse of its potential richness. Studies have been located that address formal versus informal ADR processes and their impacts on poor rural households; highly varied approaches to family and child custody mediation; ombudsperson utilization; costs associated with commercial transactions; consumer perceptions of ADR mechanisms in financial transactions; on-line dispute resolution processes, and the merits of mediation relative to arbitration of grievances in the coal mining, waste management, coastal zone management, environmental, construction, and financial services industries.

The RAISE initiative will continue to search for non-special-education-specific research in dispute resolution. Future researchers may benefit from the methodologies identified therein, and some results may generalize to special education. Working collaboratively to utilize research for self-reflective examination of programs, practice, and outcomes, stakeholders across the field of special education have an opportunity to advance special education dispute resolution and to broaden the research that seeks to understand conflict resolution in general.

Conclusion

To date, our examination of the literature specific to ADR in special education offers a snapshot of a discipline whose research base is in its infancy. Most conspicuously absent is research addressing the efficacy of actual practices (tactics, strategies, interventions) employed in mediation, resolution sessions, facilitated IEP meetings, and other early/innovative dispute resolution strategies. This absence of literature is particularly noteworthy in the face of a robust national dialogue (conducted on-line, at conferences, and in trainings) focused precisely on practice enhancement and effectiveness. Existing anecdotal descriptions of current and idealized process and practice are simply not sufficient to advance our field’s response to increasing demand for effective services. In the interest of realizing the promise of nonadversarial dispute resolution for parent–professional collaboration, research must be encouraged that leads to informed practices.

As the body of research literature in special education develops, it may be helpful to use the Access Center Research Continuum (Access Center, 2006) as a model for categorizing levels of practice as: (a) emerging, in which a body of anecdotal evidence exists for a practice but no scientifically based research exists; (b) promising, in which some data exist to support a practice but it is not of sufficient rigor or magnitude to determine effectiveness; and (c) evidence-based, in which a practice is supported by rigorous scientifically based research designs that are aligned with the Council for Exceptional Children’s (CEC’s) Division of Research Quality Indicators for Research Methodology and Evidence-Based Practices (Odom et al, 2005).

While minimal research exists confirming evidence-based practice in dispute resolution, our review reveals an increasing body of literature tied to emerging and promising practices. Both the anecdotal and data-supported nature of these practices set the stage for a body of literature in the not-too-distant future that is characterized by empirically based responses to some of the questions posed above and to others. The special education ADR research agenda can be stimulated by lessons learned from the broader ADR research community.

In service of honoring and legitimizing an historic and evolving body of hard-earned craft knowledge and of informing a research agenda, responsible investigations must be continued. The tide has shifted in the past 25 years from simple provision of educational services to meaningful, measurable, and accountable programs for students with disabilities (Katsiyannis, Yell, & Bradley, 2001). It is incumbent upon the field of dispute resolution in special education to keep pace.

Literature on ADR Research in Special Education

Note that a small number of articles are multimethod and listed as both qualitative and quantitative. The bibliographic lists herein include all RAISE database entries, classified as either quantitative or qualitative, as of March 2007, as well as citations for all literature referenced in the text of this article.

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