Alternative Approaches to IEP Conflict: A Review of the Literature

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Abstract

The originators of special education law anticipated disputes and provided due process hearings as a means to settle the disputes. However, due process proved to be unfair, costly (financially and emotionally), and destructive to school-family relationships. Years later, lawmakers offered mandated mediation along with resolution meetings in attempts to lessen the usage of due process. While the number of due process hearings has decreased, mediation and resolution meetings may occur too late in the resolution process to repair broken trust and communication in relationships between families and school districts. Alternative dispute resolution strategies offer means to end conflicts sooner, less expensively, and with fewer damaged relationships.

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Conflict is unavoidable when disagreement arises between parents and schools; consequently, communication and cooperation break down (Cope-Kasten, 2013; Mueller & Carranza, 2011). Sometimes, due to budget cuts, schools do not offer solutions for meeting students' learning needs in a way that satisfies parents (Gesler, 2014). Unresolved or ineffectively handled conflict in special education leads to costly resolution. Traditional methods of dispute resolution, such as due process hearings, mediation, or resolution sessions are often unfair to either or both parties and are very costly, financially, emotionally, and in lost productivity (Cope-Kasten, 2013; Goldberg and Kuriloff, 1991). Alternative forms of conflict resolution address disputes earlier, enhance communication and cooperation, and provide for solutions that are more equitable. Moses and Hedeen (2012) provide a continuum of dispute stages and levels of intervention beginning with Stage I, which is early in the IEP process and where prevention strategies are useful to avoid conflict, to Stage V, where disagreements have already produced conflict and legal review and litigation are needed.

Traditional Approaches to Dispute Resolution

Due Process Hearing

Within the development of the Education for All Handicapped Children Act (1975), Congress provided procedural safeguards including due process hearings. Congress viewed due process as a means of ensuring parental involvement in the education of their children and as a way of settling disputes between school districts and parents. Additionally, hearings were viewed as providing equity for individual conflicts (Friendly, 1975).

However, due process is not fair; it destroys relationships, and it is costly (Cope-Kasten, 2013; Fritz, 2008; Goldberg and Kuriloff, 1991; Hendry, 2010; Mueller, 2009b). Due process hearings fail to meet requirements of three types of fairness—subject, outcome, and objective (Cope-Kasten, 2013; Goldberg & Kuriloff, 1991). In their study, Goldberg and Kuriloff (1991) found that most parents felt that they did received timely notice of hearings. However, less than half

felt that the school provided either records or explanations in a suitable manner (Goldberg and Kuriloff, 1991). Further, the fact that parents cannot navigate the complexities of a due process system unaided supports the premise that, even in terms of objective fairness, due process is not fair (Cope-Kasten, 2013). Additionally, due process presents roadblocks to minority and low-income parents (Erlichman, Gregory, & St. Florian, 2014).

Due process is costly, both financially and emotionally (Fritz, 2008; Hendry, 2010; Moses & Hedeen, 2012). Parents' legal costs include $1500-$7500 plus 10-20 billable attorneys' hours (Moses & Hedeen, 2012; Understanding IEP Due Process, 2009). Parents are emotionally involved due to their concern for their children. Both parties are strongly invested, therefore, emotions run high, and the proceedings can become contentious. However, even though parents may win a case, the preceding conflict may bring about so much anger and animosity that winning a hearing may only provide validation of, rather than healing of, resentment caused by the conflict (Cope-Kasten, 2013). Relationships are damaged and hostility is common after due process hearings (Cope-Kasten, 2013; Mueller, 2009b).

Mediation

Because of the overuse of due process hearings and the facts that hearings that are often hostile and financially burdensome, the 1997 IDEA reauthorization introduced mediation as an option for dispute resolution and then made mediation a requirement in the 2004 reauthorization (34 § § C.F. R. 300.506, 300.510). Mediation is a way to manage conflict between two parties by enlisting the help of an impartial mediator (Hendry, 2010). Mediation has several benefits over due process. Mediation is less costly than due process. Many times, parties seeking mediation have the aim to work together to resolve the dispute. In those instances, mediation has a high success rate (Fritz, 2008). As such, school and family relationships can recover to focus on students and their needs (Hendry, 2010).

However, mediation has its limitations. Mediation is used in Stage IV of disputes where relationships are already damaged (Moses & Hedeen, 2012). State (SEA) and local education agencies (LEA) can make the road to and through the mediation process easier to navigate. Eliminating or minimizing the roles of attorneys, politics (such as mediators needing to provide donations or favors for particular elected officials or when advocacy groups push for litigation in order to change laws), finances, and procedures are positive steps (Fritz, 2008; Mueller, 2009b). Other ways to improve mediation include making it easier to obtaining mediation information, using creativity, providing training and early intervention, and sharing what works (Fritz, 2008). However, when parents or school districts only use mediation as a way to appear reasonable, to garner sound bites to use against the other party in a hearing, or because a school district is forced into mediation, it has a lower chance of success (Fritz, 2008).

Resolution Meeting

In addition to requiring mediation before a due process hearing, IDEA 2004 reauthorization required a school to hold a resolution meeting within 15 days of receiving word that parents have filed for due process with the aim of addressing and resolving concerns without going to a hearing (34 § § C.F. R. 300.510). Like mediation and due process, Resolution Meetings are formal sessions that only occur after cooperative working relationships have disintegrated and are not at all preventative in nature (Mueller, 2009b). Further, Resolution Meetings are not

confidential which could further foster mistrust that one party will use the contents of the discussion against the other (Mueller, 2009a). Resolution Meetings are used in Stage IV of disputes (Moses & Hedeen, 2012).

Alternative Approaches

Alternatives to traditional methods of dispute resolution often begin in earlier stages of conflict and even before conflict arises (Moses & Hedeen, 2012). Numerous alternative dispute resolution strategies exist, including Third-Party Consultation, Parent-to-Parent Assistance, Case Manager, IEP Facilitation, and others (Henderson, 2008; Mueller, 2009b). However, SEAs and LEAs do not use alternative methods of conflict resolution as widely as they could (Hazelkorn, Packard, & Douvanis, 2008).

Facilitated IEP Meetings

Facilitated IEP meetings are useful in Stage III, the *conflict* stage (Moses & Hedeen, 2012). However, use of a facilitator can occur earlier to avoid further animosity and tensions (Diliberto & Brewer, 2014). Similar to regular IEP meetings, Facilitated IEP meetings, include an additional participant, the facilitator. The facilitator is an objective member who maintains order, focus, and civility during a meeting. Facilitated IEP meetings are free to parents and more relaxed than traditional approaches to dispute resolution (Mueller, 2009b). Mueller (2009b) shares seven necessary pieces for fruitful Facilitated IEP meetings. First is a neutral facilitator. Second is an agenda. Lack of meeting agendas was one thing fathers of students with special needs found frustrating about the IEP process (Mueller and Buckley, 2014). Third are goals for the meeting developed by both parties. Next are guidelines for behavior, a collaborative environment, and a communication plan that prevents one party's domination of the meeting. Finally, the use of a "parking lot," which is an area to hold ideas or comments that are important to the meeting but not to the current discussion so the team can consider those ideas later, is an integral part of a facilitated IEP meeting.

States, such as Wisconsin, Minnesota, Pennsylvania, Iowa, and North Dakota have coordinated facilitated IEP meetings. Most states use trained mediators to serve as facilitators for these meetings (Henderson, 2008). Beginning in 2004 in Wisconsin, states found high success rates using Facilitated IEP meetings. Additionally, some LEAs provide Facilitated IEP meetings. Oregon and Maryland SEAs provide support for LEAs with lists of professional mediators or funding to promote IEP facilitation (Henderson, 2008).

Dispute Resolution Case Managers

Case Managers, personnel who manage formal or informal complaints by providing information about the dispute resolution process and procedures and respond to questions, are useful in Stage II, the *disagreement* stage (Moses & Hedeen, 2012). After parents make a formal complaint, SEAs assign case managers to oversee the dispute issues in order to resolve the problems without going to a due process hearing (Mueller, 2009a). The case manager evaluates the conflict, answers legal questions, and determines the most appropriate dispute resolution procedure. In 2008, 13 states used case managers to help resolve disputes (Henderson, 2008). Related to case managers are Telephone Intermediaries who respond to phone calls requesting assistance. These

are used in several states, including Pennsylvania, North Dakota, Iowa, and Minnesota (Henderson, 2008; Mueller, 2009a).

Third-Party Assistance

Third-Party Assistance is a process-focused approach used during bitter disputes. Third-Party Assistance in the forms of opinion and consultation is useful in Stage III, the *conflict* stage (Moses & Hedeen, 2012). Trained consultants combine objectiveness and personal, intuitive aspects to solve current disputes and work to prevent future conflicts (Mueller, 2009a). Few states actively use Third-Party Assistance. Oregon, Washington, and Connecticut use the Third-Party Assistance approach. Connecticut uses the approach most frequently, and in the 73 meetings held between July 2000 and 2008, 92% of disputes did not go to due process (Henderson, 2008).

Parent-to-Parent Assistance

Parent-to-Parent Assistance programs are useful in Stage II, the *disagreement* stage (Moses & Hedeen, 2012). Parent-to-Parent Assistance includes parent support groups, parent training and information centers, and mentorships (Henderson, 2008; Mueller, 2009a). Parent-to-Parent Assistance can provide legal assistance and support in navigating the IEP process, the special education system, and learning about parent rights (Mueller, 2009a). Parents are trained to support and help other parents prepare for meetings and provide support through meeting processes and during the meetings themselves (Henderson, 2008). In her study, Henderson (2008) found that at least 26 states use Parent-to-Parent Assistance**.**

Kutash, Duchnowski, Green, and Ferron (2011) found that, although there is limited research on the topic, parents of students with emotional disturbances show increasing interest in parent-to-parent assistance programs. Further, they found that Parent-to-Parent Assistance, in addition to supporting parents through the special education system, can aid in improved academic achievement and emotional function of students (Kutash et al., 2011). Additionally, Mueller, Milian, and Lopez (2009) found that Latina mothers of special needs children benefited from Parent-to-Parent Assistance, grew in their parenting skills, and increased confidence in their participation in the special education system and the IEP process.

Other Alternative Approaches

Ombuds, Alternative or Non-IDEA Mediation, and Stakeholder Management or Oversight Councils are other strategies to resolve special education conflict (Henderson, 2008; Mueller, 2009b). Ombuds are informal, neutral brokers of justice and conflict resolution who examine the issues with the parties, study the law, and recommend a resolution (Alcover, 2009; Magritte, 2009; Mueller, 2009a). Ombuds are useful in Stage III, the *conflict* stage (Moses & Hedeen, 2012).

Alternative or Non-IDEA Mediation is different from mediation mandated by IDEA 2004. In Alternative Mediation, two or more mediators work together to settle disagreements (Henderson, 2008; Mueller, 2009a). This type of mediation is useful in Stage II, the *disagreement* stage (Moses & Hedeen, 2012). Some states use Stakeholder Management or Oversight Councils to provide counsel on resolving special education conflicts. Stakeholder Management or Oversight Councils generally operate at the state level, rather than the local level. Some states use the

IDEA mandated advisory panel as an Oversight Council. Some states, such as North Dakota, meet on a regular basis to inspect dispute resolution data (Henderson, 2008).

Conclusions and Areas for Further Study

The originators of special education law anticipated disputes and provided due process hearings as a means to settle disputes. However, due process proved to be unfair, costly (financially and emotionally), and destructive to school-family relationships. Years later, lawmakers offered, and then mandated, mediation along with resolution meetings in attempts to lessen the usage of due process. While the number of due process hearings decreased due to mediation and resolution meetings, they may occur too late in the resolution process to repair broken trust and communication in relationships between families and school districts. Alternative approaches to conflict resolution exist and SEAs and LEAs use them with success in many states. Alternative dispute resolution strategies include Third-Party Consultation, Parent-to-Parent Assistance, Case Manager, IEP Facilitation, and others.

Although the literature mentioned Pennsylvania as using several alternative approaches to dispute resolution, I, as a 16-year special education teacher in urban, suburban, and cyber school districts and a parent of children with special needs, never heard of any of them as options to mediation or due process. Thus, several questions arise. Who on the local level is aware of alternatives that would be less costly financially and emotionally to parents, teachers, and school districts? If special education administrators are aware of alternative approaches to dispute resolution, which alternatives are used, how often are they used, and which are the most successful?

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