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Consortium for Appropriate Dispute Resolution in Special Education

National Dispute Resolution Use and Effectiveness Study EXECUTIVE SUMMARY

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FOR:

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THROUGH A SUBCONTRACT WITH:

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Helping Parents and Educators Create Solutions That Improve Results for Students with Disabilities

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Direction Service

EXECUTIVE SUMMARY

The provision of a due process hearing to settle differences between and among school personnel, parents, and other professionals has been the primary component of the procedural safeguards of the Individuals with Disabilities Education Act (IDEA). The parent or the public agency may initiate a hearing if they are unable to agree on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a Free and Appropriate Public Education (FAPE) to the child. In a due process hearing, a third party convenes the hearing to settle disputes or differences between the parties. EDGAR provisions for formal complaint resolution were incorporated into the IDEA in July 1992. Within the formal complaint resolution process, parents and/or school personnel may submit a written complaint regarding the identification, evaluation, placement, or provision of FAPE to the State Education Agency (SEA). When Congress added formal mediation as an option within the IDEA Amendments of 1997 to resolve issues or disputes between parents of children with disabilities and schools, it recognized the need for additional and less adversarial dispute resolution approaches to resolve differences between parents and agencies.

Congress has periodically requested information regarding the use and effectiveness of these various dispute resolution procedures. Until approximately ten years ago, the national picture regarding the efficiency and effectiveness of various formal and emerging informal dispute resolution procedures has been minimal. To that end, the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and one of its partners, the National Association of State Directors of Special Education (NASDSE) have been systematically gathering dispute resolution information from SEAs to analyze formative (process) and summative (outcome) information on the use and effectiveness of these conflict resolution procedures. CADRE and NASDSE carried out several preliminary studies in advance of this *National Dispute Resolution Use and Effectiveness Study.*

An early study by Ahearn (1994) observed that there is no policy in place that requires the compilation of national data on the implementation and outcomes of due process procedures, nor is there any requirement that states evaluate their strategies for due process protections. She further found that a limited number of states have implemented evaluation mechanisms regarding consumer satisfaction with mediation and/or due process.

A longitudinal study is being conducted by Abt Associates and its subcontractors, Westat and SRI, to evaluate the state and local implementation of the 1997 Amendments to IDEA and the impact of this legislation on schools, districts, and states. One of the Congressionally-mandated questions studied dealt with alternatives to dispute resolution. Data reviewed were for the 1999-2000 school year from all 50 states and the District of Columbia and a sample of approximately 17 school districts. Study procedures involved interviews and focus groups. Findings include that the structure of the state's due process system (one-tier or two-tier) did not influence the proportion of dispute cases. They found that districts in the Northeast were more likely to have reported having a due process hearing than school districts in the South, West, and Northwest.

A descriptive study was conducted by the American Institutes for Research (AIR), as part of a broader study within the Special Education Expenditure Project (SEEP). The final report was released in May 2003 entitled *What are We Spending on Procedural Safeguards in Special Education, 1999-2000.* Study procedures included surveys at the state, district, and school levels. Survey respondents were state directors of special education, district directors of special education, district directors of transportation services, school principals, special education teachers, related service providers, regular education teachers, and special education aides.

The SEEP study found that WSEA's dismissed nearly 80 percent of formal complaints lodged against districts in 1998-99. They found that due process hearings make up the majority of dispute resolution activities with an estimated 6,763 cases across the U.S., while an estimated 4,266 mediation cases were initiated. Over half (55.7 percent) of the due process cases were resolved in favor of the district; over one-third (34.4 percent) were resolved in favor of the family; and 8 percent resulted in a split decision.

A study that complements the data/information within the current NASDSE *National Dispute Resolution Use and Effectiveness Study* is a case study review of dispute resolution within ten states (Markowitz, Ahearn, and Schrag, February, 2003). The state sample includes Alabama, California, Illinois, Iowa, Maine, Massachusetts, Minnesota, Virginia, Washington, and Wyoming. Two additional states were added to augment the information about early dispute resolution strategies — Arizona and Montana. Telephone interviews were conducted with up to three persons per state during January through May 2002. The study authors concluded that complaints, mediations, and due process hearings typically do not function as an integrated system. However, with the growing emphasis on using data for program improvement and examining dispute resolution during the monitoring process, there is increasing interest and need for integrated dispute resolution data. In order to meet this need, the dispute resolution components will have to be more systemically interrelated than appears to be the case in most states.

Under a NASDSE subcontract with CADRE, a pre- study (Schrag and Schrag, 2001) was conducted that focused on a small sample of states integrating their databases so that cases could be followed through the entire dispute resolution process. States involved were Alabama, Maine, Iowa, and Colorado. A preliminary review of databases from these states showed that the ratio of dispute resolution cases per 10,000 special education students varied greatly across the states. Therefore, it was determined that it was necessary to obtain data from all states to determine the variations across states relative to dispute resolution cases per 10,000 special education students.

To obtain this information, the authors conducted an email inquiry of states so that a national profile of dispute resolution variations across the country could be compiled. State directors of special education or their designee were asked to report the number of dispute resolution procedures requested or filed, the number held or conducted, and the number of cases of decisions or agreements reached. SEAs also reported information regarding their procedures for handling cases, the nature of their databases, and satisfaction information gathered. Three data request waves and follow-up telephone calls were used to gather this information. Data was obtained from 49 states and the District of Columbia.

The results provided a ratio of dispute resolution cases per 10,000 enrolled special education students in the 49 states. The distribution ranged from 3 cases to 2,292 cases per 10,000 enrolled special education students and is bi-modal in distribution with states in the Northeast plus California forming the high ratio group (50+ cases per 10,000) and the rest of the nation forming the low ratio group (3 to 33 cases per 10,000) in the 2000-2001 school year. Ten states are in the high ratio group and 39 are in the low ratio group.

Using this information, the present study was designed as a stratified — random design sampling both from the high and low ratio groups. The study design and sampling procedure required states to meet the following criteria:

- Confidentiality issues could be resolved enabling databases to be shared,
- All three dispute resolution databases were built on records at the student case level, and
- All three dispute resolution databases have unique student identifiers for individual students (e.g., name,birth date, social security numbers, or another student identifier) so that all cases for the same student could be identified.

Only half the states were able to link all three DR databases, thereby, finding all cases for the same student. The confidentiality issue eliminated a few more with some having state laws that precluded sharing of information or even obtaining it for their own management purposes. Having a database structure based upon individual student cases eliminated additional states. The remaining available pool of states was asked to participate and selections were made so that state population size and geographic distribution of their strata would be representative. For the high ratio states, Pennsylvania, Connecticut and Maine agreed to participate. Participating low ratio states include Kentucky, Alabama, Colorado, and Arizona.

Following their selection, states provided their databases, which were then integrated so that all special education dispute resolutions for a state were in the same database. Once integrated, analytical variables were constructed for the state and placed into the master analysis file. The master analytical file contained 9,839 cases that could be queried to answer study questions. Cases in this master analysis database consisted, in part, of cases involving more than one dispute resolution request (34.8 percent). This group of students represents 16.3 percent of the total dispute resolution population. With over a third of the cases involving repeat filings/requests, it is apparent that well managed integrated databases would assist in effectively managing the caseload. This master analysis file was designed to produce state outcome variables and some consumer outcome indicators. However, to adequately obtain outcome information from consumers, a consumer satisfaction survey was designed and conducted.

This set of consumer satisfaction questionnaires was developed for parents and school officials. A combined group of 250 parents and school officials were randomly selected across the participating states and the questionnaire mailed to them with a cover letter from their state director of special education requesting their assistance by responding to the questionnaire. Those school officials and parents not responding within two weeks were called by telephone and encouraged to answer the questions over the phone or complete the questionnaire and return it by mail. A 44 percent response rate was received from parents and a 58 percent response rate was received from school officials (overall response rate of 51.2 percent).

The study results include weighted calculations using the seven states in the stratified sample to produce total calculations for the United States (U.S.). A comparison of the study estimates for the U.S. and actual counts found the study estimates to be about 5 percent less than the actual counts obtained for 2001 (Schrag and Schrag, May, 2003). Consequently, estimates for the U.S., using the sample data, are slightly conservative.

The SEEP study (Chambers, et al., May 2003) reported that due process hearings make up the majority of dispute resolution activities, with an estimated 6,763 cases across the country. Actual counts (Schrag and Schrag, May 2003) for all states except New Hampshire showed that due process hearings accounted for 44.8% of all dispute resolution cases in 2000-01, with a projected national estimate of 12,914. Utilizing the bimodal distribution of disputes is needed to produce accurate estimates. Estimates using data in the present study show due process hearings growing, thereby, becoming a greater proportion of the dispute resolution cases, but not the majority, as reported in the SEEP study.

This *National Dispute Resolution Use and Effectiveness Study* also found that about half of the complaints filed were ultimately decided in favor of parents. Eighty percent were not dismissed, as reported in the SEEP study. Rather, this study found that 28.9 percent of all disputes were declined, dismissed, or withdrawn.

Study findings indicated that students involved in dispute resolution cases appear to be predominantly males with the maximum number of cases occurring with students in their early teens. Disability appears to have a significant impact upon the likelihood of bringing a dispute resolution case. While students with autism represent about 1 percent of the population with disabilities, they represent over 11 percent of the dispute resolution population. Students with other disabilities such as deaf-blindness, emotional disturbance, hearing impairment, multiple disabilities and traumatic brain injury tend to utilize the system beyond their representation in the population.

Five major issue categories appear to constitute about 70 percent of the dispute resolution cases in the analysis databases. The five major categories are:

- IEP
- Placement
- FAPE
- Identification and Evaluation
- Multiple Issues

Of these categories IEP, Identification and Evaluation, and Placement cover the majority of the cases. They represent about 55 percent of all cases.

The study found the percent of cases exiting a system within the intended state outcome category can provide one measure of effectiveness; that is, the percent of cases that obtained a decision or reached an agreement. Analysis of the sample found that about 71 percent of the complaints cases reached a decision, about 51 percent of the mediation cases filed reached an agreement, and almost 19 percent of the due process hearing requests reached a decision. Other factors are obviously at play within these dispute resolution systems that need to be taken into consideration within an overall evaluation of effectiveness.

The consumer satisfaction survey found that about one third of the parents indicated that they would not use the dispute resolution process over again. When asked why they were unwilling to use these dispute resolution processes, it was found that they had experienced outcomes that did not enhance their child's education. Parents reported that solutions worked out in the mediation agreement were ineffective or not implemented, and, to a lesser degree, complaint decisions/corrective actions were not effective.

The fact that some parents perceive mediation agreements as totally confidential and that states generally do not follow-up on their implementation is working to the client's (parent/student) disadvantage. If the agreement is not implemented, or the solutions contained in the agreement do not work, parents indicated that the only recourse is to file a complaint or a request for a due process hearing. This is, in part, why the repeat utilization of mediation services is so low.

Actual consumer behavior is probably the best indicator of success; with 34.8 percent of cases involving more than one dispute resolution request, it is apparent that well-managed integrated databases would assist in effectively managing the dispute resolution caseload. Due process hearings and complaints had over 40 percent of returning cases utilizing the same procedure again for the second filing/request. Of those returning and having used mediation as their first dispute resolution process, only about 24 percent chose to use mediation again. This lower return rate may reflect a combination of the highly varied success rates that mediation has with different issues, the lack of enforcement by the SEA, and the lack of well-negotiated, practical solutions.

Of the 128 cases interviewed in the consumer satisfaction survey, 28 disputes were withdrawn for a variety of reasons. The most prevalent reason (46 percent of the time) for withdrawing involved local resolution. Resolution was achieved in IEP meetings, with team intervention and with school official participation, and/or through other early resolution activities. Methods of local dispute resolution appear to be effective and encouraging them could result in fewer formal complaints at the SEA level.

The substantial withdrawal rate from formal dispute resolution processes and the fact that over 46 percent of those withdrawing solved the dispute through local efforts indicated that enhanced efforts at the local level could perhaps substantially reduce the formal dispute resolution caseload. Additional feedback from the consumers indicated the need for continued training and technical assistance for parents in understanding which issues to mediate and the process of mediation. In addition, consumer feedback indicated that additional training is needed for mediators in the facilitation of mediation agreements that are realistic and likely to resolve the conflicts or issues, as well as more training to add to the educational focus of hearing officers in order to develop hearing discussions that can be implemented and produce resolution of the issues.

Following are six recommendations made by this study:

1. Consistent with a study finding that over one-third (34.8 percent) of dispute resolution cases involve more than one dispute resolution request (i.e., formal complaints, mediation, and due process hearings), it is recommended that SEAs and local education agencies (LEAs) implement integrated data management systems containing formal complaints, mediation, and due process hearings as well as other state and local early conflict resolution strategies. Findings can have policy, organization, training, and personnel implications.

2. Based on data from this study as well as previous studies and inquiries conducted by NASDSE, state and local informal problem solving/conflict resolution procedures appear to help resolve issues more immediately and closer to the classrooms and schools where conflicts originate. For example, it was found that 46 percent of the parties withdrew dispute resolution requests because local efforts resolved their issues. It is recommended that SEAs and LEAs systematically study the use and effectiveness of these early conflict resolution systems. Earlier resolution can result in less negative impacts on the child and family (e.g., lost learning time while more formal dispute resolution systems are being accessed and carried out; less likelihood that relationships between parents and school personnel will become strained through formal conflict resolution procedures, and fiscal resources directed to carrying out formal conflict resolution rather than to instruction and learning).

3. Consistent with the growing number of consumer satisfaction tools being utilized within states, it is recommended that these tools be shared and promoted by organizations such as NASDSE and CADRE. In order for informal and formal conflict resolution procedures to be effective in resolving parental and student issues, feedback from consumers (parents and school personnel) is critical.

4. Data gathered from consumers (parents and school personnel) within this study provide mixed results regarding the effectiveness of mediation on resolving student and parental concerns. It is recommended that organizations such as NASDSE and CADRE conduct further inquiries into the reasons both parents and school personnel seem ambivalent about the effectiveness of mediation. Yet, administrators (SEEP study) reported mediation to be more cost effective than due process hearings.

5. Closely related, it is recommended that mediation agreements be sent to the SEA for review and follow-up to monitor whether the agreements are being implemented. For example, the LEAs could be required to maintain a record of follow-up activities related to mediation agreements for possible review within the state's focused monitoring activities. Feedback could also be generated from parents regarding their satisfaction with implementation of mediation agreements. This recommendation is made with the full understanding that the mediation process should be kept confidential and that the parties enter into mediation agreements with good faith and intentions. It is clear from the data gathered in this study that either (1) many mediation agreements are not strategic or appropriate, **or** (2) many mediation agreements are not being implemented by the parties.

6. It is finally recommended that SEAs continue to provide training for mediators so that they have a firm base of understanding of schools and educational programs as well as type and nature of agreements that are likely to be implemented by the parties once written and agreed-upon.