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# IDEA and Alternative Dispute Resolution: A Primer

By Charles J. Russo, J.D., Ed.D., and Allan G. Osborne Jr., Ed.D.

Alternative dispute resolution procedures can be costly and time-consuming.

**A**lternative dispute resolution (ADR) procedures are the cornerstone of the provisions in the Individuals with Disabilities Education Act (IDEA) that mandate the timely resolution of disagreements between parents and school officials.

ADR procedures are in the form of mediation and resolution sessions that are held before culminating in due process hearings. The sessions are designed to be speedier, less costly, and less adversarial than litigation. Subject to infrequent exceptions, disagreements can be subject to judicial review only after parents and education officials have exhausted the administrative remedies under the IDEA. The provisions establish time frames that parties must meet before they can initiate litigation.

In light of the potential complexity of the IDEA's ADR process, those procedures can be costly and confusing for school districts. Accordingly, this column reviews the IDEA's ADR options, starting with mediation, resolution sessions, and due process hearings. It then offers recommendations for education leaders to ensure compliance with the IDEA's ADR procedures.

## Alternative Dispute Resolution Options

ADR options include mediation, resolution sessions, and due process hearings.

**Mediation.** Before requesting due process hearings, parents and school officials have the opportunity to participate in voluntary mediation sessions at public expense. Since mediation is voluntary, school officials may not use it to deny or delay parental requests for due process hearings.

Mediation sessions must be scheduled in a timely manner in locations convenient to parents and school officials. At the same time, sessions must be conducted by trained,

qualified, impartial mediators who are named on state-maintained lists of mediators in special education. Mediators cannot be employees of states, school boards, or other agencies that provide direct services to students who are subject to the mediation process, nor can they have personal or professional conflicts of interest in the outcomes of sessions.

## ADR options include mediation, resolution sessions, and due process hearings.

Agreements that the parties reach in mediation sessions must be formalized in writing. Discussions occurring during mediation must remain confidential and cannot be used as evidence in subsequent due process hearings or civil proceedings; the parties may also be required to sign confidentiality pledges before the commencement of mediation. The results of mediation agreements can be enforced in federal or state courts.

**Resolution sessions.** If mediation is unsuccessful, school board officials must convene meetings between parents and relevant members of the individualized education program (IEP) teams of students whose rights are at issue. Sessions must take place within 15 days of parental requests for due process hearings. If educators do not convene requested resolution sessions within 15 days, parents can seek the intervention of hearing officers to begin that process.

Resolution sessions must include a school board representative with decision-making authority on its behalf, but they may not include board attorneys unless parents are also accompanied by counsel. If school officials are unable to get parents to take part in resolution sessions within a 30-day period and can document their reasonable efforts to secure such participation, hearing officers can dismiss

parental complaints. The parties need not attend resolution sessions if both sides agree, in writing, to waive them in lieu of mediation.

### Resolution sessions must include a school board representative with decision-making authority.

If the parties resolve their differences at resolution sessions, they must execute and sign legally binding settlement agreements. As with mediation, settlement agreements are enforceable in state or federal courts, but with a difference: either party may void its agreement within three business days. If the parties fail to resolve their disputes within 30 days, officials must schedule due process hearings at which evidence from resolution sessions can be introduced.

**Due process hearings.** Parents can request due process hearings on any aspect concerning the education of their children, including identification, evaluation, and placement. Board officials may seek hearings if parents refuse to consent to student evaluations. Parties must initiate hearings within two years of the date they knew or should have known of the actions forming the bases of their complaints. If state laws create other limitation periods, they must be followed.

Hearing officers who are appointed by state education agencies preside over due process hearings. The hearings are conducted by local school boards or education agencies, meaning that they are responsible for paying the costs associated with the sessions.

Hearing officers, typically school officials, attorneys, or faculty members in higher education, depending on state law, usually undergo formal preparation that varies from one jurisdiction to the next. The officers are assigned based on their knowledge of the law generally and special education in particular, plus their

ability to conduct and control hearings before preparing written reports of the proceedings.

As with mediation, hearing officers must be impartial, meaning they cannot be employees of the states or boards involved in the education of the children whose cases appear before them nor can they have personal or professional interests in those students.

Due process hearings begin after a party notifies the other side notice by filing a complaint with a hearing officer. Complaints must be sufficient unless the parties receiving them notify hearing officers and the other party in writing, within 15 days of their receipt, that they are insufficient. Within five days of receiving responses, hearing officers must evaluate whether complaints are sufficient and must immediately notify the parties of their decisions.

### Parents can request due process hearings on any aspect concerning the education of their children.

Within five business days of the scheduled hearings, parties must disclose all relevant information to the other side and can prohibit the introduction of evidence that is not so provided in advance. Such disclosure is required because the goal of due process hearings in special education is to identify the best way to serve students with disabilities rather than simply having one side prevail.

At hearings, both parents, who can represent themselves (*Winkelman v. Parma City School District* 2007), and boards are entitled to be accompanied and advised by counsel with special knowledge about the education of students with disabilities. Even so, the Delaware Supreme Court interpreted the IDEA as forbidding parents from being represented by nonattorney, lay advocates at judicial proceedings (*In re Arons* 2000, 2001).

At hearings, parties may present evidence, compel the attendance of witnesses, and cross-examine witnesses. In addition, parties have the right to obtain written or, at the option of the parents, electronic verbatim records of hearings, along with findings of fact and adjudications.

Parents can choose whether to have their children present at hearings and whether sessions should be open to the public. If parents permit open hearings, all who wish may attend. If parents opt for closed hearings, only the parties and those they wish to have in attendance may be present.

Hearing officers must render final adjudications within 45 days of requests for hearings. The orders of hearing officers are final unless they are appealed. In states allowing a second level of review at the state level, parties are entitled to final decisions, on the basis of the record, within 30 days of requests for appeals. As noted, absent unusual circumstances, parties cannot initiate litigation until they have exhausted the administrative remedies available under the IDEA's due process provisions, regardless of whether they are in jurisdictions with one or two levels of review, and they have 90 days to appeal to state or federal courts.

### Recommendations

ADR procedures are designed to be less adversarial. Yet that does not mean that the sessions are cost free, both emotionally and financially, to education leaders. Although precise data are scant, and what is available is admittedly a bit dated, a 2010 study from the West Virginia Department of Education reported that during the 2008–9 school year, more than half of all mediation sessions in the state resolved the issues in dispute with an “average [cost] of only \$1,041.60” (p. 4). Further, in *Schaffer ex rel. Schaffer v. West* (2005)—wherein the Supreme Court affirmed that absent state laws to

the contrary, the parties challenging IEPs, usually the parents, bear the burden of proof demonstrating the IEP's inadequacy—the justices observed that conducting “a due process complaint is an expensive affair, costing schools approximately \$8,000–to–\$12,000 per hearing” (p. 59). This case is now nine years old, so it is easy to imagine that those costs have increased.

### Education leaders should take formal steps to notify parents and explain their rights.

To ensure the smooth delivery of educational services to students with disabilities and to avoid disputes that are costly with regard to finance and the toll they take on those who are involved, districts might wish to consider the following points when having to initiate ADR procedures.

1. School business officials (SBOs) and district leaders should familiarize themselves with the ADR provisions in both the federal and state laws because procedures vary from one jurisdiction to the next. In that regard, most jurisdictions allow two levels of review: one at the initial hearing locally and the second at the state level. As indicated, it is important to know what happens in one's state insofar as the parties must exhaust administrative remedies before filing suit.
2. Consistent with other provisions of the IDEA not discussed in this column, education leaders should take formal steps to notify parents and explain their rights to challenge the way in which their children with disabilities are being educated.
3. Officials must remind parents that they may be able to safeguard the rights of their children under federal and state laws

other than the IDEA, such as Section 504 of the Rehabilitation Act of 1973.

4. SBOs must maintain accurate records of materials relating to student placements because that information is useful in due process hearings and judicial proceedings.
5. School leaders should inform parents that they may request voluntary mediation or may proceed directly to dispute resolution sessions on the way to due process hearings if their disputes cannot be resolved.
6. Officials should inform parents of their obligation to exhaust administrative remedies before filing suit unless it is clearly infeasible to do so.
7. Educators must pay careful attention, in consultation with their attorneys, to the time frames established in the IDEA and state law for initiating due process hearings and the statutes of limitations because they may vary from one state to the next.
8. Officials must comply with the IDEA's requirement to share all information with parents within five days of due process hearings when preparing for hearings.
9. School boards should provide regular professional development to teachers and other instructional staff, reminding them of the need to be in strict compliance with the IDEA's terms.
10. As with many other areas, school officials should review their guidelines regularly with their lawyers, typically between school years, to ensure that their policies and procedures are up-to-date with developments in state and federal laws.

### Conclusion

As evidenced by the voluminous amount of litigation in special

education, it is clear that the application of the IDEA is far from perfect. Although due process hearings and judicial proceedings can be financially costly, their biggest drawback, because of their potentially adversarial nature, is the resulting harm that often occurs in the relationships between parents and school officials.

ADR procedures are designed not only to help avoid the expenses of litigation but also to help preserve positive working relationships between parents and school personnel. Accordingly, to the extent that school district officials, including SBOs, better understand how the IDEA's ADR provisions are designed, the better they can work to ensure the educational rights of students with disabilities and all children.

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