

The background of the slide features a faint, stylized yellow torch in the center, surrounded by a circular arrangement of yellow stars, reminiscent of the Indiana University logo. The text is overlaid on this background in a dark blue, bold, sans-serif font.

# **Addressing Special Education Disputes at the Lowest Level Appropriate: Avoiding Due Process**

**Angie Balsley, Ed.D**

**Executive Director, Earlywood Educational Services**

**Indiana CASE, President**

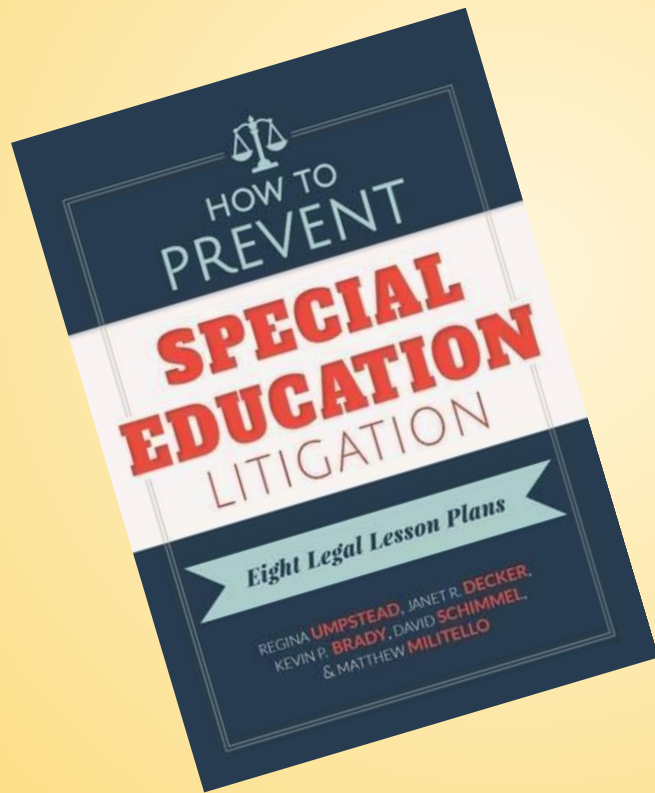
**CASE, Policy & Legislation Chair**

**Janet Decker, J.D., Ph.D.**

**Associate Professor, Indiana University**



We   **CADRE**





## Participants will be able to:

- Describe a few problems special education leaders face when a due process complaint is filed
- Analyze at least 1 pro/con of attorney involvement
- List at least 1 negative consequence that may occur after a due process complaint is successfully settled
- Identify the study's 3 recommendations to prevent disputes by 1) reducing attorney involvement, 2) requiring parties to engage in a tiered system of dispute resolution, and 3) building the capacity of special education leaders
- Define at least 2 ways special education leaders can proactively prevent disputes



# Family-School Disagreement is a Longstanding, Integral Aspect of Special Education\*

- *PARC & Mills*
- IDEA
  - Procedural Rights
  - Due Process Rights
- *Rowley & Endrew*
  - Substantive rights

\*And, *dare we say*, disagreement is not necessarily a bad thing?



## Discussion

Talk to your neighbors about your experiences with family-school disagreement, dispute resolution, and due process



The background of the slide features a large, faint, yellow outline of the Indiana State Seal. The seal is circular, with a central torch, a banner at the top reading "INDIANA", and a wreath at the bottom. The seal is surrounded by a ring of stars.

# **Improving Family-School Relationships**



# Research Study

RQ1: What were the experiences of special education directors after receiving requests for due process hearings?

RQ2: What leadership actions did special education directors take to increase cooperation and mitigate conflict between families and schools





# Literature to Inform Research

- Due process hearings result in a negative impact on stakeholders
- Leadership actions of special education directors mitigate conflict and increase cooperation

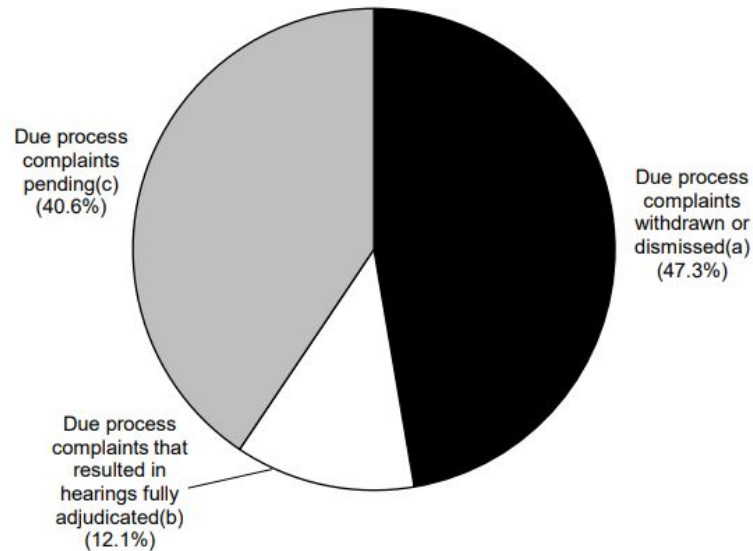
Mueller, Singer, & Draper, 2008





# Gap in Literature

**Exhibit 49. Percentage of *due process complaints* for children and students ages 3 through 21 served under IDEA, Part B, by complaint status: 2018–19**



43rd Annual Report to Congress on the implementation of IDEA (2022)



## Significance of Study

- Examined a point in the conflict resolution process that has largely not been studied by other researchers
- Investigated strategy to mitigate conflict and increase cooperation
- Findings provided insights about leadership actions that may assist in preventing and resolving dispute



## Methods

- Qualitative case study
- Single case design
- Interviewed 10 special education directors from across Indiana
- Coded for thematic analysis

## &

## Limitations

- Source of data
- Midwestern context
- Participant perspective



## RQ1 Findings

What were the experiences of special education directors after receiving requests for due process hearings?

- **Received requests unexpectedly**
- **Settlement period**



## **What do you think are....**

- The pros and cons of attorney engagement in special ed disputes?
- Negative consequences that could arise even when a settlement is reached?





## RQ1 Findings

What were the experiences of special education directors after receiving requests for due process hearings?

- **ADR unproductive after request**
- **Negative experiences with parent attorneys**



## RQ2 Findings

What leadership actions did special education directors take to increase cooperation and mitigate conflict between families and schools?

Overall, found that **PROACTIVE LEADERSHIP ACTIONS** are critical to establish, maintain, and improve family-school relationships.

- Relationships
- Understand concerns of parents
- Trained stakeholders
- Used alternative dispute resolution to resolve conflict



# Recommendations for Future Research

- Effectiveness of resolution sessions
- Role of the zealous advocate in special education dispute
- Include perspective of other stakeholders





## Recommendations for Practice

- Reduce the involvement of parent attorneys
- Require a tiered system of dispute resolution
- **Build the capacity of special education directors to be proactive leaders**



# **How to Build Capacity: Proactive Leadership Actions**





## 4 Proactive Leadership Actions

1. Build Relationships
2. Use alternative dispute resolution to resolve conflict
3. Understand concerns of parents
4. Train stakeholders
  - Legal literacy



# 1. Build Relationships

*“Proactive Leadership Actions”*



# Relationships

- Research: Considerable evidence that students' learning improves when school officials and families work together (Henderson & Mapp, 2002)
- Practical Tip: Legal Lesson #8
  - [Video example of non-collaborative meeting](#)
  - [Video example of collaborative IEP meeting](#)

Umpstead, R., Decker, J. R., Brady, K. P., Schimmel, D., & Militello, M. (2015). *How to prevent special education litigation: Eight legal lesson plans*. Teachers College Press.



# Top 10 Methods to Foster IEP Team Collaboration

1. Build trust & create relationships
2. Put aside egos; everyone is equal
3. Share a goal
4. Share accountability
5. Become an active listener
6. Make communication easy
7. Be open to other team members' ideas
8. Know the team's strengths and limitations
9. Use creative and critical thinking
10. Stop making offers; make group decisions instead

Doug Goldberg, Special Education Advisor Blog,

<http://www.specialeducationadvisor.com/top-ten-methods-to-foster-iep-team-collaboration/>



# Research: Building Relationships Key Strategy To Avoiding Due Process Requests (Balsley, 2018)

- Visible, available, responsive
  - Train others to bring concerns to your attention
- Culture of customer service
  - Keeping the focus on the student & having the right attitude
  - *Speed of Trust* by Stephen Covey
- Attitude of the staff was a critical component to establish a culture of customer service.

*“You have to store your ego and control your emotions. If you can do that, [momentum shifts] from feeling [defensive to focused on the student] and working with the family. When an administrator or teacher digs their heels in, and they aren’t listening anymore, their ship is sinking. You’ve got to be able to let go of those things and be open to how we make this work (participant in Balsley’s research)”*





## Practical Tip: Meeting with the Special Ed Director

- Opportunity to build a relationship
- Parents feel heard
- Less intimidating setting
- Directors can understand the parent perspective and what outcomes they want





# Practical Tip: Cover Sheet with Procedural Safeguards

Greetings Parents & Guardians,

Your child is important to us. **Name of Local School Corporation** is committed to working in partnership with you. The attached booklet is your copy of Indiana's Procedural Safeguards which outline our responsibilities to you and your child. An additional helpful resource, titled *Navigating the Course*, is a companion guide. It is available at this link <https://www.earlywood.org/domain/142> or a printed copy will be provided upon request.

If you have questions, concerns, or ideas about your child's educational program, we want to hear from you. Below is the contact information of people that can assist you. Please contact us so we can work together with you.

Your child's special education teacher of record  
Teacher Name

[teacher@email.k12.in.us](mailto:teacher@email.k12.in.us)  
317-999-9999

Your child's building principal  
Name

[principal@email.k12.in.us](mailto:principal@email.k12.in.us)  
317-999-9999

District Director, Director of Special Education  
Name

[director@email.k12.in.us](mailto:director@email.k12.in.us)  
317-999-9999



Executive Director of **Earlywood** Educational Services  
Dr. Angela Balsley

[abalsley@earlywood.org](mailto:abalsley@earlywood.org)  
317-736-8495

We also encourage you to check out these resources:  
[Corporation's web address]



<http://www.earlywood.org>



<https://www.facebook.com/ssjcscschools>



<https://twitter.com/ssjcscs>



<https://www.pinterest.com/ssjcscs/>



<https://www.youtube.com/user/pdssjcscs>



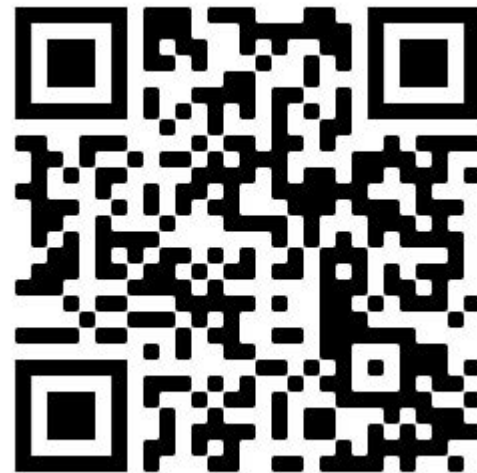
## Research: Build Relationships with Empathy (Balsley, 2018)

*“I can’t emphasize enough the relationships that schools have to build with parents and kids. One of the bad habits [of schools] is not recognizing the peaks and valleys and sometimes nightmarish things that families sometimes go through with a child with a disability. [In special education] we have to understand where the parent is coming from and connect with them before we are ever going to work through what their kids need (participant in Balsley’s research)”*



## Practical Tip: Newsletter Articles

- Empowering Parent Engagement
- The Difficult Parent
- Parents' Emotions
- Shared Empathy
- Foster Connection





## **2. Use Alternative Dispute Resolution to Resolve Disagreements**

*“Proactive Leadership Actions”*





# Disagreements Will Occur

- Special education is uniquely individualized
- Amicable relations can break-down
- District failed to provide FAPE in the LRE
- Some parents seek “optimal” program



## Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)

*This guide is not intended to interpret, modify, or replace any IDEA Part B procedural safeguards or requirements of federal or state law. State regulations associated with these processes vary widely. Parents are encouraged to contact their state educational agency or parent center for more information.*

Processes	IEP Facilitation <i>Not required by the IDEA; availability varies by state</i>	Mediation	Resolution Meeting	Written State Complaint	Due Process Complaint/Hearing Request	Expedited Hearing Request & Resolution Meeting
<b>How the Processes Differ</b>	An optional early resolution process where an impartial facilitator assists the IEP team with communication and problem solving.	A voluntary process that brings people together with a mediator, who helps them communicate with each other and resolve their disagreements.	A meeting that takes place after a parent files a due process complaint/hearing request but before a due process hearing takes place.	A written document used to communicate that a public agency (e.g., school district) has not followed the IDEA, and to request an investigation.	A process used to resolve a formal complaint made by a parent or public agency (e.g., school district), who are together referred to as "the parties."	A special type of due process complaint/hearing request available only in certain situations that relate to a student's discipline and placement.
<b>What Issues &amp; When Used</b>	Used when a parent and school district are unable to agree on important issues related to a child's IEP, or when a meeting is expected to address complex issues or be controversial.	Available anytime there is a disagreement between parents and educators about special education and/or related services.	Used to resolve issues listed in a due process complaint/hearing request.  The meeting must occur unless the parent and school district agree in writing not to have the meeting, or to use the mediation process instead.	Available anytime there is a concern about a particular child or an issue that affects children system-wide.	Used to resolve disagreements relating to the identification, evaluation, educational placement or provision of a free, appropriate public education (FAPE) to a child who needs or is suspected of needing special education and related services.	Used when parents disagree with a school district's discipline-related decision that affects their child's placement, or whether the child's behavior is related to his or her disability.  A school district may use this process if it believes that a child's behavior could be dangerous to the child or others.
<b>Who Initiates</b>	A parent or school district may request IEP facilitation. A state educational agency may also recommend this, as an alternative to a more formal process.	A parent or school district may request mediation. A state educational agency may also recommend this, as an alternative to a more formal process.	The school district must hold a resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint/hearing request.	Any person or organization may file a written state complaint.	A parent or school district may file a due process complaint/hearing request.	A parent or school district may file an expedited due process complaint/hearing request.
<b>Outcome or Desired Result</b>	An IEP that is supported by the team members and benefits the child.	A signed, legally enforceable, written agreement.	A signed, legally enforceable, written agreement that resolves issues listed in the due process complaint/hearing request.	A written decision that includes findings and conclusions, and lists reasons for the final decision. Must also include actions required to address the needs of the child or children related to the complaint.	A written decision with findings of fact and conclusions of law, which may order specific activities to be carried out.	A written decision with findings of fact and conclusions of law, which may order the child to be provided with a specific educational placement.
<b>Process Distinctions</b>	IEP facilitation is an early dispute resolution option that is not required by the IDEA.  IEP facilitation allows all members of the team the chance to participate fully, since the facilitator serves as the meeting leader.	Mediation discussions are confidential.  Mediation is a flexible process – participants may influence the process, and ultimately determine the outcome.	Resolution meetings only occur after a due process complaint/hearing request is filed.  The resolution meeting occurs unless the parent and school district both agree in writing not to have the meeting, or go to mediation instead.	This is the only dispute resolution option open to any person or organization, including those unrelated to the child.  The final decision may include corrective actions that are child-specific or relate to system-wide issues.	A formal record of the hearing (a written or electronic transcript) must be made and provided to the parent.  The decision is appealable in state or federal court.  The prevailing party may attempt to recover attorneys' fees in a separate court action.	See Due Process Complaint/Hearing Request  ←
<b>Benefits</b>	May build and improve relationships among IEP team members.  Sometimes, team members feel better heard when a facilitator is involved.  Can help resolve disagreements more quickly than other options.  Keeps decision-making with team members who know the child best.	Discussions are confidential – what is said in mediation can't be used as evidence in a due process hearing or civil lawsuit.  A more flexible, less adversarial alternative to other dispute resolution options, like due process complaints/hearing requests.  Sometimes, participants work with the mediator to design the process; in some cases, they may be allowed to select the mediator together.	Provides a chance for the parent and school district to work together to resolve issues prior to a due process hearing.  Keeps decision-making with the parent and school district who know the child.  The school district may only bring an attorney to the resolution meeting if the parent chooses to bring an attorney.  The parent or school district may cancel a	A written decision must be issued no later than 60 calendar days after the complaint was received, unless the timeline is extended.  A written state complaint is relatively easy to file.	From the date that the complaint is filed until the decision is final, your child stays in his or her current educational placement, unless you and the school district agree otherwise – this is called "pendency" or "stay-put."  The decision is legally binding on the parties.  The state educational agency is responsible for ensuring the decision is	This process is intended to quickly address decisions concerning a student's discipline and placement.

### Comparison Chart

Center for Appropriate Dispute Resolution in Special Education. (2015). *Quick guide to special education dispute resolution processes for parents of children with youth ages 3-21.*



# Facilitated IEP Meeting (Balsley, 2018)

Offered for free in Indiana

- Directors are aware of availability of free tool
- IDOE & IN\*Source recommend to parents

Many directors report not using FIEP offered from IDOE

- Trained on process prior; strategies used in house to get similar result
- Not wanting to give up control
- Prefers to demonstrate local willingness and investment in CCC process
- Meetings are belabored & outcome is unclear

*“We request FIEP when parents have the emphasis on the wrong syllable.”*

- *Helps to buffer & build understanding of the process*
- (Balsley, 2018)



# Mediation

**Before request for due process hearing (Balsley, 2018)**

- Used when impasse reached with case conference
- Directors prefer not to involve attorneys
- Attractive option because no cost
- Success dependent on
  - Focus on student
  - Both parties willing to compromise
  - Skill of mediator
- Parents sometimes disappointed; expected mediator to take sides

*“I would much rather go to mediation than due process because you have the opportunity to talk.”*

**(Balsley, 2018)**





# Mediation

## After request for due process hearing (Balsley, 2018)

- Only one respondent reported successful use of mediation after receiving a request for due process. She utilized it three times
  - Complaint about discipline; shouldn't have been DP request
  - Error in manifest
  - Playground accessibility
- Reasons others don't use mediation after due process request
  - Attorneys don't recommend it
  - Timelines for response too tight
  - Barrier: willingness of parties to compromise when already feel they've gone the extra mile
  - Similar to resolution session

(Balsley, 2018)



## Resolution Meeting (Balsley, 2018)

- All directors participate in resolution in good faith
- Many are willing to offer significant compromise at the resolution meeting
- A couple participants noted ability to resolve shortly after the meeting
  - Parent represented by self or advocate, not attorney
- Depends on the parent attorney
  - Directors describe process as “worthless, pointless, frustrating”
  - Parents told not to agree to anything at the resolution session
  - Example: Months later & same outcome for significantly more fees
  - Destroys relationship
- Despite obstacle, directors still able to gain insights into proposed outcomes





### **3. Understand the Concerns of the Parents**

*“Proactive Leadership Actions”*



# Historical Concerns of Parents

Before 1975, SWDs had no protected right to an education & their parents had no specific entitlement to provide input into their child's education (Kerr, 2000).

- **Strategic parent advocacy with momentum from civil rights movements**
  - *Brown v. Board of Education* (1954)
- ***Pennsylvania Association for Retarded Citizens [PARC] v. Penn.* (1972)**
  - Court approved settlement agreement that state had violated its constitutional obligations to provide education for all students
- ***Mills v. Board of Education* (1972)**
  - Outcome established (1) no child could be denied because of lack of resources; (2) if excluded from LRE, must be provided with alternative services suited to child's needs; & (3) due process procedures.
- **Education of All Handicapped Children Act in 1975 (P.L. 94-142)**
  - Now referred to as IDEA, established FAPE, IEP, & more
  - Reauthorized 3 times

Access → Quality

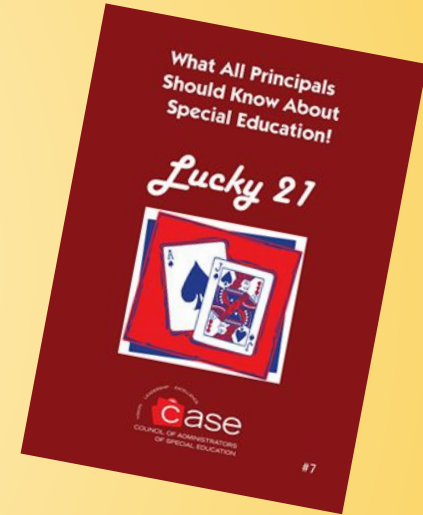


**DISABILITY**  
**RIGHTS**  
**ARE CIVIL**  
**RIGHTS**



# What do parents of students in special education need from their principals?

- Know the child's name
- Admit when you don't know
- Use people first language
- Answer emails and phone messages
- Support for teachers
- Confidentiality
- Realize that the child is a child
- Come to meetings. Your presence lets parents know you care.
- Model appropriate behavior. You set the tone of inclusion in your building
- Include ALL kids. Gen ed classrooms, assemblies, field trips. Everything!





# 4. Train Stakeholders

*“Proactive Leadership Actions”*





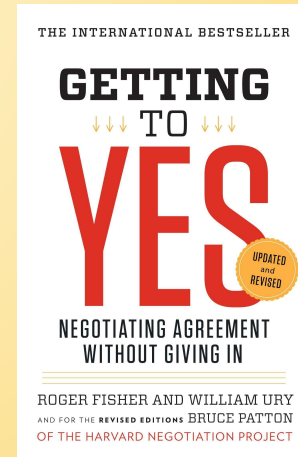
# Train Stakeholders (Balsley, 2018)

## Parents

- Navigating the Course
- IN\*Source (Parent Information Network)

## Professionals

- Leadership Actions
- Negotiation Skills
- **Legal Literacy**







# Overview of Special Education Legal Literacy

- **Test Your Special Education Legal Knowledge**
- **Special Education Legal Literacy:**
  1. What is it?
  2. What Does the Research Tell Us?
- **What Can Educational Leaders/Others Do to Increase Legal Literacy?**



# **Pre-Test Your Special Education Legal Knowledge**



Have you felt  
frustrated by the  
requirements &  
complicated nature  
of state & federal  
laws pertaining to  
students with  
disabilities?





Legal Knowledge is  
NOT Enough



Today's Educators  
Administrators & Educators  
must be Legally LITERATE.





# What is legal literacy?

“the legal knowledge, understanding, and skills that enable educators to apply relevant legal rules to their everyday practice. Those who are legally literate are able to spot legal issues, identify applicable laws or legal standards, and apply the relevant legal rules to solve legal dilemmas” (Decker & Brady, 2016).



## Knowledge

### A manifestation determination is

- a. A meeting of the principal and others at the school who work with the student to determine their IEP. A meeting of a student's IEP team to determine whether their misbehavior was a result of their disability.
- b. An evaluation of a student who is suspected of having a disability to determine whether they are eligible for special education and related services.

## Literacy

Isaac receives special education services. He has already been suspended for 8 days this academic year. Today, he got in a fight and was suspended for 3 days. Luckily, no one was seriously injured. When Isaac's parents come to school to pick him up, they ask when his IEP team will convene to discuss his discipline. The principal explains that there is no reason for the IEP team to meet because the discipline decisions are made by the administrators at the school.

- a. This was legal because the principal is permitted to decide whether Isaac's misbehavior was not related to his disability.
- b. This was legal because due to the laws surrounding zero tolerance, students with disabilities who engage in violence must be disciplined the exact same way as students without disabilities.
- c. This was illegal because Isaac is going to be removed from school for more than 10 days and therefore, his IEP team should have met.
- d. This was illegal because any time students with a disabilities are removed from their placement, they must be transferred to an Interim Alternative Educational Setting (IAES).
- e. a & b



# Legal Literacy: What Does the Research Tell Us?



## Research is limited

- Only 2 national, empirical studies
- Confirms educators & administrators **lack legal knowledge** (Schimmel & Militello, 2007; Militello, Schimmel, & Eberwein, 2009).
- Confirms educators & administrators **lack legal training** (Schimmel & Militello, 2007; Militello, Schimmel, & Eberwein, 2009).



# School employees lack a basic understanding of school law (Militello et al., 2009)

- Rare for pre-service teachers complete a school law course (Eckes, 2008; Gullatt & Toilet, 1997; Schimmel & Militello, 2007).
- Only one state (Nevada) had required preservice teachers complete a school law course (Gajda, 2008)
- Less than half of the states require principals to be trained in the law (Hingham, Littleton, & Styron, 2001)
- Principal & superintendent certification typically require one school law course (Stephens, 1983)





# What about special education legal literacy?

- No peer-reviewed, empirical research
- Majority of principal preparation programs do not require principals to complete any formal coursework in special education law (Bineham, 2014; Cusson, 2012; Powell, 2010)
- Approx. half of the state certification requirements required educators to complete formal coursework in special education law (Bocala, Morgan, Mundry, & Mello, 2010).



# Teachers & administrators want more legal training

85% of the nearly 500 principals  
they surveyed said they would  
change their behavior if they  
understood the law more (Militello et al.,  
2009)



## Confirms school employees change attitudes & behaviors with formal training

- 88% reported one grad-level School Law course **increased their confidence**
- 85% indicated that course **altered their behaviors**
- 100% reported **pre-service teachers should complete a school law course**

(Decker, Ober & Schimmel, 2017,  
<https://journals.sagepub.com/doi/abs/10.1177/1942775117742647>)



## Increasing legal literacy could improve schools

- Avoid expensive litigation - Special education is the most litigated area of education lawsuits (Katsiyannis & Herbst, 2004)
- Avoid state & federal complaints. Districts encounter numerous & pervasive OCR investigations about SWDs (Decker & Brady, 2016)
- Prevent OTHER serious issues for teachers, administrators, & students
  - When school employees fear litigation, it negatively affects the operation of schools (Zirkel, 2006)
  - Principals may unnecessarily end programs out of fear of liability (Joyce, 2000)
  - Teachers may “unknowingly violate students’ constitutional rights” or “view the law as a source of fear & anxiety” (Schimmel & Militello, 2007, p. 257)
- Empower educators to make better decisions (Decker, 2014)
- IDEA is an underfunded mandate. Prepare educators to advocate for reform (Decker, 2014)
- Other reasons?

# What can Special Education Leaders & Others Do To Increase Legal Literacy?

## Events

Conferences (e.g.,  
Education Law  
Assoc.; McCarthy Ed.  
Law & Policy Institute)  
PD sessions  
Educ. Law Certificate  
(IU)

## Updates

Newsletters (NSBA's  
Legal Clips)  
Websites  
Webinars  
Blogs  
Podcasts

## Publications

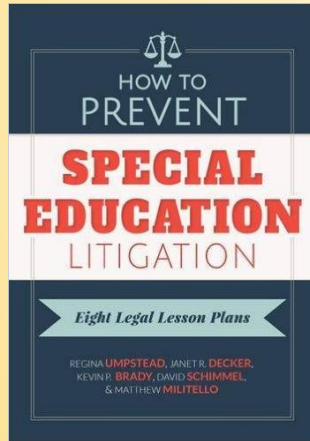
Journal articles  
Vanderbilt's IRIS  
online modules  
Books (*How to  
Prevent Spec. Educ.  
Litigation*)





# Professional Development: Legal Lesson Books

PURPOSE = to teach others how to *apply* legal principles to practical, everyday situations



Umpstead, Decker, Brady,  
Schimmel, & Militello (2015)





# Format of Each Legal Lesson

- Introduction for Facilitators
- Materials Needed
- Background, Purpose, and Objectives
- Hook
- Activity
- Questions for Conversation
- Test Your Knowledge
- Additional Resources and References



**Being  
legally  
literate  
equips  
leaders to  
engage in  
policy  
reform**





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