

**Revising the IDEA Due Process System
to Resolve Conflict and Focus on the Child:
*Let Your Voice Be Heard***

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*“Much like an acrimonious divorce,
the child and the child’s education are lost in the battle,”*





Created by Krissy Miner <http://www.mrsminermonkeybusiness.com>

- Explain how and why the IDEA contains current statutes specific to conflict resolution
- Identify the consequences of due process hearings with a focus on the child and culturally competent outcomes from current research
- Participate in an interactive and collaborative group activity and discussion to identify and recommend inclusions in the revision of IDEA for the future of due process in special education
- Identify what the experts recommend for revising due process within IDEA as identified in the 2016 research of Dr. Metheny

How Did We Get Here?

The United States in the Mid-20th Century

- Civil Rights Movement
- Parent Rights Movement & US Courts as Social Change Agents
- Special Education Law
- Attempts by US Congress to Identify Other “Enforcers” of IDEA
- Parents as Private “Enforcers” of IDEA



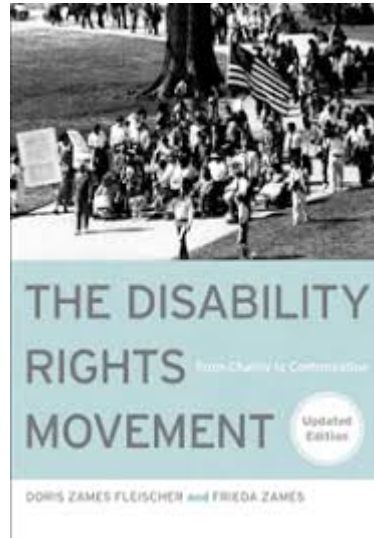
Civil Rights Movement



- Brown v. Board of Education (1954)
 - Changed long-standing discriminatory educational practices of excluding children of difference
 - Birthed parents coming together collectively = political action

Parent Rights Movement & US Courts As Social Change Agents

- National Association of Parents & Friends of Mentally Retarded Children (1954)
- Pennsylvania Association of Retarded Children v. Pennsylvania (1972)



- Laid groundwork for IDEA – free public education, parent rights to participate in educational decisions & challenge educators

- Mills v Board of Education Columbia (1972)

- Determined lack of funds not acceptable reason for failing to educate those with disabilities; resulted in longstanding fiscal impact on education in US



Special Education Law



- 1972 – Bill introduced in US Congress; 31% of testimony from parents
- 1975 – Public Law 94-142 signed by President Ford – Education for All Handicapped Children Act (EAHCA)
- 1983 – EAHCA Reauthorized
- 1990 – EAHCA Reauthorized becomes Individuals with Disabilities Education Act (IDEA)
- 1997 – IDEA Reauthorized – voluntary means for resolving differences
- 2004 – IDEA Reauthorized - voluntary alternative dispute resolution practices, federal accountability focused on improved educational results

Attempts by US Congress to Identify Other “Enforcers” of IDEA



Parents As Private “Enforcers” of IDEA

(Pasachoff, 2011)



- Parents of children with disabilities burdened with enforcing IDEA
- Privately enforced; one child at a time on an individual basis and not on general outcomes for children with disabilities
- Privately enforced; on one set of special education services at a time through special education ‘due process’

Research: What are the key findings on the outcomes of due process hearings in special education?

- ✓ Costly
- ✓ Result in “Human Damage”
- ✓ Do Not Ensure Better Educational Outcomes for Students – Do Not Focus on the Child
- ✓ Inequity of use – Are Not Culturally Competent



Research: What are the key findings on the outcomes of due process hearings in special education?

Costly

- Great fiscal costs to public education (Pudelski, 2013)
- School districts often agree to provide costly and unnecessary services to avoid litigation costs and the children who receive them take services away from other children (Pudelski, 2013)
- Costs in real dollars does not take into account the costs that result in time away from students and job responsibilities (Bateman & Linden, 2006)
- Those who can afford legal representation are more likely to file for due process (Pasachoff, 2011)
- Taxpayer money intended to educate all children with disabilities instead goes to attorneys and the privileged (Ong-Dean, 2009)



Research: What are the key findings on the outcomes of due process hearings in special education?



Human damage

- Personal and professional sensitivities damaged through due process (Rock & Bateman, 2009)
- Significant emotional and human cost of participating in due process activities and hearings (Bateman & Linden, 2006)
- In many cases, due process hearings damaged the parent-school relationship beyond repair (Mueller, 2009) and aggravated the situation pushing the relationship to the point of no return (Cope-Kasten, 2013)
- 95% of 200 superintendents surveyed across the United States collectively classified the stress related to due process as *high* or *very high* (Pudelski, 2013)



Research: What are the key findings on the outcomes of due process hearings in special education?

Do Not Ensure Better Educational Outcomes for Students – Do Not Focus on the Child

- No educational benefit for the very children it was designed to protect (Cope-Kasten, 2013)
- No evidence of a correlation between dispute resolution activities and improved educational results for students (Pudelski, 2013)
- Taxpayer money intended to educate and provide programs for all children with disabilities instead goes to attorneys (Ong-Dean, 2009)



Research: What are the key findings on the outcomes of due process hearings in special education?

Inequity of Use – Are Not Culturally Competent

- Those who can afford legal representation are the ones enforcing the mandates (Pasachoff, 2011).
- Parents in due process hearings were mostly White, upper- to middle-class, English speaking, and well educated (Massey and Rosenbaum, 2005).
- Taxpayer money intended to resolve conflict in special education instead goes to the privileged (Ong-Dean, 2009).



A System In Need of Fixing :

The IDEA has produced a system of rights that is cumbersome, inefficient and overly procedural.

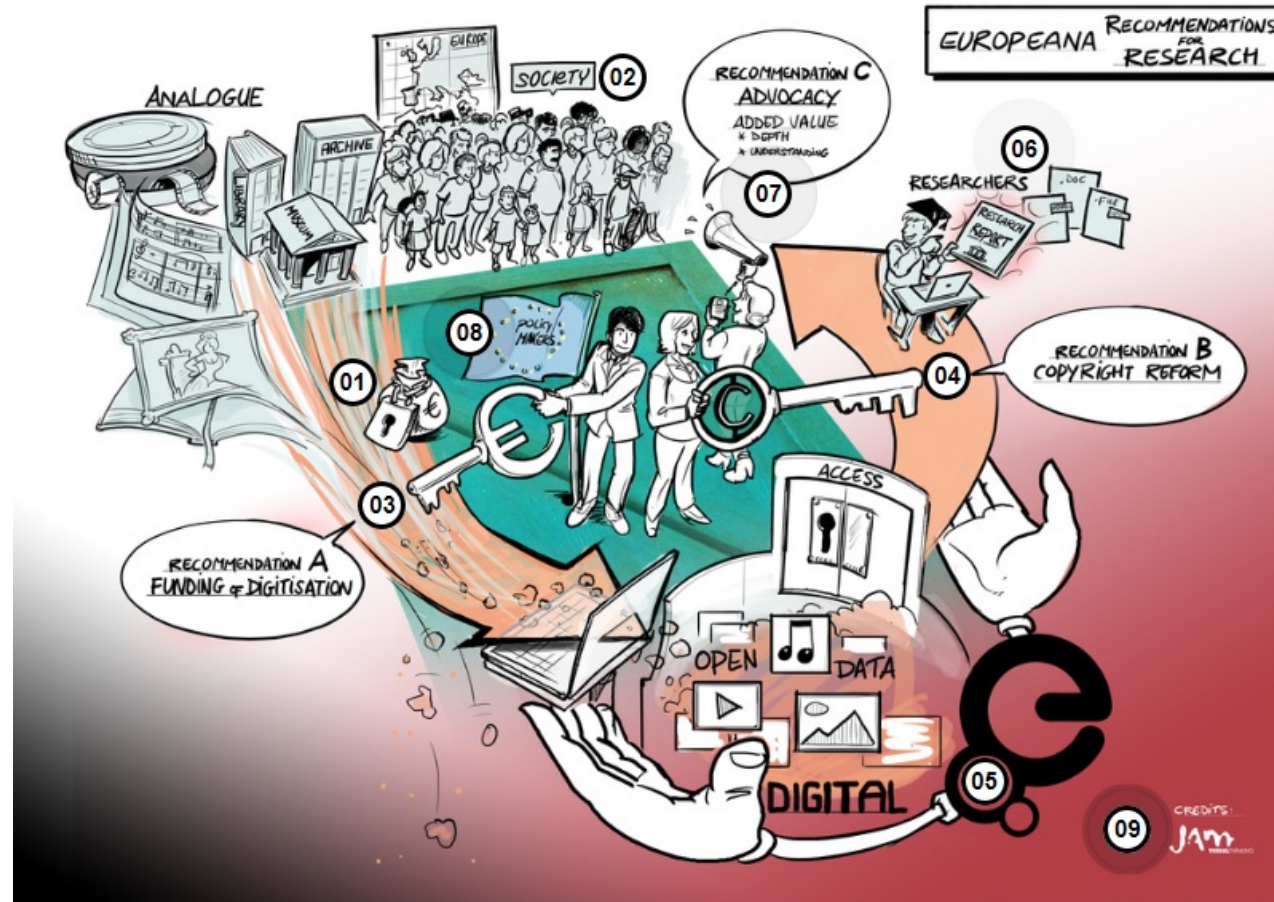
It needs to be changed.

Miriam Kirtzig Freedman, 2009



- Arundel (2015) called for the need to gather feedback from the field for inclusion in the new legislation.
- Mueller (2014) noted that the time is ripe for providing guidance to Congress on better means for resolving conflicts between parents of children with disabilities and school officials.
- Cope-Kasten (2013) identified that the best educational practices and work of CADRE have not reduced the detrimental consequences of due process.

Metheny Dissertation Research



With the reauthorization of IDEA overdue, the time is ripe to make recommendations to fix due process in special education and focus on the child

Metheny 2016 Delphi Study – *“Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”*

- Delphi designed for application to problems of forecast and policy development by
- Asking experts, with intimate knowledge, to provide the answers
- Through three rounds of surveys – iterative rounds



Metheny 2016 Delphi Study – “Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”

The Experts – Two Panels

Practitioner experts	Academic/policy advisor experts
<p>1. Has worked or is currently working as a special education administrator for a minimum of 3 years</p>	<p>1. Has worked or is currently working as a college professor in the area of special education for a minimum of 3 years or has written or advised in the field of special education for a minimum of 3 years</p>
<p>1. Has participated in special education dispute resolution activities, a minimum of one due process hearing</p>	<p>1. Has conducted research in the field of special education, preference given for research specific to special education dispute resolution activities, or has advised in the area of special education dispute resolution activities.</p>

Metheny 2016 Delphi Study – “Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”

Data Collection – Three Iterative Rounds of Surveys *(Provided and collected electronically via Qualtrics)*

Round	Participants	Instrument	Responses
Round 1	13 practitioners 12 academics/policy advisors	1 open-ended question	58 individual responses* 30 collated responses 6 themes identified
Round 2	11 practitioners 10 academics/policy advisors	Compiled responses from Round 1 rated for importance & feasibility on 9-point Likert scale	Individual responses Mean scores for importance & feasibility Interquartile range (distance between 25 th & 75 th %ile) for importance & feasibility
Round 3	11 practitioners 10 academics/policy advisors	Responses from Round 2 (individual’s, group’s mean and range) Opportunity to keep response the same or change it	Panel responses “Width” of range to determine consensus <i>t</i> test of difference between means of the two panels

*See Appendix A

Metheny 2016 Delphi Study – “*Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study*”

Research Questions

1. What do the experts, practitioners, and academic/policy advisors identify as the most important recommendations for inclusion in the reauthorization of IDEA for resolving conflicts between the school and parents of children with disabilities in special education programs so that due process hearings can be avoided?
2. What do the experts, practitioners, and academic/policy advisors rate as important and feasible for inclusion in the reauthorization of IDEA for resolving conflicts between the school and parents of children with disabilities in special education programs so that due process hearings can be avoided?
3. Is there a significant difference between the importance ratings for the recommendations from practitioner and academic/policy advisor experts?
4. Is there a significant difference between the feasibility ratings for the recommendations from practitioner and academic/policy advisor experts?

Metheny 2016 Delphi Study – *“Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”*

- The findings...

But before the findings are reviewed, let your voice be heard by participating in today’s research



Collaborative Discussion Activity: Nominal Group Technique in Three Iterative Rounds

Round 1 – 10-15 minutes

In groups of 5 to 6:

- First individually on the 3x5 card provided spend approximately 3-5 minutes silently generating and writing down *what you recommend* for inclusion in the reauthorization of IDEA for resolving conflicts between the school and parents of children with disabilities in special education programs so that due process hearings can be avoided

Then as a group, take 8-10 minutes to do the following:

- Identify a facilitator, recorder and time keeper (to watch time and keep process moving) from within group
- Facilitator leads group in discussing recommendations from individuals in the group and coming to a consensus on 5-7 *most important recommendations*
- Recorder uses chart paper to record conversation and when group has decided places the 5-7 recommendations under Round 1 on document provided
- For Round 2, facilitator takes chart and moves to a different group, everyone else stays in same group

Collaborative Discussion Activity: Nominal Group Technique in Three Iterative Rounds

Round 2 – 5-7 minutes

In Group 2:

- Same group, new facilitator
- Identify a facilitator, recorder and time keeper (to watch time and keep process moving) from within group
- Facilitator leads group in discussing recommendations brought from Group 1 individuals and coming to a consensus on the 5-7 *most feasible recommendations*
- Recorder uses chart paper to record conversation and when group has decided places the 5-7 recommendations under Round 2 on document provided
- For Round 3, facilitator takes chart and moves to a different group, everyone else stays in same group

Collaborative Discussion Activity: Nominal Group Technique in Three Iterative Rounds

Round 3 – 5-7 minutes

- Same group, new facilitator
- Identify a recorder and timekeeper (to watch time and keep process moving)
- Facilitator reads the responses gathered from Round 1 and Round 2 to Round 3 group
- Facilitator leads group in deciding on *top three recommendations that are equally important and feasible*
- Recorder uses chart paper to record conversation and when group has decided places top three ideas under Round 3 on document provided
- Facilitator provides Round 3, final three recommendations, to Dr. Metheny

Metheny 2016 Delphi Study – “Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”

What did the experts identify as most important for inclusion?

6 Themes Derived from 58 Responses (Appendix A contains the 30 collated responses identified by theme)
Require training
Require ADR practices
Require facilitated IEP meetings
Require parent-school relationships building
Limit/remove attorneys
Revise/eliminate current due process system

Metheny 2016 Delphi Study – “*Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study*”

What did the experts rate as important and feasible for inclusion ?

Most Feasible	Most Feasible & High Level of Consensus	Most Feasible & Most Important
Train special education and general education staff in FAPE, LRE, special ed law	Train special education and general education staff in FAPE, LRE, special ed law	Train special education and general education staff in FAPE, LRE, special ed law
Mandatory, formal ADR as first step of due process, without attorneys	Mandatory, formal ADR as first step of due process, without attorneys	Mandatory, formal ADR as first step of due process, without attorneys
Require evidence of best practices in respectful communication	Mandate use of neutral, trained facilitators	Require evidence of best practices in respectful communication
Facilitated IEP meetings		

Metheny 2016 Delphi Study – *“Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study”*

Is there a difference between what practitioners and academics/policy advisors rates as important for inclusion? Yes, rankings below

Practitioners	Academics/Policy Advisors
1. Put caps on attorneys fees	1. Train special education and general education staff in FAPE, LRE, special ed law
2. Train special education and general education staff in FAPE, LRE, special ed law	2. Train parents in tenets of IDEA, FAPE, LRE and how they can be active members of IEP
3. Mandatory, formal ADR as first step of due process, without attorneys	3. Use plain language, without jargon and acronyms, in written & verbal communication
4. Develop regional rates for attorneys	4. Train special education and general education administrators in special ed law and recent court decisions
5. Federal funding for mandatory ADR as first step	5. Mandatory, formal ADR as first step of due process, without attorneys
6. Mandatory preventative dispute resolution meetings without attorneys prior to using due process	6. Require evidence of best practices in respectful communication

Metheny 2016 Delphi Study – “*Expert Recommendations for the Future of Due Process in Special Education: A Delphi Study*”

Is there a difference between what practitioners and academics/policy advisors rates as feasible for inclusion? Yes, overall practitioners identified the recommendations as more feasible.

Practitioners found these areas of recommendations more feasible

Requiring mandatory & funded ADR practices

Removing/revising attorney’s roles – capping attorney’s fees

Training special education & general education staff

Requiring facilitated IEP meetings

Conclusions for Metheny (2016) Dissertation

- Keep due process but do not include in IDEA any additional, specific, legal procedures specific to due process
- Set parameters for the use of public education dollars to pay attorneys involved in due process activities
- Change the tenor of IDEA to focus on proactive, preventative conflict resolution practices grounded in the solving of conflicts from a human relations perspective rather than one based in highly procedure-driven, civil law actions
- Mandate and provide federal funding for ADR activities

Collaborative Discussion Activity: Nominal Group Technique in Three Iterative Rounds

And the results are...



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Appendix A – Responses from Panels

Thematic areas	Recommendations for importance of inclusion in the reauthorization of IDEA
Require training	<ul style="list-style-type: none"> ➤ Train general education and special education administrators in special education law and recent court decisions. ➤ Train general education teachers, special education teachers, and service providers in the tenets of a FAPE and LRE as well as specific requirements of special education law. ➤ Train parents in the tenets of IDEA, including FAPE and LRE and how they can be active members in the IEP process. ➤ Train school district board members in the tenets of IDEA, including FAPE, LRE, and zero reject. ➤ Train special education staff to develop IEPs with assessment, goals, and services aligned that are student centered.
Require parent-school relationship building	<ul style="list-style-type: none"> ➤ Evidence of best practices in respectful communication, such as active listening. ➤ Evidence of best practices in collaboration, particularly related to diversity. ➤ Evidence of active special education community advisory committees to create strong, positive relations between schools and families. ➤ Use of plain language, without jargon and acronyms, in written and verbal communication.
Require facilitated IEP meetings	<ul style="list-style-type: none"> ➤ Mandatory use of facilitated IEP meetings that include agenda setting and civility norms, to resolve issues prior to using due process. ➤ Mandatory use of third party, neutral, trained facilitators in facilitated IEP meetings to resolve issues prior to using due process. ➤ Mandatory training for school staff members in facilitated IEP meetings
Require ADR practices	<ul style="list-style-type: none"> ➤ Mandatory preventative dispute resolution meetings at the local level, without attorneys present, prior to using due process. ➤ Mandatory, formal ADR as first step in due process. ➤ Federal funding for mandatory, formal ADR as the first step in due process. ➤ Mandate mediation that includes only the parents and district.
Limit/remove attorneys	<ul style="list-style-type: none"> ➤ Remove attorneys from IEP meetings. ➤ Remove attorneys from local resolution sessions. ➤ Remove attorneys from mediation. ➤ Put caps on attorneys' fees. ➤ Develop regional rate fees for attorneys.
Revise/eliminate current due process system	<ul style="list-style-type: none"> ➤ Require that an IEP agreed upon at local resolution level be implemented for 1 year before due process can be filed. ➤ Shorten the time that issues are eligible for due process hearing review (current 2-year statutory period is confusing and interpreted differently). ➤ Require that all issues are identified at time of filing and cannot be added to or amended. ➤ Require a follow-up system to ensure services and referrals are made within statutory limits. ➤ Require data or research to back up a claim of one method over another. ➤ Limit the number of due process hearing days. ➤ Eliminate mandatory mediation; it must be voluntary. ➤ Eliminate due process entirely. ➤ Replace due process with a fairer, less adversarial, less expensive, less compliance-focused, and more education-focused regulatory enforcement system.