

Reforming the Due Process System in a Reauthorization of IDEA

Replacing mediation with an Expert review could improve outcomes and reduce disparity in access to FAPE.

Establishing an IEP for a child can be a stressful annual experience year for families. Parents can feel pressured into accepting an assessment, placement or services that do not seem to meet their child's needs. Challenging the school district can feel overwhelming and take too long.

The student's access to a free, appropriate public education depends on their parent's ability to navigate the IEP and Due Process system. Many parents employ an educational advocate, but not everyone has the means to hire a private advocate. Access to free advocacy services is extremely limited. Most families that utilize the Due Process system

either settle before or during mediation, agreeing to a short-term confidential settlement. Few cases reach the administrative judge, even fewer are decided in favor of the student.ⁱ

AASA, The School Superintendents Association proposed a reform to IDEA replacing the administrative Due Process system with an expert who would construct an IEP to be tried out for an agreed time. After that time if the family were still in disagreement, they can seek judicial remedy in a court, resulting in a precedent bearing legal case.

We present three qualifications to the proposal to increase access for all students:

1. The Expert must be independent from the school district and the family.
2. The Expert needs to meet with the student to ensure a 'person centered' outcome.
3. To be part of a free and appropriate public education, the process needs to be free itself.

Proposals for the reauthorization of IDEA

There are disparities in Special Education based on socio-economic, race, ethnicity, and linguistic differences. Disadvantaged students are less able to use the current Due Process system.

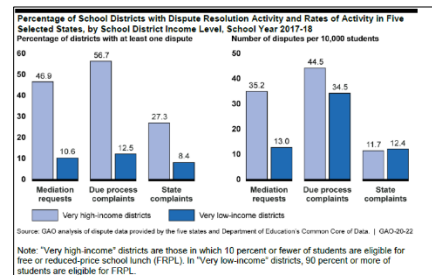
A core component of IDEA is the Due Process system (see [History of IDEA](#)). In [PARC vs Penn](#), parents argued that the school district denied children with disabilities their constitutional rights to Due Process of Law. IDEA provided a system of special education, but also a Due Process system when there is disagreement. Parents must pursue their dispute through the administrative process before other

Crystal started asking the school for help for her 11-year-old son Ivan when he was in Kindergarten. At age six, he was diagnosed with ADHD and started medication. School held a Student Support Team but still denied an IEP. Crystal had an independent psychological evaluation, but it was not till 5th Grade that Ivan got the support he needed because of the support of his 5th-grade teacher.

litigation can be pursued (*Smith v. Robinson*, 468 U.S. 992 (1984)). In California, this Due Process system is administered by the Office of Administrative Hearings.

There are many proposals for change during reauthorization of IDEA, including funding, outcomes measured including LRE, disparities in race and income, and the due process system. As a civil rights law, we need to take care that individuals with disabilities do not lose rights in the reform process.

The U.S. Government Accountability Office (GAO) studied Due Process claims and found that there was significant disparity in numbers of due process claims between school districts with very high-incomes and those in which 90 percent or more of students are eligible for Free and Reduced-Price Lunch.ⁱⁱ



Evaluating the AASA proposal.

- Families would still be able to defend their child's civil rights to equal treatment in court.
- No need for confidential settlements from the IEP team or others at the school.
- Cost free to families and the district
- Documents for review are almost entirely written by the school employees.
- Independent assessment may be too expensive for many families.
- Principles for "Person-Centered" planning are absent.

Alternatives:

a) Alternative Dispute Resolution is underutilized. The families often do not trust the mediator since (s)he is employed by SELPA that is controlled by the districts.

b) State Department of Education should enforce IDEA. The 2016 *Morgan Hill* and *Emma C* cases demonstrate the difficulty of state regulation.

We asked an adult with a disability about their experience of IEPs as a teenager. Sandy De Jesus told us:

"Teachers would come in and speak with her mom to go over what she was improving in and what she needed more assistance with...Mom would do most of the

We suggest three qualifications to the AASA proposal (see above). The expert should not be paid directly by the District or SELPA. The student must participate in consultation with the expert. Legal aid should be available to families to pursue their dispute in the courts. Attorneys can be provided by Family Empowerment Centers and Disability Rights California.

Evaluation Criteria: Policy goals will be measured by the number of students and families provided with an expert during an IEP and by reduction in litigation. The impact of policy would be measured by LRE rates, graduation rate, employment post 22, math and ELA scores.

Implement, monitor, and evaluate the policy: As with Due Process, implementation of the federal law may be up to each State Department of Education. This makes it possible for differing state approaches to be compared to find the best practicing model and the different models could be monitored by the U.S. Department of Education.

ⁱ In 2019-2020 4153 Due Process hearings were filed on behalf of students, 492 by Districts. Of those on 91 ended with a hearing decision. 2430 were settled outside the resolution/mediation process and 1436 settled in mediation. *Office of Administrative Hearings Special Education Division Annual & Quarterly Reports 2020*.

ⁱⁱ *Special Education IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics*, United States Government Accountability Office, November 2019 <https://www.gao.gov/products/GAO-20-22> Retrieved 11/17/20