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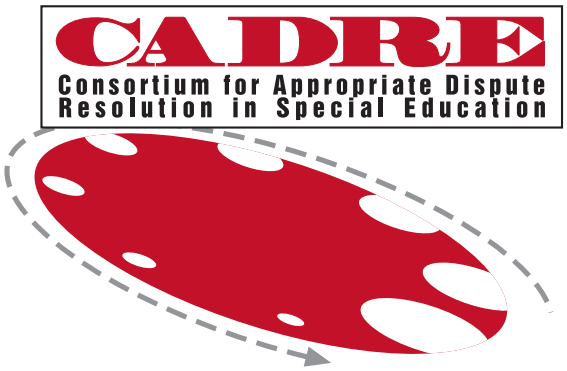

National Dispute Resolution Use and Effectiveness Study

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FOR:

The National Association of State Directors of Special Education (NASDSE)

THROUGH A SUBCONTRACT WITH:

The Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

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

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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.

National Dispute Resolution Use and Effectiveness Study

Conducted by
Judy Schrag, Ed.D., Consultant
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For
The National Association of State Directors of Special Education (NASDSE)

Through a Subcontract with
The Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) was intended to encourage collaborative problem solving with parents and school systems working together to identify and meet a child's special education needs. This concept is reflected in the Individual Education Program (IEP) process in which parents and educators work together as a team to determine a child's individual needs, design an appropriate educational plan to accommodate them, and implement needed programs and services within the child's IEP.

When problem solving and communication break down and differences arise, the IDEA has established processes whereby parents and public agencies can resolve disputes concerning special education. 20 U.S.C. Section 1400 Parents and/or public agencies may submit a request for a due process hearing for issues related to the identification, evaluation, placement, or provision of FAPE. Formal complaint resolution procedures of the Education and Governmental Accounting Regulations (EDGAR) were incorporated into the IDEA regulations in July 1992. Mediation was also added as a dispute resolution option within the IDEA Amendments of 1997 in recognition of the need for additional and less adversarial dispute resolution approaches to resolve differences between parents and agencies.

In 1998, the National Center on Dispute Resolution (the Consortium for Appropriate Dispute Resolution in Special Education or CADRE) was funded for five years by the United Stated Department of Education, Office of Special Education Programs (OSEP). CADRE was established to provide technical assistance to state education agencies (SEAs) on implementation of the mediation requirements under IDEA. CADRE also was charged with supporting parents, educators, and administrators to benefit from the full continuum of dispute resolutions options that can prevent and resolve conflict and ultimately lead to informed partnerships that focus on improved results for children and youth.

Congress has periodically requested information regarding the use and effectiveness of the various dispute resolution procedures. Until approximately ten years ago, the national picture regarding the efficiency and effectiveness of various formal and emerging informal dispute resolutions was virtually nonexistent. To that end, CADRE was charged with systematically collecting and analyzing formative (process) and summative (outcome) information from SEAs on the use and effectiveness of the full continuum of conflict resolution approaches. Thus, CADRE has subcontracted with one of its partners, the National Association of State Directors of Special Education (NASDSE) to carry out preliminary studies and a *National Dispute Resolution Use and Effectiveness Study* involving seven states across the nation.

PURPOSE AND OVERVIEW OF REPORT

The overall purpose of this Report is to present the findings of the *National Dispute Resolution Use and Effectiveness Study* conducted by NASDSE, under subcontract with CADRE, regarding the use and effectiveness of formal complaint resolution, mediation, and due process hearings. The study design, methodology, and results are found in Section II of this Report.

In order to put this *National Dispute Resolution Use and Effectiveness Study* into context, several items are included within Section I. First, brief background information is summarized regarding federal IDEA requirements for the dispute resolution procedures (i.e., complaints resolution, mediation, and due process hearings). Several initial studies are reviewed that were conducted by NASDSE, in its subcontract with CADRE, to determine the rates of dispute resolution within the states as well as the status of data systems to gather use and effectiveness data and information. As supplemental context information, several other related national studies regarding dispute resolution procedures are also summarized. Finally, Section III provides a summary discussion and conclusions.

BENEFITS TO BE DERIVED FROM THE STUDY

This *National Dispute Resolution Use and Effectiveness Study* will add to the body of knowledge for Congress, OSEP, SEAs, local education agencies (LEAs), parent/advocacy organizations, and professional organizations regarding the dispute resolution use and effectiveness within seven states and projections regarding overall dispute resolution for the nation. Information derived from this study can also assist SEAs in refining state administration of formal complaints resolution, mediation, and due process hearings, including the management and analysis of data across these three dispute resolution systems. Finally, LEAs will find data, information and other insights from the study results helpful in analyzing current and possible formal and informal conflict resolution strategies and systems at the local level.

Section 1 — BACKGROUND INFORMATION AND RELATED STUDIES

1. Summary of IDEA Requirements for Dispute Resolution

A. Formal Complaint Investigation

As stated earlier, the previous 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 SEA. The SEA has a time limit of 60 days after the complaint is filed to complete its investigation and issue a written decision to the complainant, unless unusual circumstances warrant an extension of time. If a written complaint is received that is also the subject of or contains issues that are part of a due process hearing, the written complaint may be set aside until the conclusion of the due process hearing.

B. Mediation

When Congress added formal mediation as an option within the IDEA Amendments of 1997 (IDEA '97) 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. Specifically, SEAs must offer mediation at least whenever a due process hearing is requested. While prior legislation permitted mediation, the 1997 IDEA Amendments outline state obligations for creating a mediation process in which parents and LEAs may voluntarily participate. Among these SEA obligations are:

- Ensuring that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

- Maintaining a list of qualified mediators knowledgeable in laws and regulations relating to the provision of special education and related services; and

- Bearing the cost of the mediation process.

Some parents may choose not to use mediation, and an LEA or a State agency may establish procedures to require those parents to meet with a disinterested party who would explain the benefits of the mediation process and encourage them to make use of the process.

Through the provisions of IDEA '97, Public Law 105-17, the Senate Report (S. Rep. No. 105-17, 105th Congress, 1st Section, 1997), and the House Report (H.R. Rep. No. 105-95, 105th Congress, lst Session, 1997), Congress signaled the intent to encourage more collaborative decision-making by parents and schools when problems may be present:

> *The committee is aware that in States where mediation is being used, litigation has been reduced and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the committee's strong preference that mediation becomes the norm for resolving disputes under IDEA.*

C. Due Process Hearings

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 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 FAPE to the child. In a due process hearing, a third party convenes the hearing to settle disputes or differences between the parties. Within the due process hearing process, the hearing officer receives evidence, provides for the examination and cross-examination of witnesses by each party, and then issues a report of findings of fact and decisions. Within 45 days after receipt of a request for a due process hearing, a final decision must be reached in the hearing and a copy of the decision mailed to each of the parties (unless the hearing officer grants an extension). Due process hearing decisions are final unless any party involved in the hearing appeals the decision. The SEA must ensure that not later than 30 days after a receipt of a request for a review, a final decision is reached in the review and a copy of the decision is mailed to each of the parties.

D. Expanding the Continuum of Dispute Resolution

During the past several years, there has been a trend within the states to implement other alternative dispute resolution (ADR) processes. These ADR processes have resulted in positive outcomes for parents, students who receive special education and related services, advocates, school district staff, and others. This trend has effectively extended the continuum of processes and procedures to resolve differences early in response to concerns that formal procedures, such as due process hearings, are more costly, litigious, and do not result in satisfactory

relationships between parents and school personnel.
Several CADRE publications and resource materials have described a spectrum of dispute resolution options that have been emerging across the country. (e.g., Feinberg, Beyer, and Moses, October 2002; and Abel and Morton, November 2002) These options can be categorized as follows:

- **Preventive ADR** that channel disagreements into a problem solving arena early enough that escalation and full-blown disputes can be avoided. Examples of preventive ADR approaches are case managers, conflict resolution and problem solving training, and parent-to-parent and other parent partnership or mentoring strategies.

- **Facilitated ADR** methods that involve a third-party neutral, with no authority, to assist the parties in reaching a satisfactory resolution. Examples of facilitated ADR methods include case managers, facilitated IEPs, solution teams, technical expert teams, IEP coaches, and complaint investigation strategies designed to improve communication between parties in dispute.

- **Advisory ADR** methods involve a third-party neutral who offers expert evaluation regarding the merits of the dispute. Examples of advisory ADR methods within states include non-binding arbiters, ombudspersons, advisory opinions, and settlement conferences.

- **Fact-Finding ADR** methods that utilize a third party or technical expert to make findings that may be binding, depending upon agreement of the parties. Examples of fact-finding ADR methods include technical experts, third-party or neutral opinions, independent evaluations, or ombudspersons.

- **Imposed ADR** methods involve a third-party neutral who makes a binding decision regarding the merits of the dispute. An example of imposed ADR is a binding arbiter.

2. Previous Research Regarding Dispute Resolution Use and Effectiveness

A. Early NASDSE Studies

Symington (1994) carried out case studies of several states in order to document the development and use of mediation as a strategy to improve communication and resolve disagreements between schools and parents of students with disabilities. Participating states included Massachusetts, Connecticut, Pennsylvania, New Jersey, and New Hampshire. In this study, Symington reviewed the various state mediation models, the role of the mediator, and training of mediators. Symington found that disputes were often resolved prior to hearings whether or not a formal mediation session was held. The range mediations conducted in 1993 that had failed and resulted in a request for due process hearing ranged from 10 percent in Connecticut and Pennsylvania to 36 percent in New Jersey. Another finding was that agreement between parties was also reached prior to a decision rendered by the hearing officer. For example, in Connecticut, of 77 hearings held, only 44 resulted in decisions rendered by the hearing officer, with agreements reached by the parties for the remaining 33.

Through its Project FORUM, NASDSE has conducted several analyses of state policies in mediation and due process procedures (Ahearn, 1994). Ahearn 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 indicated that a limited number of states

have implemented evaluation mechanisms regarding consumer satisfaction with mediations and/or due process. Schrag (1996) conducted a scan across the country to identify trends in mediation and other alternative dispute evaluation procedures in special education. She observed that many states are expanding their continuum of dispute resolution processes to include more informal and less adversarial methods to resolve differences between parents and school personnel regarding the education of students with disabilities.

B. Abt Associates Study

Under a contract with the U.S. Department of Education, Abt Associates and its subcontractors, Westat and SRI, are conducting a longitudinal study 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. Following are selected findings:

- On average, states have offered mediation for 10 years.

- Most states (88 percent) allowed attorneys to attend mediations and hearing, but usually parents did not bring an attorney.

- Nearly all states (97 percent) offered or sponsored mediation training via the state department of education.

- About 75 percent of states used attorneys, community mediators, or contractors as mediators.\
- Less than half of the states (41 percent) used special educators, and fewer used psychologists (34 percent), school administrators (21 percent), or social workers (24 percent) as mediators.
- Dispute resolution cases per 10,000 students with disabilities in the states included:
    - Mediations – 4.0 (a range of 0.4 for the lowest to 160.0 for the highest state)
    - Impartial due process hearings – 2.3 (range of 0.4 to 1,477.0)
    - State administrative reviews – 0.3 (range of 0.0 to 4.0)
    - State/federal judicial reviews of hearing decisions – 0.1 (range of 0.0 to 0.9)

- Across all schools, 16 percent of the principals reported involvement in at least one or more formal disputes.

- The structure of the state's due process system (one-tier or two-tier) did not influence the proportion of dispute cases (43 percent and 57 percent).

- Regional variations were evident. Districts in the Northeast were more likely to have reported having a due process hearing than school districts in the South, West, and Northwest.

- Mediations or due process hearings are rarely or never used when parents don't consent to an initial evaluation.

- Tensions existed between parents and schools regarding the provision of services.
- School districts attempted to avoid formal disputes, often making decisions based on fear of disputes.
- Formalized alternative dispute resolution strategies were not typically provided; however, they are becoming a more common practice to resolve disputes early.

C. American Institutes for Research — Special Education Expenditure Project

As part of a contract with the U.S. Department of Education, the American Institutes for Research (AIR) conducted a descriptive study 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. During 1999-2000, this study found that school districts spent approximately $146.5 million on special education mediation, due process, and litigation—less than one-half of one percent of total special education expenditures. The authors reported that the average annual expenditure per open litigation case amounted to $94,000 in 1999-2000. The authors reported that "…an estimated $8,160 was spent on the average mediation or due process case in 1999-2000." (p.8) These authors further note, "The averages presented here reflect expenditures on both mediation and due process cases. It is important to note that due to the nature of the survey, we were unable to separate expenditures on mediation from those on due process hearings, and acknowledge that there are likely to be differences between the two activities." (p. 8)

Complaint resolution is largely a state-level activity, and the SEEP study found that SEAs dismissed nearly 80 percent of complaints lodged against districts in 1998-99. Thus, district-level expenditures on complaint resolution activity were reported to be negligible. Other findings of the SEEP study included:

- Mediation cases, due process hearings, and litigation tended to be concentrated in less than 2/5th of the nation's school districts.
- An estimated 62 percent of school districts reported that they did not have any complaints, mediations, due process hearings, or litigation during the 1998-99 school year—and 38 percent did.
- Of all school districts, 28 percent had complaints, 12.5 percent had mediation cases, 13 percent had due process hearings, and 2 percent were involved in litigation.
- Urban school districts tended to be disproportionately represented with a statistically significant difference among school districts with procedural safeguard activity.
- The highest economic status districts were significantly more likely to have any type of procedural activity than lower economic status suburban population districts (70 percent to 21 percent respectively).
- The percentage of districts with complaints and litigation cases were not statistically significant across district income categories.
- Larger school districts were more likely than smaller to have dispute resolution activities of all kind.
- Over twice as many urban districts had at least one type of activity, in comparison to rural and suburban districts.
- While not statistically significant, districts with higher income families were disproportionately represented among school districts with procedural safeguard activity.
- Data showed 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 hearings 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.

• Of the 51.3 percent of litigation cases that were tried, over half (30.1 percent out of the 51.3 percent) were decided in favor of the district, and one-sixth (8.7 percent) was resolved in favor of the family. The remainder of litigation cases (12.5 percent) resulted in a split decision.

• An overwhelming number (96.3 percent) of the districts reported that mediation is more cost effective than due process.

• A small subset of reporting districts (3.5 percent) indicated that there are no financial differences to the district between mediation and due process, while .1 percent specified that mediation is less cost-effective than due process.

D. Recent NASDSE Studies

During April-May, 2003, a mediation survey was sent by NASDSE to state directors of special education of the 50 states and federal jurisdictions. Responses were received from 50 states and 3 jurisdictions. Following is a summary of the study findings regarding the question:

When does your state department of education offer mediation?

1. As required in conjunction with the filing of a due process hearing — All states or 100 percent.
2. In connection with the filing of a state complaint — 15 states or 47 percent.
3. Any time that parents or school districts request a state mediation — 47 states or 87 percent.
4. When the SEA learns of a problem, but before a formal complaint is filed — 29 states or 55 percent.
5. Other circumstances — 29 states or 55 percent.
    - Local resolution for complaints that don't come to the state for resolution.
    - A mediation is provided at state expense at any time upon oral or written request of the school district and parent.
    - When an issue will not result in a formal complaint.
    - During IEPs when explaining due process rights.
    - As a part of facilitated IEPs.
    - After pre-hearing conferences.

A final 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. This case study review provides information across the ten states in the following areas: state administration of complaints, mediation, and due process hearings; state staffing for handling complaints; data management and evaluation of the complaint process; timelines in complaint resolution; training for complaint resolution staff; qualifications and training of mediators; the mediation process; mediation agreements and follow-up; data collection and evaluation of the mediation process; state staffing and employment of hearing officers; data management for hearings; timelines in due process hearings; training for due

process hearing officers; evaluation of due process hearings; dispute resolution components as a system; relationship between dispute resolution systems and monitoring; other types of dispute resolution; strategies for informing parents and the public about dispute resolution options; and changes under and recommendations from states.

In the above-described study, the authors concluded that complaints, mediations, and due process 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. There is also an increased availability of mediation and other alternative dispute resolution options that are focused on resolving disputes at the earliest and most informal levels.

3. Pre-Studies to the *National Dispute Resolution Use and Effectiveness Study*

A. Year 1 Phase 1 NASDSE Study

Year 1 of NASDSE's subcontract with CADRE contained two study phases. Phase l culminated in the description of characteristics of state data systems and methods, procedures, and content. In July 1999, NASDSE's Project FORUM conducted a brief analysis of the use and effectiveness of dispute resolution strategies within and across the states. This study was conducted in collaboration with CADRE. In conducting this study for Project FORUM, Schrag utilized an email survey and received responses from all 50 states. Table 1 below provides a summary of information gathered from the 50 states regarding dispute resolution state data collection efforts.

Type of Information	Dispute Resolution Processes		
	Complaints	Mediations	Due Process Hearings
Information regarding the numbers and locations.	48 states	48 states	47 states
Type of issues involved	42 states	42 states	43 states
Information regarding resolution activities carried out or completed.	35 states	NA	48 states
Information regarding the numbers and locations of mediations completed.	Not Applicable	47 states	Not Applicable
Information regarding the type and nature of agreements or decisions.	NA	27 states	47 states
Satisfaction concerning the dispute resolution procedures.	NA	29 states	6 states
Follow-up activities within school systems as a result of resolution.	31 states	6 states	47 states
Information regarding the impact of resolution (e.g., whether the c oncern was resolved or whether it recurred again in a subsequent formal complaint, mediation, or due process hearing request).	9 states	7 states	4 states

Table l. Information gathered by SEAs regarding dispute resolution processes.

An overview of the data collection capability within SEAs indicated that there were no consistent, agreed-upon methods or procedures across states for reporting follow-up and impact dispute resolution data. A few good instruments, however, were identified and shared with states. In addition, none of the states interviewed were able to follow an individual case through the complaint, mediation, and due process hearing systems to determine the number of cases utilizing more than one dispute resolution procedure with the same issues involved. Thus, this way of measuring effectiveness was not immediately available in any of the states reviewed.

Database elements used by states varied widely with little consistency across states. There did appear, however, to be a core of data elements that would be appropriate for all states to utilize. It was found that some states have developed sophisticated software systems to track and manage their due process cases. Software for complaints and mediation is more limited. Maine and Iowa have fully integrated dispute resolution systems. Otherwise, none of the systems for complaints, mediations, and due process hearings were linked by common fields to provide integrated case management information so that information across dispute resolution procedures.

B. Year 1 Phase 2 NASDSE Study

As a follow-up to the initial screening survey, Schrag and Schrag (1999) conducted a more in-depth examination in the following ten states that appeared to have the most complete data systems including follow-up, impact, and satisfaction data. These states included: Alabama, Idaho, Illinois, Indiana, Michigan, Oregon, Tennessee, Texas, Wyoming, and Washington. Additional email and telephone contacts were made with these states to obtain detailed organizational and procedural information, including data management software being used and the annual number of requests each year for the dispute resolution procedures. Following is a summary of the results of the Phase 2 more in-depth study of the selected states:

- Dispute resolution procedures are consistent across the ten sampled states.
- Some states had developed pre-filing processes in an attempt to resolve disputes prior to more formal procedures.
- The sampled states have developed logging procedures within each formal dispute resolution system to follow the cases through the process. None of the ten sampled states, however, have a case management system that integrates or goes across all three formal dispute resolution procedures (i.e., complaints, resolution, mediation, and due process). This missing linkage limits the measurement of effectiveness of dispute resolution procedures.
- As with the findings of the Phase 1 studies, there was a general lack of impact and effectiveness data being gathered by the SEAs.
- Formal disputes filed during a 12-month period per 10,000 students with disabilities ranged from 10.2 percent in Wyoming to 39.9 percent in Washington State.
- Indiana, Michigan, Texas, and Tennessee SEAs had comparatively low percentages of dispute resolution cases that request a due process hearing. Illinois and Alabama had a higher percentage of dispute resolution cases that request due process hearings.
- With acknowledged limitations, an estimate was made that there were 18,535 dispute resolution requests filed across the nation within the 12-month period covering part or all of 1998