A Case Study of the Implementation of the Resolution Session in Processing of Special Education Complaints in a Large Urban School District

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Educational Leadership

by

Sauntheri Spoering

Dr. Janet Usinger, Dissertation Advisor & Chair

December, 2016
We recommend that the dissertation prepared under our supervision by

SAUNTHERI SPOERING

Entitled

A Case Study Of The Implementation Of The Resolution Session In Processing Of Special Education Complaints In A Large Urban School District.

be accepted in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

Janet Usinger, Ph.D, Advisor

Bill Thornton, Ph.D, Committee Member

Gus Hill, Ph.D, Committee Member

Cleborne Maddux, Ph.D, Committee Member

William Evans, Ph.D, Graduate School Representative

David W. Zeh, Ph. D., Dean, Graduate School

December, 2016
Abstract

In 2004, United States President George W. Bush signed into law the amendment to the Individuals with Disabilities Education Act (IDEA). The law contained a last step to resolve complaints prior to a due process hearing: the resolution session. For decades parents sought resolution for their grievances about educating children with disabilities through the courts. In addition to being financially prohibitive, litigation did very little to strengthen school-family partnerships. The resolution session included in the 2004 reauthorization of IDEA was designed to provide a more effective means of resolving disputes. One large, urban school district in the western United States was recognized for rapid implementation of the resolution session. The purpose of this study was to examine the factors that supported this recognition. The descriptive case study focused on how the school district resolved complaints and disputes within the timeframe of 2002-2008, two years prior to the re-authorization of IDEA and the years following implementation. Three sources of data were analyzed: the records of due process complaints; policy and procedure manuals; and interviews with key administrators responsible for resolving special education complaints. Three disciplines that make up a learning organization were found to contribute to the rapid implementation of the resolution session: a shared vision of effectively solving special education problems through direct communication between school district personnel and parents; control over the design and implementation of the process; and team learning.
Dedication

For my father, the late Professor M. Balasegaram, who with the magic of education modeled persistence and dedicated a lifetime to public service.
Acknowledgements

Thank you to the students, staff and faculty, at the University of Nevada, Reno who provided me with assistance in getting this dissertation started and completed, and added to my depth of knowledge, in particular; Dr. Richard F. Daugherty, for his inspiration, Dr. Janet Usinger, my advisor, for her patience, time, and attention to detail, Dr. Bill Thornton for his interesting classes and leadership, and Dr. Gus Hill for his always valuable information. Thank you to all the members of my dissertation committee who agreed to help me finish this journey.

My sincere thanks to Clark County School District, in particular, Michael Harley and his team at the Office of Compliance and Monitoring, for their enthusiasm, kind assistance, and valuable time.

I would also like to thank my family, in particular my husband, Jeff who put his dreams aside so that I could fulfill mine. And our daughter Naesa, who provided the inspiration for the final leg of this journey.

Finally, I would like to thank all the teachers in the United States who go to work everyday to better serve our children.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>i</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>ii</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>iii</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>vii</td>
</tr>
<tr>
<td>CHAPTER I: Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Statement of the Problem</td>
<td>3</td>
</tr>
<tr>
<td>Purpose of Study</td>
<td>5</td>
</tr>
<tr>
<td>Research Design and Methodology</td>
<td>6</td>
</tr>
<tr>
<td>The Case</td>
<td>7</td>
</tr>
<tr>
<td>Significance of the Study</td>
<td>7</td>
</tr>
<tr>
<td>Delimitations</td>
<td>8</td>
</tr>
<tr>
<td>Limitations</td>
<td>9</td>
</tr>
<tr>
<td>Definitions of Terms</td>
<td>10</td>
</tr>
<tr>
<td>Summary and Organization of the Dissertation</td>
<td>12</td>
</tr>
<tr>
<td>CHAPTER II: Review of Literature</td>
<td>14</td>
</tr>
<tr>
<td>Historical Context</td>
<td>15</td>
</tr>
<tr>
<td>Litigation – The Popular Choice</td>
<td>25</td>
</tr>
<tr>
<td>Alternative Dispute Resolution</td>
<td>32</td>
</tr>
<tr>
<td>Local Complaints Process</td>
<td>32</td>
</tr>
<tr>
<td>Mediation</td>
<td>33</td>
</tr>
<tr>
<td>Arbitration</td>
<td>36</td>
</tr>
<tr>
<td>IEP Facilitation</td>
<td>36</td>
</tr>
</tbody>
</table>
APPENDICES

A. Special Education Due Process Complaint and Resolution Matrix ...... 102
B. Summary of Dispute Resolution Procedures within Special Education 103
C. Interview Guide for School District Personnel.......................... 104
D. IRB Exemption Letter....................................................... 106
E. Approval Letter from School District ..................................... 108
F. Resolution Agreement....................................................... 109
LIST OF TABLES

Table 1. Resolution of Complaints as Found in the Electronic Database…………… 60
Table 2. Due Process Case Summary from the 2013 End-of-Year Report…………… 62
Table 3. Resolution of Complaints found in the 2013 End-of-Year Report………. 62
Chapter I

Introduction

PRELIMINARY MEETING - Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint. (Individuals with Disabilities Educational Act, U.S.C 20 ë(f)(1)(B)(i), 2004)

The legal mandate for the education of students with disabilities has evolved through several key pieces of legislation. Current special education law originated in 1970 when the United States Congress (Congress) enacted the Education of the Handicapped Act (EHA) in federal law. The EHA funded grants and pilot programs to educate disabled children across the United States. However education for disabled children throughout the country was still inconsistent and depended on state or school district regulations; education also varied due to specific types of disabilities. After several hearings across the country, during which Congress took testimony, the EHA was amended to include a Part B, titled the Education for All Handicapped Children Act (EAHCA) or Public Law 94-142. The EAHCA provided direct funding to states that provided education services to children with disabilities. The amendment was an essential platform that provided equal access for children with disabilities to attend public school as their non-disabled peers. The law also mandated that the education provided to children with disabilities must be appropriate to their needs (EAHCA, 1975). This meant that no child was to be disqualified, suspended, or expelled from receiving a free and public education based on the child’s disability.

The Individuals with Disabilities Education Act (IDEA) was signed into law by President William. J. Clinton in 1997; IDEA amended the previously enacted EAHCA.
There were two key provisions of IDEA. The first affirmed the provision of free appropriate education for children who were eligible to receive special education services in public schools. The second provided a plan that would stipulate how the children would access the designated services.

Members of Congress have repeatedly tried to balance the educational needs of students with disabilities and the fiscal realities of public funding of education. Nevertheless, various disputes between parents and school personnel about the appropriate education for students with disabilities, which helped precipitate the initial 1970s legislative acts, have continued to shape subsequent special education legislation. The 1997 IDEA addressed, but did not mandate, ways to deal with conflict or disputes between school district personnel and parents. Mediation was recommended in the legislation and has been a popular choice among educators and school district administrators for resolving disputes in special education. Despite this option for resolving conflict, costly litigation has often been the preferred choice by parents of students with disabilities (Mueller, 2009).

When IDEA was reauthorized in 2004, procedural safeguards for parents and school district personnel, as well as constitutional rights for students were honored to ensure that the intent of IDEA was preserved. It was also recognized that voluntary mediation was insufficient to avoid costly litigation; the resolution session was the first conflict resolution process that was actually mandated in statute. The resolution session was introduced in the 2004 reauthorization of IDEA under procedural safeguards (IDEA, 2004). Richards and Martin (2005) argued that Congress intended to preempt the due
process hearing and other expensive legal forms of complaint resolution by introducing the resolution session.

Although the resolution session was mandated in the law, there were few guidelines in 2004 IDEA that stipulated procedures for implementation. State educational officials were left to interpret the law and implement the resolution session; essentially the implementation of the law was left to the interpretation of school officials. As a result, the implementation process has been differentially applied based upon school officials’ experiences in process implementation, previous experiences in the complaints process and procedural safeguards of the law, as well as their experiences in dealing with parents and students.

**Statement of the Problem**

In the U.S., students in need of special education services are protected by federal law; IDEA safeguards the rights of students who qualify under the law for a free and appropriate education (FAPE). Although codified through legislation, all laws, including special education laws, are subject to differing interpretations. According to Maloney (1995), judicial decisions have been the means of resolving special education due process complaints lodged by parents against school district personnel. Judicial decisions have not been the final word in FAPE, however. In response to judicial mandates, Congress has acted by repeatedly proposing alternatives to costly litigation by amending the original EHA legislation. In 2004, the U.S. Congress made changes to the 1997 IDEA; a significant change added to reduce the costs associated with litigation was the requirement of the resolution session.
For school officials, an effective resolution method relies on being cost efficient. Agreements between the parties must be more forthcoming and the process less time consuming than litigation. Reducing costs has been a particularly important consideration in special education. In 1975, when Congress amended the initial legislation associated with special education, there was a promise that the federal government would contribute approximately 40% of the cost of educating students with disabilities (S. Rep. No. 94-455, 1975). While there is little recent or precise information on the total costs associated with providing educational services to disabled students, Flanagan and Graff (2000) contended that the contribution by the federal government has covered only about one quarter of what was initially promised.

In 2004, Senator James Jeffords (I-VT), one of the authors of the 1975 EAHCA, in his testimony to the Senate Committee on the 2004 IDEA bill, urged Congress to keep the promise to contribute 40% of the cost of the program. The Senator also stated that his representative state of Vermont had to spend, “22 million dollars in state funds to make up the shortfall from the federal government” in 2004 to cover the cost of special education (S. Rep No. 108-134, 2004). The history of legislatively imposing obligations without commensurate funding has led to the term unfunded mandate, frequently resulting in strong resistance by state and local education officials to implement the mandated effort; as such, Mueller (2006) argued that local education agencies were slow to adopt processes to effectively resolve disputes before a due process hearing.

In addition to the arguments against unfunded mandates, the resolution of special education complaints tends to be people-orientated; disputes are between real people with real concerns. Much of the literature associated with special education disputes focuses
on students. There is lack of insight about how special education administrators, especially those who handle the complaints process, interpret the complaints process. Understanding how school district administrators implement a federal law associated with special education provides insight into how to address legislative mandates in the future.

**Purpose of Study**

The purpose of this descriptive case study was to examine how one large urban school district was able to rapidly adopt the resolution session in its due process procedures for addressing special education complaints. The study explored the impact that this adoption had on the perceptions that school district administrators held about due process special education procedures. Evidence was obtained from interviews with key personnel, in particular district administrators who facilitated the complaints process associated with special education. This evidence provided information on how school officials rapidly adopted and implemented a resolution session to reduce the number of due process hearings at the school district. Existing data in the form of district policy manuals provided additional support about the process of implementation. In addition, numerical data on the number of complaints filed at the school district and number and process of resolutions provided information on the types of resolutions used. Three research questions guided this study:

1. How did the legal requirement of the resolution session affect the way special education complaints were processed in a large urban school district?
2. How did school administrators directly involved in the resolution of disputes regarding students with disabilities understand the resolution session process of the school district?

3. What are the strengths and weaknesses of the process and what factors were important in the development of the process.

**Research Design and Methodology**

This study was conducted within a framework of a descriptive case study as described by Stake (2010), which includes rich descriptions of a situation and the interpretations of the people involved in the situation. The case study describes the complaints process, also known as due process hearing requests, as implemented at the school district between 2002 and 2008; the study also presents data on the resolution of complaints between 2002 and 2008. The focus of the study then shifts to an analysis of meanings that stakeholders had about the adoption and the effects that implementation has had on the stakeholders.

Three sources of data were analyzed: (a) the number of due process complaints and the approach used in their resolution between the years 2002 and 2008; (b) interviews with the key personnel who were involved in the facilitation of special education policy within the school district; and (c) school district policy and procedure manuals. The data collection process started with permission from the university Institutional Review Board as well as the school district Assessment, Accountability, Research, and School Improvement Division. Data collection was via face-to-face interviews with stakeholders to capture the human perspective of the program. The due
process complaints filed against the school district between the years 2002 and 2008 were analyzed for types of complaints as well as types of resolution.

The Case

The large urban school district in the western U.S. was chosen to be the focus of this study because of its reported rapid adoption of the resolution session. According to the U.S. Department of Education, National Center for Education Statistics (NCES), the state’s enrollment in public schools grew by 17.3% between 2002 and 2008, leading the nation. The school district where the study was conducted was the driving force in the increase in student population. In 2002 there were 245,659 students enrolled in a total of 282 schools that made up the school district. The number of students in 2008 totaled 312,546, with 350 schools in the district. Likewise the school district had a significant number of students with disabilities. Approximately 10% of students in the district had an Individualized Education Plan (IEP) in the 2008 school year (Special Education Advisor, 2013).

According to Harley and Redmond (2007), in the 2005-2006 school year, the year after the 2004 reauthorization of IDEA, there were 63 due process hearing requests. All complaints were resolved without a due process hearing. Harley and Redmond credited the reduction in due process hearings to the adoption of the resolution session.

Significance of the Study

Despite the increased use of alternative dispute resolution processes in special education, little research has been conducted on the implementation of alternative dispute resolution processes adopted by school districts across the nation (Reiman, Beck, Peter, Zeller, Moses, & Engiles, 2007). This study adds to the literature on the implementation
process of a federal law and is particularly significant in adding to the knowledge base on the implementation of the resolution session.

There is also scant research on school district administrators’ perspectives on implementing a federal law. The current literature tends to focus on parental rights and how parents view their rights as well as the reality of their experiences. School district administrators tend to contribute to these studies by supporting or opposing parents’ perspectives. This study focuses on data collected from key stakeholders at the administrative level to examine the relationship between the process and the people who implement the process; in essence, the study illuminates how the resolution process has affected the perceptions that school district administrators hold about a federally mandated process.

**Delimitations**

This research study had the following boundaries.

1. Not all types of legislative cases were identified; only those cases identified as special education were examined in this study.

2. Since the resolution session only applies to special education complaints, this study examined the complaints and disputes filed under IDEA, as defined by the school district.

3. For this research, only complaints filed within the 2002-2008 time frame and with the particular school district were considered.

4. For purposes of confidentiality, only federal law rather than state law was considered.
5. The study was limited to the number of complaints and cases filed within
the school district, Student Support Services Division.

6. Data gathered and presented in this study were based on special education
(as defined in this study) complaints and cases filed with the particular
school district.

7. The study focused on the resolution session as intended/described in the
2004 IDEA.

8. Parents and students did not participate in the research as the primary
focus of this study was the implementation of the resolution process in one
school district and the employee perspectives that shaped the program.

**Limitations**

This study contains the following limitations.

1. This is a single case study and may not be generalized for other settings or
   situations.

2. The descriptive nature of this case study required that data were collected
   and analyzed by the instruments only described in this study.

3. Only perspectives of administrators that managed the complaints and
   resolution process at the school district were considered.

4. Beginning in 2011, the records of special education due process requests
   were transferred from paper copy to an electronic database. Due to budget
   constraints and the physical relocation of the office where the records
   were housed, the process was conducted in a somewhat ad hoc manner. As
a result, particularly for the earlier years of the timeframe of the study, the number and detail about the complaints and their resolution were limited.

**Definition of Terms**

Several legal and technical terms are used in this study. These are defined to convey meaning and context to the reader.

A **legal case** is a judicial action between two parties that is decided in the Courts.

A **complaint** is officially filed with a school district to start the procedure that may lead to legal case; these are very often described as disputes or conflicts.

**The Individuals with Disabilities Education Act (IDEA)** is a federal law that guides special education in public schools. The IDEA was renamed for the previously known Education for All Handicapped Children Act, in 1990. The law provides guidance and compliance as to the educational rights afforded to special education students and their parents with regards to all public agencies involved receiving federal monies. The 1997 IDEA authorization is known as Public Law (P.L.) 101-476, while the 2004 reauthorization became known as P.L. 108-446 – 108th Congress or Section 14000(a).

**Individualized Education Plan (IEP)** is a requirement described in the IDEA as the documented personalized plan for each designated special education student as prepared by the committee members, which include the parents, the student, teachers, school administrators, and other education personnel as appropriate. The IEP must be revisited at least once a year.

**Education of the Handicapped Act (EHA)** is the original mandate enacted by the U.S. Congress in 1970 to expand earlier federal grants that funded programs to educate children with disabilities. The law also provided funding for the development of special
education teacher training programs and delivery of programs in state and local school districts.

**Education for All Handicapped Children Act (EAHCA)** or P.L. 94-142 was an amendment of the original federal mandate, the EHA, in 1975, which preceded the IDEA. The EAHCA governed special education services for children with disabilities in public schools.

**Free Appropriate Public Education (FAPE)** is a mandate under Education for All Handicapped Children Act of 1975 and was maintained in the 1997 and 2004 reauthorizations of IDEA. The mandate ensures that students who qualify for special education must receive those services at no financial cost to themselves or their parents. The mandate also entitles these students to receive specifically designed instruction, an appropriate placement, and related services.

**Local Educational Agency (LEA)** is the school district that provides a public education and related services to a local area. The LEA is responsible for compliance with state and federal laws for which it receives funding.

**Mediation** is the process by which parties in dispute can resolve a complaint or issues that leads to a legally binding agreement. Although not mandated in the 2004 IDEA, mediation (Section 615(e)(1)) is strongly encouraged as an appropriate dispute resolution process. Mediation is voluntary, can be implemented in many forms, and is used by many school districts to resolve special education-related disputes. It generally involves a third party, not involved in the dispute, who assists the parties in the process.

**Procedural Due Process** must take place when an individual is deprived of life, liberty, or property. It involves a prescribed constitutional procedure that must be followed.
State Educational Agency (SEA) is the state agency responsible for providing a public education and oversight of the school districts or LEAs in its jurisdiction.

Special Education is the term that applies to the education of designated students with disabilities. Instruction and resources in public schools are specifically designed to educate students with disabilities, depending on their needs. Public schools are required to follow particular federal legislation in meeting the needs of designated students.

Resolution Session is a mandated meeting between the disputing parties that is part of the procedural safeguards of the 2004 IDEA [IDEA 20 U.S.C. § (f)(1)(B), 2004]. School districts and parents must enter into a preliminary meeting (or meetings) before the due process hearing. The meeting(s) offers an opportunity for both parties to resolve their dispute before a due process hearing and must be convened within 15 days of the initial complaint being filed. A representative who has decision-making authority must be present.

Summary and Organization of the Dissertation

This case study examined the implementation of the resolution session in a large urban school district. Perspectives of the school district personnel responsible for resolving special education special education complaints were also examined. Chapter I provided an overview of the study. Chapter II documents a history of special education law, explains the resolution session and other forms of conflict resolution that are used to resolve disputes in special education. The research questions and methodology are contained in Chapter III. The chapter includes a description of the design, data collection methods, data sources, data collection methods, and data analysis techniques. Chapter IV
is compromised of the results from the data collection and Chapter V is a discussion of the results and conclusions of the study.
Chapter II

Review of Literature

Providing an adequate education for children with disabilities has been an evolving struggle between parents and school district personnel; for the most part, this struggle has taken place very publicly through actions by the judicial and legislative branches of government at the state and federal levels. Parents want the best education possible for their children; school district personnel want the best education for all children enrolled at schools located in their districts while operating within the budgets derived from public funding; judges and juries make decisions based upon the information presented to them at trial; legislators try to codify solutions that balance all interests. Actions and reactions from all groups result in an ever-changing landscape for providing an adequate education for children with disabilities.

One of the most recent legislative attempts to balance the respective demands of parents of children with disabilities and financial constraints of public schools is the addition of a resolution session in the due process for complaints filed by parents of students with disabilities against school district officials. The purpose of this study was to examine how one large urban school district was able to rapidly adopt the resolution session in its due process procedures and the impact that this adoption had on the perceptions that school district administrators held about the process and adoption.

Three questions guided this study:

1. How did the legal requirement of the resolution session affect the way special education complaints were processed in a large urban school district?
2. How did school administrators directly involved in the resolution of disputes regarding students with disabilities understand the resolution session process of the school district?

3. What are the strengths and weaknesses of the process and what factors were important in the development of the process?

This review of literature presents the complexity of the struggle to provide a free and appropriate education for children with disabilities. The chapter is divided into five sections. The first section is a history of the forces that have shaped special education law. The second section focuses on the role that litigation has played as a driving force in special education. Alternatives to dispute resolution are presented in the third section. In the fourth section of the chapter, the resolution session, the most recent mandated alternative to dispute resolution, is described. The last section is a summary of the chapter.

**Historical Context**

The history of providing an adequate education for children with disabilities has been shaped by struggles between parents and school district personnel that have played out through several landmark legal decisions and subsequent legislative action. The context and direction was established early when providing education for children with disabilities was cast by parents and advocates as a civil rights issue. Indeed, since the Brown v. Board of Education ruling by the U.S. Supreme Court in 1954, students, parents and educators in American public schools have used the legal system to resolve disputes and conflicts over a variety of issues. One issue that has found its way through the legal system is special education. Through a series of congressional acts in the 1970s to ensure
a free and appropriate public education, the civil rights of school-age children with disabilities was established. Free and appropriate public education (FAPE) is the basis of the current Individual with Disabilities Education Act, known as IDEA. A FAPE was initially mandated within the Education for All Handicapped Children Act of 1975, the precursor for the current IDEA, and is purely a procedural requirement to develop a specifically designed program that meets the unique needs of a designated disabled student. Two separate legal cases were thought to have precipitated the initial congressional acts; the Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania (1972) and Mills v. Board of Education (1972).

The PARC v. Commonwealth of Pennsylvania (herein known as PARC) case was a class action suit brought before the U.S. District Court by a Pennsylvania state association that advocated for children with disabilities. The litigation involved a group of disabled children who had been deemed uneducable (i.e., unable to be educated) by educators and administrators employed at various school districts within Pennsylvania. In contrast, the plaintiffs argued that under the Equal Protection clause of the 14th Amendment to the U.S. Constitution the state was denying “students with mental retardation” the right to a public education (Yell, 2006, p. 67). The students at the center of the case either had been denied the right to receive an education via state funds or had been expelled from the public schools due to the students’ disabilities. The argument was that the state ignored its constitutional obligation of providing a public education to the disabled described at the time as mentally retarded children. The PARC case was settled by consent agreement. Two important factors established for the plaintiffs formed the basis for the consent agreement. The critical factors were:
1. Children with disabilities are capable of benefiting from an educational program or training.

2. Children with disabilities have an equal right to be educated with public funds because the same rights are conferred to all other children.

Zettel and Ballard (1979) reported that the consent agreement contained four primary stipulations: (1) the state could no longer deny children with disabilities a public education; (2) children from ages six to 21 must be provided access to an appropriate publicly funded education or training; (3) school districts must locate and identify children with disabilities; and (4) disabled children must be provided similar programs to that of their non-disabled peers. The PARC ruling outlined the responsibilities of the states to educate children with disabilities.

The courts also considered another landmark case shortly after the PARC decision. In 1972, Mills v. Board of Education was filed against the District of Columbia on behalf of all out-of-school children with disabilities who claimed that they were denied a public education. Similar to the PARC case, the plaintiffs argued that the school district violated the due process rights of disabled children under the 14th Amendment to the U.S. Constitution. At the time, it was estimated that the 18,000 children who were eligible to receive specialized educational services were being denied, expelled, or transferred from public schools with no due process of law (Alexander & Alexander, 1998). The U.S. Court for the Eastern District of Pennsylvania ruled that the segregation of disabled students was unconstitutional and ordered the District of Columbia School Board to provide a publicly funded education for all students with disabilities. More importantly, the Court ordered due process safeguards for the placement, discipline, and
exclusion of students with disabilities. The procedural due process requirements included
the right to an impartial hearing with representation and presentation of witnesses and
notification of due process.

Similar cases across the country followed; by 1975, there was a patchwork set of
state laws pertaining to the education of students with disabilities. To address
inconsistencies among states, federal legislation was proposed to ensure an appropriate
publicly supported education for all handicapped children. Congressional hearings at the
time revealed that over one million handicapped children were still being denied access
to a publicly funded education (H. Rep. No. 94-332, 1975). Over half of the designated
handicapped population was not receiving entitled educational services and many
children were being inappropriately placed into programs and services (H. Rep. No. 94-332, 1975).

In 1975 the 94th Congress sought to resolve this disparity as well as add an
extension of a civil rights mandate in Section 504 of the Rehabilitation Act that had been
passed earlier in 1973. Congress sought to prohibit discrimination on the basis of
disability by passing the Rehabilitation Act in 1973. This legislation made it unlawful for
agencies or activities that were supported by federal funds or grants to discriminate
against individuals with disabilities. Section 504 entitled individuals with disabilities to
accommodations, where impairment substantially limits a major life activity. Since
learning is considered a major life activity, Section 504 is pertinent to the legislation
governing special education.

No otherwise qualified handicapped individual in the United States…shall solely
by reason of his handicap, be excluded from the participation in, be denied the
benefits of, or be subject to discrimination under any activity receiving federal financial assistance. (Rehabilitation Act, 1975)

Section 504 sought to define a handicapped person and protect the rights of disabled persons especially in relation to agencies receiving federal funds. The Education for All Handicapped Children Act (EAHCA) of 1975, Public Law 94-142, specifically combined “an educational bill of rights for handicapped children” (Zettel & Ballard, 1979, p.12) with the promise of increased federal assistance. More importantly, Congress passed that a free appropriate education be made available to all handicapped children. The free appropriate public education assurance was to become the mainstay of the law and the basis for all further provisions of the law.

Free appropriate public education entitled every designated disabled child to an individualized education program. The Individualized Education Program (IEP) is the education plan developed through a partnership between the school staff and the parents for each eligible student with disabilities. The IEP was created to address the student’s educational needs and contain benchmarks, goals, and the provision of services. Local school district personnel were given the responsibility of developing and implementing the IEP, which included nondiscriminatory testing and evaluation services.

The PL 94-142 also safeguarded due process rights for children with disabilities with the provision of a complaints procedure; specifically the procedure established an opportunity for an impartial hearing with representation and the right to an appeal. Parents or guardians had the right to examine evidence and records. Through these due process safeguards for students with disabilities and parents, enforcement of the law to appropriately educate disabled children was enacted (IDEA, 1997).
The EAHCA “emphasized procedure over substance” (Hanson, 2003, p. 526). Congress detailed procedures, including a complaint process with which states were required to comply in order to be eligible for funding. As Congress opened the door to impartial due process hearings, the legal system became a significant mechanism for dispute resolution and a levy for the rights of students with disabilities as conferred in PL 94-142. Courts, including the U.S. Supreme Court, based their decisions on the procedural delivery of FAPE (Hanson, 2003). Procedural delivery is related to procedural due process and required that, “parents must be given notice and opportunity to participate in the development of the child’s program” (Alexander & Alexander, 1998, p. 407).

The 1982 U.S. Supreme Court landmark ruling in the case of Board of Education of Hendrick Hudson Central School District v. Rowley set a new precedent for how courts around the country began to interpret the law regarding procedural safeguards in special education complaints. Amy Rowley was a deaf eight-year old child whose parents had requested the school district to provide a sign-language interpreter for Amy in the classroom. Representatives of the school district refused and insisted that they had provided other services, including personalized instruction for Amy. Amy’s parents claimed that Amy was being denied her FAPE. Both the U.S. District Court and U.S. Second Court of Appeals decided in favor for Amy’s parents. The U.S. Supreme Court reversed the decision based upon evidence that Amy was making progress in school with the services provided and that academically she was performing above average. Since other accommodations were offered to Amy, the Court found that the school district and state had met and provided Amy with the FAPE requirement under the EAHCA.
The U.S. Supreme Court ruling in the case stated that as long as appropriate instruction and services were provided for a handicapped child, who derived some educational benefit, the FAPE requirement had been met. Hanson (2003) suggested that this was to be a litmus test for subsequent litigation regarding procedural safeguards under the EAHCA and has remained the standard for FAPE. In order to receive federal funding, state education officials had to demonstrate how they had met federal requirements. A variety of programs and services designed to meet the educational needs of students with disabilities began to be offered in school districts. By 1985, some form of free and appropriate public education was provided to children with disabilities in all states.

The types of disabilities covered under federal legislation have evolved as well. Increasingly exact and sophisticated medical research has allowed for new diagnoses and categories of disabilities. This gave rise to an increase in the designation of students needing special education services, specifically students with disabilities that affect learning. As a result, the number of designated special education students increased, as did parents who demanded that their children receive FAPE services (Daugherty, 2004). Congress intended the procedural safeguards to act as an enforcement of the law with regards to the EAHCA. Enforcement of the law also meant that more and more students and parents were taking advantage of their due process rights.

In 1990, Congress amended and renamed the EAHCA the Individuals with Disabilities Education Act (IDEA). Yell (2006) argued that the intent behind the IDEA amendment was to increase low academic expectations for students with disabilities and to ensure a quality, as opposed to appropriate, education for each student. Additionally,
throughout the IDEA legislation and subsequent amendments, the terms disabled and
disability were used in place of the term handicapped. Several new categories of
disabilities were also added in the 1990 amendment. Related services (i.e., services that
provide some indirect benefit to learning) were included. In addition, the law required a
planned transition from secondary to postsecondary opportunities for students with
disabilities over 16 years of age. The amendment contained provisions to reduce the
amount of paperwork for educators and limited attorney fees. The amendment also
addressed the issue of reimbursement to parents who placed their student with disabilities
in a private school under certain conditions. Similarly, the amendment addressed issues
of discipline and included clarification on the removal of a student from an educational
setting for specific disciplinary offenses. The amendment required the IEP team to
determine if the student’s disciplinary offense was a manifestation of that student’s
disability before suspending or removing the student from school. According to the
IDEA legislation, parents’ procedural due process remained the same as granted by the
original law.

The IDEA legislation was amended again in 1997. For the first time in the history
of special education legislation, the 1997 amendment included, but did not mandate
mediation as an alternative means for conflict resolution. School districts were required
to offer voluntary mediation to parents as a means for dispute resolution. If both parties
agreed to a resolution during mediation, then the terms would become legally binding
through a written agreement. However, the amendment stipulated that mediation could
not be used as a way of delaying or denying parental rights to an impartial due process
hearing. Mediation sessions were to be confidential and discussions occurring during
mediation could not be used as evidence in any due process hearing or in court. Dobbs, Primm, and Primm (1991) argued that the basis for Congress to include an alternative dispute resolution process was that mediation would encourage open discussion and lead to more problem solving as opposed to costly hearings. The legislation stipulated that attorneys could be present at mediation, but attorney fees could not be filed or claimed for mediation sessions that occurred prior to a due process hearing.

Congress reauthorized the IDEA in 2004. Also known as Individuals with Disabilities Education Improvement Act (IDEIA), the 2004 reauthorization was designed to align with the goals established in the 2002 reauthorization of the Elementary and Secondary Education Act, commonly known as No Child Left Behind (NCLB) [No Child Left Behind Act of 2001, P.L. 107-110]. Improving student academic performance via greater accountability throughout public education was the goal of both bills. Congress sought to increase student performance by mandating the use of research and scientifically based practices in the classroom (Yell, 2006). Members of the IEP were no longer required at every meeting as long as parents and the school district representative approved. Benchmark objectives were not required and changes could be made in writing to a student’s IEP without the team having to reconvene in between the annual IEP meetings. Yell (2006) indicated that these changes reflected congressional intent to reduce the amount of time teachers spent on lengthy paperwork and meetings.

The 2004 IDEA also contained modifications to the discipline process. In the previous 1997 amendment, the *manifestation determination* was introduced. The manifestation determination required the IEP team to determine if the student’s infraction was linked (manifestation) to the child’s disability. The IEP team had to consider three
factors in their approach: (a) the placement and services of the student was appropriate and had no effect on the infraction; (b) the disability of the student did not impair his or her ability to understand the impact and consequences of behavior; and (c) the disability of the student “did not impair the student’s ability to control the behavior” (IDEA, 2004).

The 2004 IDEA amendment contained modifications to determining the casual link between the student’s behavior and disability. Since this determination is directly connected to FAPE, it is important to explain the provisions of the legislation that are discipline-related as well as how the impact led to the introduction of the resolution session. The IEP team was required to show whether the conduct of the student was caused directly or linked to the student’s disability or if the student’s conduct was the direct result of the failure to implement the student’s IEP. Yell (2006) contended that the 2004 modifications made it easier for the IEP team to determine if the student’s infraction was directly caused by or substantially related to the student’s disability.

Congress changed the stay put provision in the 2004 IDEA amendment. The stay-put provision, introduced in the 1997 IDEA amendment, stipulated the educational services and placement the student receives during the manifestation determination process. Under the 1997 amendment, the stay put provision meant that the student could not be moved to a different placement until the manifestation determination was made. This provision changed in the 2004 amendment to allow students to remain in the interim setting or alternative placement throughout the disciplinary process.

The 2004 amendment also stipulated a two-year statute of limitations for due process by all parties, with a 90-day limit in filling for appeals. In a further attempt to stem the rising number of judicial based resolutions, Congress introduced and mandated
the resolution session, an alternative provision for conflict resolution, in the 2004 IDEA amendment (Yell, 2006). The intent of the session was “for parents of the child to discuss their due process complaint, so that the LEA (Local Education Authority) has the opportunity to resolve the dispute that is the basis for the due process complaint” (IDEA, 2004).

The 2004 amendment also sought to further curtail attorney fees. Attorneys could no longer be reimbursed for attending IEP meetings unless required by a hearing officer; nor could they be reimbursed for fees and actions performed before a written settlement. School districts could receive attorney fees if the courts found that attorneys representing parents were involved in any the following: they filed a frivolous suit; they continued to litigate after the suit was shown to be unreasonable; or they harassed or delayed proceedings, which increased financial costs to the school district.

In summary the U.S. Congress wanted to ensure that children with disabilities, like their non-disabled peers, had guaranteed protected rights to a public education (Latham, Latham, & Mandlawitz, 2008). With each ensuing legislation, protection in the form procedural safeguards increased. It appeared that Congress intended the procedural safeguards to ensure that children with disabilities were given a free appropriate education. The legislation contained safeguards to ensure that the intent of the law was being carried out by school district personnel. Appendix A shows the general Special Education Due Process Complaint and Resolution Process under the 2004 IDEA.

**Litigation – The Popular Choice**

Beginning in 1975, procedural safeguards were granted to parents and school districts through legislation. Under the law, students with disabilities are entitled to a free
and appropriate public education: “The U.S. Congress understood that potential conflict was likely and that parents would need the opportunity to exercise their legal rights” (Mueller, 2006, p.5). Nevertheless, early special education legislation did not mandate or stipulate the manner by which to deal with conflicts or disputes between school district personnel and parents. Parents used the due process safeguards as contained within the law to ensure that school district personnel were adhering to the law.

Litigation became the popular choice for dispute resolution as each legislative act provided an opportunity for an impartial due process hearing and the right to an appeal. As litigation increased so did costs. School district budgets were burdened with rising costs of services for students with disabilities, as well as the costs associated with litigation. According to Mueller (2006), more than 14,000 due process hearing requests were estimated to take place in the 2006-2007 academic year, with costs as much as $50,000 per hearing.

Under the 1975 EAHCA, attorneys who represented parents and guardians of students with disabilities could not claim attorney fees; instead, claims for attorney fees were made using other laws, including an extension from Section 504 of the Rehabilitation Act (Yell, 2006). However in 1984, the practice of claiming attorney fees for actions in general was halted by the U.S. Supreme Court decision in Smith v. Robinson. The Court held that the plaintiffs were not entitled to attorney fees under other laws (e.g., 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1871, 42 U.S.C 1983) if the original claim was brought under the EAHCA, which did not carry any provision regarding attorney fees. In 1986, Congress amended the EAHCA to include the Handicapped Children’s Protective Act (HCPA). This amendment to the EAHCA
authorized courts to grant attorney fees (reimbursement) to parents and guardians, but only if they were the prevailing party (Council for Exceptional Children, VA. Dept of Governmental Relations, 1986).

The HCPA authorization regarding attorney fees could also be applied retroactively to cases that were pending or brought after the *Smith v. Robinson* decision in 1984. The 1986 HCPA allowed for attorney fees to be claimed under EAHCA as well as the Rehabilitation Act of 1973. However attorney fees could only be claimed under the latter legislations after procedures had been exhausted under the EAHCA. Subsequent court-based decisions allowed attorneys to include cost of travel, testing and evaluation, use of paralegals, and specific paperwork. So dramatic was the increase of litigation that cases regarding attorney fees accounted for 11% of special education related court cases from 1978 to 1994 (Maloney, 1997).

According to Roberts (2008), there are four main reasons why disputes occur in special education: (a) when and how eligibility of a student for special education is made; (b) the types of educational services that students require; (c) the appropriateness and efficacy of the IEP; and (d) the educational placements of students under FAPE. The original EAHCA law of 1975 defined specific disabilities that affected the educational performance of a child. In the subsequent amendments to the EAHCA, Congress recognized more types of disabilities; however, disagreements between parents and school district personnel arose regarding how determination of those disabilities was made.

The history of litigation in special education suggests that parents and school district personnel have often disagreed on the special educational services provided to
students with disabilities. The *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) was a landmark court case whose findings also contributed to the special education legislation. Amy Rowley, plaintiff, claimed she was denied her FAPE entitlement. School district personnel felt that Amy was making academic progress without the additional services that her parents had requested. The U.S. Supreme Court found that there was no substantive standard in the language of the law for, “prescribing the level of education to be accorded to handicapped children” (*Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982). The Court reasoned that the law does not mandate states to provide services that are, “sufficient to maximize each child’s potential…” (*Board of Hendrick Hudson Central School District v. Rowley*, 1982). This decision essentially set the standard on what could be litigated in courts, including the level of education that the student received.

Unfortunately FAPE was not defined legally in terms of substantive standards. The U.S. Supreme Court concluded that Amy was receiving an adequate education. In addition, Amy was performing academically better than her peers. The Court deemed that the state had indeed satisfied the FAPE requirement by providing personalized and sufficient services from which Amy benefited educationally. The Court also noted that since Congress had not defined the standards of FAPE, standards for appropriate education was to be defined by the courts and hearing officers. The interpretation of the law was left to school district officials, parents, lawyers, and judges to decipher and implement.

The *Rowley* case promulgated a major glut of litigation regarding educational services. Curtis (2005) argued that one of the reasons for special education litigation is a
vague and redundant IEP. Conflict occurs when students who have been identified as having disability claim they are not receiving real educational services that meet their needs. In *Board of Education v. Rowley* (1982), the Supreme Court acknowledged the importance of the IEP in determining compliance with a FAPE and directed district and appellate courts to do the same. Since then, courts have placed utmost importance on parent participation and involvement with the IEP process, as well as the educational benefit that the IEP confers on the student.

The due process provision of special education legislation plays several roles: a guideline for parents’ rights; a venue for parents to challenge school personnel decisions; and as a regulator for the process and the law. While “appropriate education”, “environment”, and “free” all remain undefined in FAPE, there is strong evidence to suggest that Congress wanted the law to succeed with parents and schools as partners (Roberts, 2008). When that partnership breaks down or is non-existent, the adversarial nature of due process takes over and courts must decide what constitutes a FAPE and whether that education has been met.

Roberts (2008) found that the concept of placement of a student has become a contentious issue between parents and school personnel, often resulting in litigation. Placement encompasses a wide range of environments, from special day classrooms to students with disabilities being placed in regular classes with non-disabled students, which is known as mainstreaming or inclusion. Since placement is central to the IEP, many of the challenges within the IEP tend to be placement-related. Newcomer and Zirkel (1999) reported that among the 200 litigated cases they analyzed, at least 63% of those cases could be classified as placement-related. They added that because Congress
indicated a preference for the Least Restrictive Environment (LRE) provision of the FAPE, it must be given due consideration.

The LRE is often reflected in the IEP and one that has been most often challenged in litigation according to Maloney (1995). Almost 10% of cases in Maloney’s analysis of special education litigation from 1978 to 1994 were related to LRE’s. Although never actually defined, the LRE has tended to be favored by the U.S. Congress. Turnbull, Huerta, Stowe, Weldon, and Schrandt (2009) suggested that for every student with a disability, parents and school representatives within IEP teams must agree on what constitutes LRE. Since the LRE has few guidelines and differs for each student, “…there is much room for disagreement between parents and educators as to what constitutes the appropriate environment for the child” (Roberts, 2008, p.5).

Beyond these reasons for special education disputes, Hill (1987) also cited the challenges associated with monetary shortfalls in special education funding that school districts and states faced. Hill contended that the fiscal impact may reflect the procedures for determination of whether a child qualifies for IDEA and the types of services offered. The current IDEA law provides funds for each state based on an estimated number of designated students. Since states do not receive more funding if the actual number is greater, there is no financial incentive to identify students with disabilities (Roberts, 2008).

Indeed states are required to fund a large proportion of the IDEA mandate from their own resources. With the 2004 reauthorization of IDEA, Congress announced that federal funding would increase every year from 2004 to 2010 so that the legislation would be fully funded, covering the 40% of state costs, as promised in the original 1975
legislation. According to Connecticut Senator Christopher Dodd (D-CT) (S. Rep. No. 108-134, 2004), the federal government had not matched half of the 40% of funding that was promised in the EAHCA bill of 1975. Since due process is afforded to all parents and students under the 14th Amendment of the U.S. Constitution, parents may file a complaint about a procedural or a substantive issue. Resolving these complaints can become costly.

If a parent disagrees with a decision regarding the IEP, placement, or any other issue related to special education, the parent can file a complaint with the school district. All complaints are investigated by school district and state department of education officials. If parents are not satisfied with the outcome, parents can file for a due process hearing. According to Yell, Ryan, Rozalski, and Katsiyannis (2009), “A due process hearing is a formal hearing in which both parties have the right to subpoena, examine, and cross-examine witnesses” (p.70). Although attorneys may represent parties, a hearing officer adjudicates the case after examining the evidence from each side. State regulations may include a one or two tier system of appeals. With a one-tier system, the state agency conducts a due process hearing after which the case proceeds immediately to a state or federal court on appeal. In states where a two-tier system is implemented, the due process hearing is conducted by the school district and an appeal goes before a state-level review and then before a court on further appeal. Since IDEA is a federal law, a federal court has jurisdiction.

Litigation is the most expensive form of dispute resolution and not just financially. According to Zirkel (1994), litigation is, “unduly time-consuming and open-ended” (p. 404). Zirkel reported the procedure for one due process case alone: 13 hearing
sessions; 1800 pages of recorded testimony; over three years; an eventual court trial. In another example, a due process transcript cost $27,000 and expenses for a hearing officer totaled $20,000 from a due process hearing. Once introduced under IDEA, attorney fees became the largest cost in due process hearings; these costs are paid from the budgets of school districts. The nature of litigation bears more than just the financial cost, as summed up by a federal judge in *Oberti v. Board of Education* (1993), “It is regretful that this matter has ended up in litigation where parties are pitted against each other instead of working together.”

**Alternative Dispute Resolution**

Until 1997, the IDEA contained virtually no process for dispute resolution; the due process hearing was mentioned as the only form of conflict resolution. In *Clyde K v. Puyallup School District* (1994), the U.S. Court of Appeals for the Ninth Circuit noted that the interests of parents and students would be served more effectively by compromise and cooperation. Congress acknowledged that litigation does neither and has encouraged alternative forms of dispute resolution over the years to counter the expensive costs of litigation (H. Rep. No. 104-614, 1996). Appendix B provides an overview of the alternative dispute resolutions described below.

**Local complaints process.** Latham et al. (2008) found that the complaints process of many State Educational Agencies (SEA) contain means of alternative dispute resolution. If the complaint is made against a school district, the SEA officials are expected to review the complaint, following procedures set forth by the IDEA and state policies. The SEA staff typically informs the school district officials of the complaint and carries out an investigation. Resolution of the complaint and any dispute may
include mediation, resolution session, due process, and litigation. According to Latham et al. (2008), “Generally the SEA complaint is used most frequently, the mediation process next, followed by due process hearings” (p. 87).

**Mediation.** Mediation usually involves the use of a neutral body that is responsible for mediating between the parties involved to reach a mutual agreement. Before Congress officially made alternative forms of conflict resolution available within IDEA in the 1997 reauthorization, mediation had been used in many states to settle disputes between parents and school officials. Baldridge and Doty (1998) suggested that because mediation had been implemented in many states, it was perhaps inevitable that Congress would place an emphasis on mediation in the 1997 amendment.

Mediation is generally a less expensive form of dispute resolution than litigation and may or may not involve the use of attorneys. According to Daggett (2004), the average cost for mediation and due process was $8,000 to $12,000 per case while costs for litigation averaged $95,000 per case. This may have been the idea behind the inclusion of mediation in the 1997 amendment and again in the 2004 IDEA reauthorization. William Goodling (R-PA), the chairman of the House Committee on Education and the Workforce (the committee responsible for designing and authorizing the bill), noted, “Mediation has proved successful in nearly three-quarters of the States that have adopted it. This change will encourage parents and schools to work out differences in a less adversarial manner” (as cited in Latham et al., 2008, p.8).

It is noted that mediation, while encouraged in both the 1997 amendment and 2004 reauthorization, was not mandated and remains a voluntary process that may be scheduled before any due process hearing. Nevertheless mediation has been
implemented in some states as part of the two-tier or three-tier process whereby parents are given the opportunity to meet, “with a disinterested party who will explain the benefits of, and encourage the use of, the mediation process” (IDEA, 2004). Congress stipulated that mediation must involve an impartial expert and must not be “used to deny or delay a parent’s right to a due process hearing” (IDEA, 2004).

There is much evidence that supports the success of mediation in settling special education disputes before expensive litigation. In a study of post mediation satisfaction, Welsh (2004) noted that disputants found mediation to be fair and valued the process in providing assistance in achieving resolution or making progress towards it. According to Stitt (1998), mediation as a form of alternative dispute resolution reduced time and costs; it also allowed for improved relationship between the disputing parties. Masters and Albright (2001) found that parties had more control over the outcome and were more focused on an early settlement when the mediation process was used.

Mediation and arbitration (see below) have long been popular forms of dispute resolution outside the field of education. According to Lipsky and Seeber (1998), many of the Fortune 1000 firms use mediation to settle employment issues. Masters and Albright (2001) found that mediation was used to cover many non-labor disputes. They argued that it has been long understood that in order to resolve issues quickly and efficiently, while harboring good relationships and keeping costs down, mediation and other forms of alternative resolution are necessary.

Beyer (1999) reported that more than 39 states used mediation in various forms to resolve disputes between parents and school district personnel. These mediation processes were implemented in different ways, but there was some consensus that a
successful mediation depended on the individual situation, the parties and issues involved, and the propensity towards reaching an agreement. Higher parental satisfaction was found in mediation compared to due process hearings (Kerbeshian, 1994). Dobbs, et al. (1991) noted that conflicts in special education are suited for mediation because maintaining working relationships between parents and school district staff members are important for the efficacy of the IDEA. In contrast, Schrag and Schrag (2004) found that one-third of parents who participated in mediation with a school district would not use the process again. Parents claimed that mediation was ineffective and school district personnel did not implement agreements that were made in the resolution. Parents further felt that the resolution did not enhance their child’s education.

Beyer (1999) pointed to ineffective quality control within the mediation process, which may result in the failure to resolve special education conflicts under IDEA. One of the provisions found in the IDEA is that only qualified mediators may be hired, but the law failed to define the specific qualifications. Attorneys are often hired by a Local Education Authority (LEA) to mediate the conflict between the parties; Beyer noted the mixed feelings of having an attorney mediate and the issue of impartiality of mediators. Parents are required to meet with a disinterested party in order to gain information (benefits) about the meditation process. Since lists of mediators are retained by the state department of education and school districts, Beyer argued that parents might view the whole process as unfriendly, biased, and controlled by the state.

Mediation is intended to facilitate discussion between parties. Mediators do not generally offer advice to either party. Lake (1991) found that parents were dissatisfied with mediation because parents believed they compromised too much. Since mediators
usually have no authority over the binding agreement or decision-making, parents felt that this process was inadequate in making school district personnel compliant and accountable. In contrast, Padula (2008) found that the school administrators in one state were more satisfied with the process of mediation when they were better able to understand parents’ perspectives.

**Arbitration.** Arbitration is a form of mediation in which the neutral third-party (arbitrator) renders a final decision. Arbitration, third-party opinion or consultation, is a method frequently used to resolve disputes. Similar to the process of arbitration used in industrial disputes, third-party experts are used to recommend settlement for school officials and parents or advocates in dispute (Schrag, 1996). The third-party consultant or hearing officer hears facts and opinions from each party and issues a recommendation to resolve the dispute. Arbitration is voluntary and occurs after a filing of a due process request. Since parents’ rights to due process may not be delayed or denied, this option of dispute resolution is not binding. According to Henderson (2008), the third-party arbitration has not been widely used and when available has not been a popular choice for dispute resolution in special education cases.

More recently, advisory opinions have been offered by a judge or hearing officer trained in mediation after hearing the case. The officer’s opinion is used to establish a settlement between the disputing parties for a more formal resolution. Henderson (2008) reported the success and popularity of this process in one state, especially for parents who were unable to afford the expense of an attorney.

**Individualized Education Plan (IEP) facilitation.** This process of conflict resolution employs an outsider who does not know the family or child and is responsible
for assisting and conducting the IEP meeting to resolve any disagreements or disputes between parents and school personnel. According to Mueller (2009), the IEP facilitation mitigates potential adversarial conflict that can lead to litigation. Facilitated IEPs are less formal and less expensive than mediation or due process. Mueller argued that the process allows parents and school personnel to resolve disagreements immediately so that issues do not remain unresolved until a complaint is filed or court action ensues.

The process of the facilitated IEP is similar to that of mediation. The neutral facilitator creates an agenda for the IEP team with goals created by each member of the team. The facilitator keeps the team focused on resolving the issues so that an agreement is reached. Henderson (2008) found that IEP facilitation was offered in at least 24 states mainly at the local (LEA) level. One state in Henderson’s survey reported a 94% agreement rate with the facilitated IEP process. The facilitated IEP is usually available at any stage of a dispute; three states in Henderson’s survey made IEP facilitation mandatory after a request for a due process hearing had been filed.

**Case managers.** A case manager is an individual who understands special education law and can facilitate problem-solving issues between school officials and parents of students with disabilities. Henderson’s 2008 survey study on alternative methods of resolving conflict in special education in 43 states within the U.S. included interviews with state officials responsible for dispute resolution. The states selected for interview were states where a range of non-IDEA methods for dispute resolution were used and officials could report their data on the use of their process. Henderson reported that 13 states in the survey used case managers to resolve dispute resolution in special education. Depending on the state, the dispute resolution case manager fulfilled different
roles. In some states the case manager was a staff member from the LEA that responded to formal and informal complaints and advised parents about resolution processes. In other states, a regional manager who handled documents and communication between school staff and families was provided. In one state, the dispute resolution case manager also handled the requests for mediation.

**Immediate assistance and response.** Telephone hotlines for assistance and staff responses are other alternatives to dispute resolution. Henderson (2008) cited 33 responses from his survey consisting of 43 states. Assistance to parents regarding information about dispute resolution (e.g., advice about the processes, procedures, and options) were offered by professional staff. Parents or advocates could reference an SEA representative in person or call the telephone hotline directly to receive assistance. The telephone hotline service was reported to be free, providing callers immediate assistance and clarification on issues. One state reported that staff initiated the complaint resolution process for parents if required (Henderson, 2008).

**Pre-hearing conferences.** Pre-hearing conferences are usually conducted by hearing officers who will be connected to the case should the complaint proceed to a due process hearing (Henderson, 2008). Pre-conference hearings are very similar in process to the early complaint resolution. Once a request for due process has been filed, the parties (i.e. parents, involved program members, and representatives from the state department of education) meet with a hearing officer in an effort to resolve the issues of concern or dispute. Early complaint resolution is used at both the state and local levels. Pre-conferences are conducted in some states before the filing of a request for due process (Henderson, 2008). The intent of an early complaint resolution is to reach a
settlement between the parties and reduce the need for a more formal, expensive, and adversarial process.

**Parent-to-parent assistance.** Turnbull, Turnbull, Erwin, and Soodak (2006) reported twenty years of research that involved families assisting each other through a mentorship model. Support for parents comes in the form of parents who have a child with a disability and may have gone through a conflict resolution themselves and are trained to provide advice, as well as IEP and legal assistance. This method is ideally activated early in the dispute resolution process (Feinberg, Beyer, & Moses, 2002). Families are matched through a process that involves a regional database, which participating school district staff can access if required. This assistance is not offered in all states; Feinberg et al reported its popularity in local schools districts in Wisconsin, Oregon, and California.

**The Resolution Session**

The resolution session, introduced in the 2004 IDEA amendment, became the first mandated dispute resolution process in special education legislation. The process involves a meeting or meetings between the affected parties and preempts the due process hearing. The resolution session is the intermediary step that takes place within 15 days of a complaint filed by either parent or school district official. Either the party or representative, including a representative of the LEA who has the “…decision making authority on behalf of such agency” must be present at the meeting (IDEA, 2004).

John Boehner (R-OH), the former Chair of the House Education and Workforce Committee, noted the reasons for the addition of the new procedural safeguards, “The rights of parents are preserved under H.R. 1350, but innovative solutions are proposed to
resolve problems in a timely fashion, reduce costly litigation, and refocus IDEA on teaching children rather than compliance with regulations” (as cited in Edwards, 2005). A report from the U.S. Government Accountability Office (GAO) published in 2003, a year before the reauthorization of IDEA in 2004, found that while the number of requests for due process hearings had doubled over time, the number of actual due process hearings had declined. The same report estimated that for every 10,000 students, four due process hearings and seven mediations were held.

Judicial decisions echoed similar sentiments regarding costly and time-consuming litigation. In Clyde K v. Puyallup School District (1994), the U.S. Court of Appeals for the Ninth Circuit noted that the interests of parents and students would be served more effectively by compromise and cooperation. Congress sought to do both with the resolution session by effectively dissuading attorneys from being present at the session(s) in that no provision for attorney fees were included in the law (IDEA, 2004). Resolution sessions were mandated to provide an opportunity for parents and school district personnel to find common ground. A successful resolution session would entail parents and school district staff settling their differences as well as working together to better serve the student.

There are several stipulations found in the law (IDEA, 2004). Any settlement that emerges from the resolution session is legally binding. Although mandated, both parties may agree in writing to waive the resolution session and proceed to a due process hearing or use an alternative process such as mediation. Although any resolution that emerges as an agreement is legally binding, either party has the option of voiding the agreement after three business days of the execution of the agreement. If either party voids the
agreement, the process then moves to a due process hearing as initially filed. Similarly, if the parties do not reach an agreement within 30 days of the complaint being filed, the process moves to a hearing.

Although there are similarities between the resolution session and mediation, there are distinct differences. Unlike mediation, the resolution session is not subject to confidentiality requirements. It is also legally mandated before a due process hearing. If a parent refuses to participate in the resolution session, school district officials can request that the parents’ complaint be dismissed after the initial 30-day pre-hearing process (IDEA, 2004).

Parents and school district officials may waive the resolution session if mediation is chosen as the means of resolving the dispute. Acknowledging that at least $90 million was spent in resolving special education-related disputes in the 1999-2000 school year (U.S. GAO, 2003), Congress sought to eliminate expensive litigation by adding a last step of a pre-hearing towards resolution outside of a hearing or court. The absence of attorneys was intended to significantly reduce costs, even if a resolution was not forthcoming from the session. Furthermore, Congress wished to establish a process with binding arbitration to resolve dispute issues effectively. It was believed that a mandated resolution under a federal law might be more effective in avoiding litigation and to settle disputes between parents and the school district personnel (U.S. GAO, 2003).

The resolution session has limitations to meaningful conflict resolution. Mueller (2009) suggested that the resolution session, as intended by Congress, might not be effective since a due process hearing request must already have been filed for a resolution session to occur. Parties involved may not be inclined to take the session seriously; the
procedure would merely become a formality in attaining a hearing. In her study on alternate dispute resolution, Henderson (2008) found that only 14 out of the 43 states surveyed were using the resolution session in some form. Furthermore, Mueller (2009) argued that mediation and the resolution process were perceived to be reactive and failed to empower the parties or the team involved to work together or participate amicably. Since the presence of attorneys at the resolution session is limited unless both parties agree to be represented, attorneys may actually discourage their clients to seek resolution through these means.

The resolution session is intended to allow for an opportunity to resolve issues before a due process hearing; previously school district officials claimed that they had not been given an opportunity to resolve complaints about which they were unaware (Hazelkorn, Packard & Douvanis, 2008). Edwards (2005) raised the point of the resolution session being the most contentious from of dispute resolution; the resolution session forces parties that previously had not worked well on resolving issues to meet yet again. Edwards contended that since these parties have most likely already met formally and informally several times prior to the complaint and may have even attempted mediation, school district officials have hidden motives based on financial and other issues to drive the negotiation process. Parents could be forced to compromise based on the expertise and experience with negotiation of school district officials.

Literature on the implementation of the resolution session is scant since the regulation allows parents and school districts to jointly waive the resolution session. One dissertation study conducted by a school district administrator focused on the cost of the resolution session compared to due process hearing costs (Loehr, 2010). Since the
resolution session is part of the IDEA due process safeguards, any agreement forthcoming from the process is enforceable in court. This means that while Congress sought to discourage attorneys from being present at the meetings, the resolution session is enforced and monitored by law; a situation that could ultimately involve attorneys and a court of law. Since its inclusion in the 2004 IDEA, the resolution session has drawn critics and supporters alike. Attorneys, school district personnel, parents, and special education professionals have all sought to define the resolution session; after all Congress did leave the process open to interpretation.

Summary

Early partnerships between parents and school personnel regarding special education have been engendered in a divisive environment. These conditions led to the formative legislation with the Education for All Handicapped Children legislation in 1975. Indeed legislation became the key to ensuring that designated special education students are entitled to a free public education with appropriate services as required. Rights to a public education were extended through legislation over time, sometimes prompted by litigation, initially borne out of conflict between parents and school personnel. As litigation in special education rose so did costs that were incurred through resolution. Increasing demands on schools to provide special education services were spurred by: (a) vague language within the legislation, (b) the absence of clear definitions, and (c) a lack of funding. The initial promise of federal funding has never fully materialized so Congress sought to temper the rising expenses while keeping their pledge to parents’ due process rights within law.
Notwithstanding costs of litigation, relationships between parents and school personnel also suffer when litigation is used to resolve conflict. Conflict on issues surrounding special education is thought to increase as the number of designated special education students in public education rise. Due to the increasing need for dispute resolution and the rising cost of litigation, alternative methods of resolving disputes have been implemented. Mediation, where available, has been used successfully to settle disputes in special education and has become the preferred method (Marchese, 2001). Nevertheless school officials have implemented less adversarial methods of resolving conflict within special education very slowly. Since conflict is inevitable, Congress felt that a mandated dispute resolution was necessary. Evidence suggests that Congress sought to avoid financial and further social strain by mandating meetings between the parties in the resolution session. The resolution session allows schools district personnel time and opportunity to resolve conflicts on issues of which they had no previous knowledge or sufficient time to resolve (Halzelkorn, et al., 2008).

The resolution session, although mandated in the IDEA in 2004, must not be used to delay a due process hearing and can be waived if both parties agree. There are limited guidelines for the resolution session; Congress intended this process to be interpreted and implemented by school district officials in their own way. The law as stated discourages attorneys from attending the session(s), encouraging a more meditative style of resolution, which will be less expensive if parties agree to resolve and settle the issues this way.
Chapter III

Methodology

When the U.S. Congress reauthorized the Individuals with Disabilities Education Act (IDEA) in 2004, the resolution session was mandated as a last step in parent-school negotiations; the intent was to resolve conflict and avoid litigation. The provision required the implementation of the resolution session before a due process hearing. According to Mueller, Singer, and Draper (2008), approximately $146 million had been spent on the resolution of disputes between parents of students with disabilities and schools officials. It was contended that alternative dispute practices would provide viable solutions to expensive litigation. Mueller et al. further argued that research on the implementation of system-wide changes to reduce litigation in special education is scant.

The purpose of this descriptive case study was to examine how one large urban school district was able to rapidly adopt the resolution session in its due process procedures and the impact this adoption had on the perceptions that school district administrators held about the process and its adoption. The study focused on the implementation of the resolution session, and identified main factors that led to the rapid adoption of a federal mandate. Three research questions guided the study:

1. How did the legal requirements of the resolution session affect the way special education complaints were processed in a large urban school district?

2. How did school administrators directly involved in the resolution of disputes regarding students with disabilities understand the resolution session process of the school district?
3. What are the strengths and weaknesses of the process and what factors were important in the development of the process?

This chapter is divided into six sections. The first describes the research design that was used. The second describes the case under study. This is followed by descriptions of the data sources that were used, the method of data collection, and data analysis. Finally, the chapter is summarized.

**Research Design**

A descriptive case study as described by Stake (2010) was used to address the research questions. Stake defined case study research as studying “how things work” (Stake, 2010, Qualitative Research, Chapter 1, title). Descriptive case study research is rich in portrayals of situations, which in turn may be interpreted and offered to others for modifying and adding to the understandings of the phenomena or case (Stake & Trumbull, 1982). According to Stake (2010), qualitative inquiry encompasses personal judgment; it involves the experiences and perceptions of people, stakeholders who are involved in the focus of the case under study. Indeed it is the interpretation of the stakeholders that adds to the data about how and why something, the resolution session in this research, is working.

Yin (2003) associated case studies with process or program evaluations. The case study can be used to “document and analyze the outcomes of public or privately supported interventions, such as the programs sponsored by federal agencies or the initiatives supported by private foundations” (Yin, 2003, p. xi). Hancock and Algozzine (2011) suggested that the goal of the case study research design is not only to add value
to better understand a theoretical research problem, but also to enhance practical knowledge of the issue under study.

Descriptive case studies may be defined by special features such as covering a situation or intervention over time, obtaining information from different sources, and presenting information from the past that is currently relevant and applicable (Yin, 2003). Yin (1994) suggested that case studies are particularly useful for the how and why questions. Merriam (1998) described how a case study design may be used to study the process of a program: how the process works and why the program has meaning in the context of the goal or end product of the program.

According to Merriam (1998), case study researchers are interested in “insight, discovery and interpretation” (p. 28) and use any appropriate method for data collection or analysis; she further suggested that case studies in education tend to conform to a qualitative research design. Morse (1998) added that qualitative methods are often the best research approach for special education, as the implementation of educational services tends to be people-orientated; the experiences of people directly involved in activities are important to document.

Design of the case study is dependent on questions, theory related to the research, the phenomenon, and the outcome. Merriam (1998) defined the most important characteristic of a case study as a thing that is bounded; what will be studied lies within “what will not be studied” (Miles and Huberman, 1994, p. 25). The case or thing being studied has limiters such as the number of people interviewed or observations. A case study hypothesis, system, or program is bounded by limiters that make the study specific.
Using a mixed methods approach the research presented employed a descriptive case study research design to examine how education officials in a large urban school district in the western U.S. quickly adopted and implemented the resolution session of the 2004 reauthorization of IDEA. It also examined how the implementation of the resolution session affected the perceptions that school district administrators held about resolving special education complaints.

The Case

By definition a case is a bound system (Merriam, 1998). For this study the case was bound by a specific timeframe and function within a large, urban school district. The time frame of this study was from the years 2002 to 2008. This timeframe included two years prior to the 2004 reauthorization of IDEA in order to establish the process for the resolution of complaints filed under the previous 1997 reauthorization of IDEA. The time frame of 2004 to 2008 focused on how the resolution session procedure was implemented under the 2004 reauthorization of the IDEA. The resolution processes of under both legislative acts were examined.

The case was also bound by an examination of how special education complaints filed with the Student Support Services Division within a large, urban school district were resolved. The school district was chosen because of its reputation of rapidly implementing the resolution session provision of the 2004 reauthorization of IDEA (Harley & Redmond, 2007). During the timeframe of the study, 2002 to 2008, the school district under study was one of the fastest growing in the nation. In 2002 the student population was 245,659; in 2004, the student population in the district had risen to 270,529; in 2008 the student population in the district was 312,546 (Nevada State
Legislature, 2013). In 2008, the school district had 31,888 students with designated Individualized Education Plans (IEPs) compared to 2002 when the district had 27,122 students with disabilities (Nevada Report Card, 2013). The percentage of students with disabilities remained around 10% of the total student population for the years of the study.

The Student Support Services Division is the department within the school district that is responsible for oversight of federal law and policy, including special education. Staff in the Division processes complaints and is responsible for the administration of compliance. In particular, the documentation for the cases is housed at the Office of Compliance and Monitoring (OCM), which is part of the Student Support Services Division. The staff at the OCM is responsible for the oversight of the policies and procedures that were the focus of this study. The OCM, composed of educators and attorneys, reports to the Assistant Superintendent of the school district.

**Data Sources**

A descriptive case study analyses comparative data from different perspectives. Three sources of data were used in this study: (a) the records of due process complaints including the manner in which they were resolved; (b) the special education policies and procedures manuals of the school district; and (c) interviews with key stakeholders on school district policy related to special education.

The records of due process complaints are documented and maintained by school district officials. Two data sets were reviewed in this study, the data portion of the 2013 OCM End-of-Year Report and a district-maintained electronic database. The portion 2013 End-of-Year Report contained information dated from 2003 on the number of
complaints filed during the year and the number and processes of resolutions each year. The electronic database contained information on cases from 2003 onwards.

The second data source was the policies and procedures manuals used to guide the process for resolving complaints filed by parents of students with disabilities. The manuals were written in accordance with the regulations of the 1997 and 2004 IDEA as well as school district policy. The manuals included procedures for filing complaints and how school district officials should proceed with resolving these complaints. The manuals also included forms and information for filing complaints, school district regulations, and parental rights under the 1997 and 2004 IDEA. For the purpose of this study, the sections pertaining to the federal regulations under the 1997 and 2004 IDEA and due process procedures for filing complaints were used as data sources. Specifically, the 1999 Student Support Services Procedures manual also known as Achieving Educational Equity for Students with Disabilities, described the complaints processes used under the 1997 reauthorization of the IDEA; the 2011 Student Support Services Special Education Procedures manual reflected the 2004 reauthorization of IDEA.

The third source of data was comprised of the interviews with key personnel who were involved in the planning and implementation of the dispute resolution process. Stake (2010) recommended gathering data for a case study through existing data and interviews when researchers are unable to directly observe the case for themselves. Five key personnel were interviewed: the Chief Compliance Officer; district administrators who were educators; and legal personnel. Three of the five administrators that were interviewed each had at least 15 years of experience with the school district and had worked for the OCM between the years 2002 and 2008. All personnel interviewed were
involved in the complaints and resolution process at the school district at the time of data collection.

Interview questions focused on the process for resolving special education complaints. Questions focused on a retrospective of the process used before 2004, the implementation of the resolution session in the procedural safeguards after 2004, significant changes as a result of the change in process, and the effects of those changes. See Appendix C for the interview guide. When appropriate, follow up questions and other probes were used to gather more in-depth information.

Data Collection

Approval from the university Institutional Review Board (IRB) was obtained (Appendix D). Permission to conduct this study and retrieve archival records from the school district was obtained via the district procedure for conducting research. This application included permission to interview school district administrative personnel. Permission was granted from the school district to conduct the research at the OCM (Appendix E).

Due to the timing and nature of the research, data were collected in two different site visits to the OCM. During the first site visit it was discovered that the school district records were transferred from paper copies to an electronic database in approximately 2011. The transfer process was conducted in a somewhat piecemeal fashion because of limited resources. To address the lack of primary data, the 2013 End-of-Year Report was obtained from the Coordinator at the OCM as an attachment via email communication.

Procedural safeguards from the 1999 Student Support Services Procedures manual in the school district reflected the changes mandated by the 1997 IDEA. The
Student Support Services Procedures manual was provided in a hard paper copy format by the supervising attorney. In addition, the supervising attorney provided the 2011 manual, which reflected the 2004 reauthorization of the IDEA, in the form of an electronic pen drive.

Interviews with key personnel from the OCM were conducted via face-to-face interviews. The small staff had been notified of the study prior to the site visit. Following an introduction by the Chief Compliance Officer (CCO) the investigator requested individual interviews with available staff. All individuals agreed, upon which an information sheet for human subjects protection was reviewed. The interviews were conducted in the privacy of the staff member’s office or a private space. Not all staff were available to be interviewed during the first visit; during a subsequent visit these remaining staff were interviewed. Each interview lasted approximately one hour. Interviews were audiotaped for later verbatim transcription. Immediately after the face-to-face interviews, memos were written to capture body language and nonverbal communication.

**Data Analysis**

Data analysis occurred in three phases. First the policy and procedures manuals from 1999 and 2011 (reflective of the 1997 and 2004 reauthorization of IDEA) were reviewed for recommendations for handling due process complaints. Similarities and differences were identified and documented. The 2011 manual reflecting the 2004 reauthorization also was reviewed for the recommended time frame for implementation and all references to the resolution session.
The second phase was an analysis of the electronic database and the 2013 End-of-Year Report. Analysis of the electronic database included gathering the number and breakdown of the nature of all the cases contained in the database between 2002 and 2008: disabilities of the student, due process filing date, resolution method and date, as well as resolution agreement or due process testimony. Particular attention was paid to the number of complaints resolved via the resolution session compared to other methods of resolution used by the OCM staff.

The 2013 End-of-Year Report from the OCM contained information on the number of complaints and the number of resolutions and processes for each year between 2003 and 2008 (2002 data were not included in the Report). Data in the report were categorized by school year. Particular attention was paid to the number of complaints for each year and the list of resolutions used in that year. The number of complaints reported in the End-of-Year Report was compared to the number of complaints filed for each year from the electronic database. The number of resolution sessions in the End-of-Year Report was compared to the number of resolution sessions used for each year in the electronic database.

The final phase was an analysis of the interviews conducted with key personnel. The intent of this analysis was to gain a more nuanced and personal understanding of the formal process, as reflected in policy and procedures manuals, as well as the impact that the inclusion and implementation of the resolution session had on their work and attitudes toward due process complaints. Special attention was paid to how key stakeholders described the implementation of a process over time. The data from interviews were
analyzed to identify common and distinct characteristics that embodied the perceptions and experiences of school district administrators.

To assure trustworthiness of the findings, the description of the processes associated with the 1997 and 2004 legislations was discussed with the CCO who concluded that the description of the process accurately reflected the policy, procedures and practices of the OCM in implementing a federal mandate.

**Summary**

The qualitative descriptive case study focused on the implementation of the resolution session process in one school district. Due process complaints that were filed with the school district between the years 2002 and 2008 were collected and analyzed. Two numerical data sets were used as the investigation focused on the number of complaints and the resolution session processes; the district-maintained electronic database and the OCM 2013 End-of-Year Report. Information was obtained from additional sources such as district policy and procedure manuals, and written material.

The human perspective of the case study was developed through audiotaped interviews with key personnel from the district who have been involved with the resolution session process. The implementation process and experiences of the administrators who were responsible for implementing the process were established through respondents’ answers to the semi-structured questions. Transcription of the interviews was conducted; perspectives were identified and compiled. Information compiled from the number of complaints, and the number and resolution processes before and after the passage of the 2004 IDEA law, as well as the information from interviews
with key personnel and written material comprised the study of one district’s rapid implementation of the resolution session.
Chapter IV

Results

In 2004, the resolution session was mandated by the 108th U.S. Congress through an amendment to the Individuals with Disabilities Education Act (IDEA). The purpose of this descriptive case study was to examine how one large urban school district was able to rapidly adopt the resolution session in its due process procedures and the impact that this adoption had on the perceptions that school district administrators held about the process and its adoption. Only due process complaints that were filed with the school district were examined in this study. Three research questions guided the study:

1. How did the legal requirements of the resolution session affect the way special education complaints were processed in a large urban school district?
2. How did school administrators directly involved in the resolution of disputes regarding students with disabilities understand the resolution session process of the school district?
3. What are the strengths and weaknesses of the process and what factors were important in the development of the process?

This chapter provides the findings of the analysis of the data collected. The chapter is divided into four sections. The first describes the two datasets used to understand the scope of the complaints filed and their resolutions. The second section describes the process for resolving complaints before 2004. The third describes the process for resolving complaints after 2004; this section includes the perceptions held by the school district administrators about the resolution session. The final section is a summary of the process.
Complaints Filed and Resolved

To understand the scope of the complaints filed under IDEA with the school district, the original plan was to derive this information from an electronic database. Beginning in 2011, school district records were transferred from paper copies to an electronic database. The process of converting the files was reported by interviewees as somewhat ad hoc and lacked a systematic approach due to limited resources. It must be noted that 2011 was during the depth of the global financial crisis; the budget for the school district where this study was conducted was severely affected by revenue shortfall. As a result, the electronic database, originally identified as a primary data source, was soon found to be inadequate to ascertain the number of special education complaints and their resolutions.

Because of the inadequacy of a single source of information for the special education complaints filed with the school district and their resolutions, two data sources were examined: the electronic database, originally proposed as the data source, and a 2013 End-of-Year Report, identified during one of the interviews. It was impossible to align the two data sources because each reflected a different timeframe and was created for a different purpose.

The 2013 End-of-Year report was a compilation of the number of complaints and the number of resolutions. In contrast, the electronic database followed each complaint to its conclusion and contained detailed information on the nature of the complaint, the dispute between the parties, the date when the complaint was filed, the resolution agreement, and due process hearing testimony when appropriate.
**Electronic database.** The electronic database was established in 2011 and was populated with historic records of individual case details. Cases were recorded under the name of the party filing the complaint, and in the calendar year in which the complaint was filed. According to Office of Compliance and Monitoring (OCM) staff at the school district, the database mainly contained cases from after 2005, and were all eventually resolved or withdrawn. Due to several factors, which included budget reductions and the relocation of the department, the electronic database was not completely populated with historic data when it was created. As a result, the information in the database was scant and incomplete with regards to the number of recorded complaints.

According to the electronic database, there were four different methods used to resolve due process complaints: resolution session, due process hearings, mediation, and Individualized Education Plan (IEP) meeting. The resolution session is a process whereby a meeting is conducted to resolve the complaint before the due process hearing. If the parties reach an agreement, a written document, enforceable in court, is signed by both parties.

A due process hearing is conducted by an impartial hearing officer, appointed by the State Department of Education. During the hearing testimony in the form of an oral argument from each of the represented parties is presented. Under the IDEA, the hearing officer is required to hear the case and make a decision within 45 days of the complaint being filed with the school district.

Mediation is an alternative dispute resolution method whereby parents and school district representatives meet with a third party mediator. The impartial mediator is
chosen from a list of qualified mediators appointed by State Department of Education staff. If the parties reach an agreement, it is signed in a written document.

Individualized Education Plan meeting is a special meeting that is convened outside of the regular IEP meetings. The IEP meeting is conducted by the IEP team, which consists of parents and school district representatives. The IEP team attempts to resolve the complaint through the meeting under the IDEA regulations governing IEP meetings.

The electronic database did not contain information about how all the complaints were resolved; some cases contained detailed information on the nature of the complaint, witness testimony, and documented paperwork that indicated the type of resolution. Other cases did not contain anything more than a name and the nature of the complaint. Because of the lack of specific information, it was not clear how some of the cases were resolved. Such cases were classified as Not Clear.

As presented in Table 1, in 2002, there was no record of complaints filed or resolved in the electronic database. In 2003, a rather low number of three complaints were recorded and resolved via due process hearings. In 2004, two complaints were resolved via due process hearing and one compliant had a resolution that was not clear. In 2005, two complaints were resolved via resolution sessions and one complaint had no clear resolution. In 2006 the recorded complaints increased dramatically; 12 complaints were resolved via resolution sessions and it was not clear how eight complaints were resolved. In 2007, the number of complaints increased again; 27 complaints were resolved via resolution sessions and three via due process hearings. One complaint was resolved through the IEP process and it was not clear how another one complaint was
resolved. In 2008, 30 complaints were resolved via resolution sessions, eight via due process hearings, and it was not clear how two complaints were resolved.

Table 1

Resolution of Complaints as Found in the Electronic Database

<table>
<thead>
<tr>
<th>Year/Due Process Resolutions</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolution Session</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>12</td>
<td>27</td>
<td>30</td>
</tr>
<tr>
<td>Due Process Hearing</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Mediation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>IEP</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Not Clear</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

2013 End-of-Year Report. Inspection of the electronic database in relation to the descriptions provided during the interviews suggested that not all of the complaints filed and resolved had been recorded in the electronic database. During his interview the Coordinator revealed that additional information could be found in a 2013 End-of-Year Report. The portion of the 2013 End-of-Year Report that was provided by an OCM administrator contained data that described the number of due process complaints and the types of resolution between the years 2003 and 2013. Unlike the electronic database, which was based on calendar years, the 2013 End-of-Year Report reflected school years.

The information obtained from the 2013 End-of-Year Report contained two specific pieces of information: the number of complaints processed and the manner in which the complaints were resolved. Complaints filed toward the end of a school year, July 30, generally are not resolved until the following school year, which starts August 1. These cases were labeled Cases Pending in the 2013 End-of-Year Report. Cases Considered are the total number of cases pending from the previous year and new cases
filed in that year. According to OCM staff, for each of the school years, Cases Closed are cases in which an agreement had been reached and signed during that school year.

There were a total of 44 complaints considered in the 2003-2004 school year. Eleven complaints were pending resolution by July 30, 2004; these complaints were carried forward to be considered in 2004-2005 school year. Of the 44 total complaints, 33 cases were closed.

In the 2004-2005 school year, there were a total number of 32 complaints considered; this included the 11 cases from the 2003-2004 school year. Eight cases were pending resolution by July 30, 2005; these complaints were carried forward to be considered in the 2005-2006 school year. Of the 32 total complaints, 24 cases were closed.

There were a total number of 63 complaints considered in the 2005-2006 school year; this included the eight cases from the 2004-2005 school year. Eleven cases were pending resolution by July 30, 2006; these complaints were carried forward to be considered in the 2006-2007 school year. Of the 63 total complaints considered, 52 cases were closed.

In the 2006-2007 school year, there were a total number of 30 complaints considered; this included the eleven cases from the 2005-2006 school year. One case was pending resolution by July 30, 2007; this complaint was carried forward to be considered in the 2007-2008 school year. Of the 30 complaints considered, 29 cases were closed.

In the 2007-2008 school year, there were a total number of 41 cases considered; this included the one case from the 2006-2007 school year. Two cases were pending resolution by July 30, 2008; these complaints were carried forward to be considered in
the following school year. Of the 41 complaints considered, 39 cases were closed. See Table 2, which summarizes the due process cases.

Table 2
Due Process Case Summary from the 2013 End-of-Year Report

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of Cases Considered</td>
<td>n/a*</td>
<td>44</td>
<td>32</td>
<td>63</td>
<td>30</td>
<td>41</td>
</tr>
<tr>
<td>Cases Pending (July 30)</td>
<td>n/a*</td>
<td>11</td>
<td>8</td>
<td>11</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Cases Closed</td>
<td>n/a*</td>
<td>33</td>
<td>24</td>
<td>52</td>
<td>29</td>
<td>39</td>
</tr>
</tbody>
</table>

*Note.* Adapted from Student Support Services, Office of Compliance and Monitoring, Due Process Summary.

Table 3 presents the resolution of the complaints identified in the 2013 End-of-Year Report. Four methods of resolution were included in the 2013 End-of-Year report; Withdrawal by Resolution, Due Process hearings, Dismissal by Hearing Officer, and Appeals. Cases Closed are the total number of cases where an agreement had been reached and signed that school year.

Table 3
Resolution of Complaints found in the 2013 End-of-Year Report

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cases Closed</strong></td>
<td>33</td>
<td>24</td>
<td>52</td>
<td>29*</td>
<td>39*</td>
</tr>
<tr>
<td>Withdrawal by Resolution</td>
<td>13</td>
<td>6</td>
<td>43</td>
<td>27</td>
<td>37</td>
</tr>
<tr>
<td>Due Process Hearing</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Dismissal by Hearing Officer</td>
<td>2</td>
<td>3</td>
<td>9</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Appeals</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Resolution Not Identified</td>
<td>16</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

*Note.* Adapted from Student Support Services, Office of Compliance and Monitoring, Due Process Summary.
* The number of resolutions exceeded the number of closed cases; this may be due to some of the methods of resolving cases not being mutually exclusive, such as a due process hearing in which a hearing officer dismissed the complaint, or the complaint went through the appeals process.

During interviews, the OCM staff described the Withdrawal by Resolution as the precursor to the resolution session. The Withdrawal by Resolution is a meeting between the parties that was conducted by school district representatives, which may have included attorneys. When an agreement was reached, both parties signed a written document. Once signed, the party that filed the complaint would withdraw the initial complaint in writing, thus Withdrawal by Resolution.

A due process hearing is conducted by an impartial hearing officer, appointed by State Department of Education staff. During the hearing testimony in the form of an oral argument from each of the represented parties is presented. Under the IDEA, the hearing officer is required to hear the case and make a decision within 45 days of the complaint being filed with the school district.

A hearing officer may dismiss a complaint (Dismissal by Hearing Officer) when the party filing the complaint has not given appropriate notice. The reasons may range from an incomplete form to a more complex issue such as the nature of the complaint not being governed by due process procedures (e.g., the complaint does not qualify for due process under the 2004 IDEA legislation).

Following a due process hearing, either party may appeal a hearing officer’s decision (Appeals). A State Review Officer who is appointed by the State Department of Education reviews and examines the hearing record to ensure that the procedures
followed in the due process hearing were consistent with those required under the IDEA law.

The 2013 End-of-Year Report but did not identify all the types of resolutions used to resolve due process complaints. Because of the lack of specific information, it was not clearly identified how some of the complaints were resolved. These cases were labeled Resolutions Not Identified.

As presented in Table 3 and according to the 2013 End-of-Year Report, there were a total number of 33 cases closed in the 2003-2004 school year. Of the 33 cases closed, 13 cases were resolved via the Withdrawal by Resolution method, two cases by Due Process Hearing, and a hearing officer dismissed two of the complaints. There were 16 cases where the type of resolution was not identified.

In the 2004-2005 school year, of the 24 cases closed, six were resolved via Withdrawal by Resolution, four cases were resolved though Due Process Hearing, and a hearing officer dismissed three cases. There were ten cases where the type of resolution was not identified.

Of the 52 cases closed in the 2005-2006 school year, 43 were resolved via Withdrawal by Resolution and a hearing officer dismissed nine complaints.

In the 2006-2007 school year, of the 29 cases that were closed, 27 cases were resolved by the Withdrawal by Resolution, three cases were dismissed by a hearing officer and one case was resolved though the Appeals process. It must be noted that the number of cases closed during the 2006-2007 school year, did not align with the resolution of the cases. These were cases that went through different steps of resolution,
for example, a due process hearing which was dismissed by the hearing officer, and finally resolved through an Appeal.

In the 2007-2008 school year, 39 cases were closed. Of these cases closed, 37 cases were resolved via Withdrawal by Resolution, two by Due Process Hearing, three cases were dismissed by a hearing officer, and two cases were resolved though the Appeals process. Again the number of cases during the 2007-2008 school year did not align with the number of resolutions, particularly whereby a due process hearing is dismissed by a hearing officer and finally resolved through an Appeal.

The evidence, particularly from the 2013-End-of-Year report, indicates that the OCM staff of the large, urban school district under study was engaged in resolving between 24 and 52 special education complaints per year during the timeframe of the study. Given the relatively small staff, the next step in describing this case study is the details about how the complaints were processed and resolved. The details are divided into two sections; resolving complaints before and after 2004 when the IDEA was amended to mandate the resolution session.

**Resolving Complaints before 2004**

Details about the complaints filed between 2002 and 2004 were limited. Information from the year 2002 was not included in either the electronic database nor in the 2013 End-of-Year Report. Although the resolution of the complaints prior to 2004 was not clearly described the records, interviews indicated that it was very common for special education complaints to be resolved via a due process hearing. When an alternative dispute resolution process was undertaken, the most common form of resolution was reported to be mediation. Because these were the reported methods of
resolving special education complaints prior to 2004, a description of a due process hearing as well as mediation will follow a description of process of filing a complaint.

**Filing a complaint.** According to the school district’s 1999 Student Support Services Procedures manual, the parent or a school district employee can initiate an impartial due process hearing if there is a disagreement with the identification, evaluation, educational placement, or provision of Free Appropriate Public Education (FAPE) to the student. When parents or guardians (hereafter parents) of a child who has been designated in need of special education services do not feel that their concerns have been adequately resolved by the special education facilitator or principal at the school site, they may provide notice to the school district. Providing notice is filing a complaint or due process hearing request with the school district. In addition, notice is a legal requirement of due process and includes parent consent, which is required for all evaluations, IEP meetings, and placement of a student. This means that school district personnel must get the consent of parents to carry out these actions. Providing notice also includes informing parents of their rights when evaluations, IEP meetings, and placement of a student are conducted. Parents may submit their notice or complaint on a form or in a letter, with or without an attorney.

Forms for filing a complaint or due process hearing request are available from the OCM of the Student Support Services Division, an administrative division of the school district. Interviews revealed that beyond ensuring that the appropriate forms are available to parents, OCM staff is available to either provide or facilitate assistance, including translation services, to parents who request help. Regardless of whether the complaint is filed via a letter or on a school district form, the complaint is required to include the
following information: the student’s name, address or residence, a description of the nature of the problem, and a proposed resolution.

The complaint may be submitted to either the school district Office of the Superintendent or General Counsel. Regardless of where the complaint is submitted, it is forwarded to the Chief Compliance Officer (CCO) of the OCM. The OCM is officially designated to handle complaints filed under IDEA; in all matters of the complaint process, the CCO represents the school district. Once received at the OCM, the complaint is reviewed to ensure that all of the appropriate information is contained in the complaint. If the complaint contains insufficient information, the CCO or delegated staff contacts the parents (or the attorney of record) to notify them that the complaint lacks specific information. The parent/attorney is required to provide the missing information for the complaint to proceed.

When the complaint is deemed complete, a very formal and prescribed process ensues. According to an OCM Compliance Monitor, the overarching principle in processing a complaint is meticulous record keeping. The OCM staff must record all actions (e.g., phone calls, letters, and other types of communications) regarding the complaint.

The initial process of responding to a complaint that has been deemed complete is that the CCO notes the date when the complaint was filed; this date starts the clock for the timelines established by statute and school district policy. The CCO makes the decision whether the complaint will be resolved by mediation or should proceed to due process hearing. According to the CCO, several factors are considered when making the decision on the type of resolution that is appropriate for the complaint. This includes
factors such as whether the parents are represented by an attorney, the named attorney, whether the parents have previously filed a complaint with the school district, and the nature of the complaint.

Regardless of whether the decision is made to proceed via mediation or a due process hearing, the CCO assigns two Compliance Monitors to act as fact finders; they talk to witnesses and collect the evidence that will be presented at the hearing. Specifically, this process involves the Compliance Monitors reviewing school records as well as communicating and interviewing relevant school site personnel named in the complaint. Usually two Compliance Monitors are assigned to a case; one to gather evidence and the other to support the process. Even if mediation is selected to resolve the complaint, Compliance Monitors gather information as the mediation process may be unsuccessful and the complaint is ultimately resolved via a due process hearing. The Compliance Monitors stated that they are familiar with the case from start to finish whatever the resolution may be, “We fact find and prep all the due process cases”.

**Due process hearing.** Within five days of receiving the complaint, the CCO contacts the appropriate staff at the State Department of Education to request the appointment of an impartial hearing officer. At this point, control over the process shifts from the school district to the State Department of Education. The hearing officer cannot be employed by the school district nor can the hearing officer be an educator employed in the care of the child about which the complaint was filed. State Department of Education staff informs both parties (i.e., the CCO and the parents/attorney) as to the appointment of the hearing officer.
In preparation for the due process hearing, the CCO and parents/attorney must disclose their evidence to the hearing officer at least five business days before the hearing. Examples of evidence presented include the IEP, evaluations, recommendations, and that notice was provided to the parents. The hearing officer has the authority to prevent any undisclosed information being used at a hearing.

The actual due process hearing consists of a hearing officer, the CCO or an OCM attorney, parents/attorneys, and other relevant parties. The hearing officer is responsible to hear the complaint, oversee the process, and make the final decision about the case. Both parties present their respective oral arguments and their evidence. Witnesses may be called and cross-examined during the hearing. Compliance Monitors are present at the hearing to observe, take notes, and assist the CCO or the OCM attorney representing the school district. According to the Student Support Services Procedures manual, parents can request that the due process hearing is open to the general public.

The school district’s 1999 Student Support Services Procedures manual describes how the hearing officer must decide if sufficient notice had been provided on both sides. Under IDEA 2004, a hearing officer can dismiss a complaint during a due process hearing due to lack of evidence or for a complaint that does not qualify for due process. If the hearing officer is satisfied that sufficient notice was provided, the hearing proceeds and a decision is rendered by the hearing officer no later than 45 days after the receipt for the request for hearing. The hearing officer’s decision must be mailed out to the parties within the 45-day period. If either party has requested an extension, the hearing officer can grant extensions to the timeline. After the hearing officer has notified the parties, the State Department of Education staff makes the decision and the facts of the case available.
to the public. According to the Student Support Services Procedures manual, personally identifiable information is redacted from the public notice.

The Student Support Services Procedures manual describes how the hearing officer’s decision is final, however either party has the right to file an appeal with the State Department of Education within 30 days of the hearing officer’s decision. The other party may file a cross-appeal after receiving notice of the appeal. A second hearing officer, also employed by the State Department of Education, reviews the entire record of the case to determine whether the proper procedures for a due process hearing were followed.

The second hearing officer may seek additional evidence and arrange a convenient time and place for parties to provide additional evidence. During the appeal, the CCO and the parents/attorney are present, as well any witnesses subpoenaed by the hearing officer. Upon hearing the new evidence, the hearing officer must provide a decision no later than 30 days after the receipt for the request of an appeal. The hearing officer informs both parties by mail. After notice of the appeal decision by the hearing officer, an official of the State Department of Education makes the decision and the facts of the case available to the public; personally identifiable information is redacted from the public notice.

The second (appeal) hearing officer’s decision of the review is final unless one of the parties brings a civil suit. To bring a civil action the party must have exhausted the procedural safeguard remedies described above.

Mediation. Mediation is a process that brings both parties together in an attempt to resolve disagreements. According to the 1999 school district Student Support Services
Procedures manual, mediation is voluntary. Mediation was reported to be the favored alternative method used for conflict resolution before 2004. During the interviews, it was revealed that mediation is also used for complaints that are not subject to due process procedures; for example when a parent specifically requests mediation for a non-due process complaint. A non-due process complaint is a complaint that is not covered by due process procedures under the IDEA. Examples of non-due process complaints include complaints related to a personnel issue such as the parent or student has an issue with a teacher. A parent can file a complaint to request mediation specifically. OCM staff explained that because mediation can be used to resolve both formal (due process complaints) and informal complaints, mediation was not included in the due process summary data in the 2013 End-of-Year Report.

When mediation is chosen to resolve due process disputes, the CCO contacts the appropriate State Department of Education staff responsible for the mediation process. The staff at the State Department of Education identifies an impartial qualified mediator trained in effective mediation techniques. As with the hearing officer, the mediator must not be employed by the school district or an agency that receives IDEA funding, and must be knowledgeable in laws and regulations relating to special education. The mediator is selected in one of two ways; the individual may be randomly selected from an existing list of state mediators or the individual may be chosen on a rotating basis. If the mediator is not randomly selected, both parties must agree to the selected mediator.

According to the school district Student Services Procedures Manual, mediation sessions must be held in a timely manner and scheduled at times and in places convenient to the parties. At the beginning of each mediation process, confidentiality agreements are
signed; any discussions that occur during the mediation may not be used as evidence in any due process hearing or civil suit. An OCM administrator described the mediation process where two parties (i.e., CCO and parents/attorney) are not in the same room, “The mediator would bring both parties together, we would articulate the issues and then the mediator would ask for a caucus and one party would go to an ante room and there talk freely with the mediator”. The mediator then goes back and forth between the parties. According to the Student Support Services Procedures manual, if an agreement is reached, the parties sign a written mediation agreement and it becomes binding. If mediation does not result in an agreement, the complaint proceeds to a due process hearing.

Once a successful mediation process has concluded, the responsibility shifts back from the State Department of Education to the local school district. The CCO is responsible for monitoring all the agreements reached in the mediation process. Compliance Monitors conduct training, if necessary, with school personnel to ensure they understand the terms of the agreements.

**Resolving Complaints after 2004**

The school district procedure manuals and interviews revealed that the process for filing a complaint did not significantly change after 2004. Forms were identical and responsibilities of the CCO and Compliance Monitors remained the same. Likewise, the due process hearing and mediation remained the same. The difference after the 2004 IDEA reauthorization was the required step of the resolution session.

**Resolution session (Withdrawal by Resolution).** One means for resolving complaints found in the 2013 End-of-Year Report was Withdrawal by Resolution.
Withdrawal by Resolution was in evidence as early as the 2003-2004 school year. This was a full year prior to the December 2004 passage of the amendment to IDEA. During the interviews, OCM staff explained that they had implemented a peremptory process to resolve complaints or due process hearings requests in anticipation of the 2004 IDEA. Staff at the OCM continued to name the resolution session as “Withdrawal by Resolution” after the 2004 IDEA regulations came into effect because once the meeting(s) resulted in a resolution, the party that filed the complaint must withdraw the due process hearing request. An OCM administrator described the process quite simply:

We also would simply just meet with the parents and we would talk through the issues and we would come up with an agreement. And so our written agreement stated with specificity what we would do to address the issues.

The justification for starting the process prior to 2004 was that the 1997 IDEA encouraged alternative dispute resolution processes. The staff at OCM devised a process that, to them, included the benefits and reduced the burdens of mediation. Because there were no preclusions of the process in the law, they designed and implemented a process whereby the parties could make agreements in writing, thus resolving the complaint.

Staff from the OCM indicated that they had always been in communication with parents and their attorneys as part of the procedural safeguards process, so the meeting was easier to implement pre-2004, before the actual law required, “a variety of things like notices at certain times, 15 days for resolution, 30 days of the resolution periods of the timeline for going into hearing”.

According to an OCM administrator, the structure of the meeting remained the same after the passage of the 2004 IDEA regulations. Parties come face-to-face and
discussed the issues of the complaint to arrive at a resolution. Apart from the fact that the process was codified in law, there were other changes, “little nuances, more behavioral type things; how do you approach a parent, what strategies do you use, what works out, what works there, what had changed in the school to see what options and resources are available?”

One reason it was so easy to convert the Withdrawal by Resolution into the resolution session was that, according to an OCM administrator, prior to the 2004 amendment to the IDEA, representatives from Congress travelled the country to take testimony from school district employees, service providers, and parent groups regarding concerns in resolving special education complaints. One of the major concerns from OCM employees was a lack of articulation about the issues in the due process complaints. School district employees testified in the hearings that frequently the due process hearing was the first opportunity they were given to resolve issues in a due process complaint. Thus school district administrators who were responsible for resolving complaints were not always provided sufficient information to resolve an issue before it resulted in a due process hearing. Their recommendations to Congress included a system that was similar to binding arbitration whereby a hearing officer would be appointed to make the final decision, which could not be appealed, as hearings are expensive and time consuming.

District administrators further contended that cutting out the *middle man* (from mediation or due process hearing) and arranging to meet directly with parents would resolve complaints faster and more effectively. Using the Withdrawal by Resolution means that school district administrators can work directly with parents; a forthcoming
resolution can be achieved quickly compared to a due process hearing or mediation. More importantly, the process allows parties to discuss their differences and to resolve issues in a less adversarial environment (compared to a due process hearing) without third parties necessarily present. One OCM administrator stated that the process of the resolution session puts less pressure on parents and school staff.

The 2004 IDEA describes the resolution session as a formal meeting. However staff at the OCM agreed that in working with parents, a more informal process emerged. Staff at the OCM explained that an opportunity to meet directly with the parents to discuss and resolve complaints has sped up the process of achieving a resolution. In addition, maintaining a positive relationship with parents was cited as crucial to the implementation of the resolution session used at the district. Administrators interviewed agreed that the focus of the process is to address the parents’ complaints through a more collaborative approach.

There was no precedent set for the resolution session process in the 2004 IDEA reauthorization, so the team at the OCM developed the procedures that were incorporated into the special education complaints process for the district. Staff at the OCM developed the steps that administrators would use to resolve a complaint, encouraging the use of the resolution session. The OCM is part of the International Organization for Standardization (ISO) for corroborative process. The ISO is an independent, non-governmental organization based in Geneva, Switzerland that develops voluntary standards for products, services, and systems to ensure quality and efficiency, as well as safety. The CCO indicated that developing systematic procedures and examples is
essential for any new hire or department member to follow. As a result, the process of resol

Upon embracing the resolution session in 2004, one of the first changes made at the OCM was to create a coordinator position to facilitate the resolution session as the statutory representative of the school district. The position description includes oversight of the entire process, including being responsible for the paperwork and documenting timelines and progress of a resolution. The individual in the position of Coordinator at the time of data collection was an educator who had experience working with parents to resolve special education concerns, and had been trained to facilitate both mediations and the resolution session. It was thought that hiring a non-attorney would encourage a less adversarial meeting and ultimately reduce the number of due process hearings. The Coordinator was hired in 2004 to supervise mediations and facilitate the resolution session as the school district’s statutory representative. The Coordinator facilitates the process when parents are not represented by an attorney; however when parents are represented by an attorney, the CCO or OCM attorney conducts the resolution session.

With the implementation of the resolution session, district policies and procedures shifted to include time for the process associated with the resolution session. The resolution session must be conducted within 15 days of the school district receiving the due process complaint. If there is no resolution at the end of the process, then the CCO has 45 days to address the complaint via a due process hearing. During the first 30 days, attempts are made for the parties to meet to address and resolve issues in the complaint filed before the complaint moves to a due process hearing. If the complaint proceeds to a
due process hearing, the hearing officer is required to conduct the hearing and render a decision within the (next) 45-day period.

**The process.** The formal process is explained; however, it was stressed during the interviews that each resolution session is subject to differences, depending on the nature of the complaint, attorney representation, parents’ concerns and requests, and media used (telephone vs. face-to-face). Upon notice of a due process complaint, the CCO begins to resolve it by initially speaking with the parents or attorney representing the parents. The Coordinator and two Compliance Monitors are usually present at this initial meeting. As with mediation and due process hearings, two Compliance Monitors are assigned to a filed complaint; one lead and the other as support in case the lead monitor may become unavailable (e.g., through illness) at any time during the process. Once the CCO has decided that a resolution session will take place, the complaint is forwarded to the Coordinator who oversees the resolution process. Under the supervision of the Coordinator, the lead Compliance Monitor has two responsibilities. Similar to the process outlined for mediation, the Compliance Monitor is responsible for collecting and reviewing information from school records, and communicating with parents, school site and district personnel to gather evidence regarding the complaint in order to brief the OCM attorneys and the Coordinator about their findings. In addition, the Compliance Monitor communicates with parents who are not represented by an attorney.

A collaborative and simple approach in communicating with parents was described as essential to continue a positive tone for the rest of the process. The Compliance Monitor is also responsible for explaining the process and procedures of the
resolution session to parents. The Compliance Monitor documents the process as well as completes and compiles the paperwork that documents the agreement for parties to sign.

The Compliance Monitor arranges a convenient time and date with the parent for the resolution session to occur. The Coordinator facilitates the face-to-face or telephone meeting with the parents, but the Compliance Monitor is also present. Although the Compliance Monitor has already documented the issues and concerns with the parents, the Coordinator listens while the parents reiterate the concerns. According to a Compliance Monitor, “most parents appreciate being heard and maybe having the opportunity to relate their concerns without the other party being defensive, as they may have experienced at a school site”. Parents provide their recommendations for a resolution – these recommendations are discussed with the Coordinator. The Compliance Monitor observes and takes notes during the meeting. The Compliance Monitor does not actively participate in the resolution session; his or her role at the meeting is to observe and record notes.

While some complaints are able to be resolved during the phone or in a face-to-face meeting, others required further discussion between the Coordinator and CCO. The reason that some resolutions cannot be made immediately is that any agreement that results from the resolution session is legally binding; there are times when other parties (e.g., school staff) must be consulted and/or school district policy must be taken into consideration. Agreements are drawn by the Compliance Monitor using a written format (Appendix F), which is signed by the CCO, a representative from the school district General Counsel’s Office, and the parents. The Compliance Monitor is responsible for monitoring the implementation of the resolution agreements on an on-going basis, which
is usually the duration of the IEP or a time line as agreed in the meeting and stipulated in the resolution agreement. Although either party can cancel the resolution agreement in writing within three business days, according to one of the attorneys interviewed, there have been no revocations of any resolution agreements to date.

**Perspectives on the resolution session.** All five interview participants at the OCM indicated that the most significant changes associated with the resolution session mandate were the reduction in the number of due process hearings, the reduced costs associated with resolving due process complaints, and the manner in which the meetings with parents were conducted. Administrators at the OCM agreed that the resolution session had made it easier to resolve complaints by developing strategies to work effectively and efficiently with parents, while managing the resources and options available in the school district to address and resolve the issues in the complaints. As one OCM administrator, explained, “I think it makes both parties feel better again. The relationship was broken and now, through trust, that relationship is repaired and allows the parties to keep moving forward which is very good”.

District administrators stated that the resolution session was relatively easy to incorporate into the existing process for resolving complaints. Prior to 2004, the favored alternative dispute method was mediation, but the meeting was conducted through a third party. Parties initially would be brought together by a mediator, but after each party had an opportunity to articulate the issues, the mediator would ask for a caucus during which one party went into an ante room and talked freely with the mediator. As such, unlike the resolution session, mediation did not necessarily include talking face-to-face. Interviewees contended that this limited the dialogue and did not encourage or develop a
positive working relationship between parents and school district personnel. The most experienced administrators in the OCM described how the resolution process has changed to become more child centered with a focus on assisting parents and students, and creating a less adversarial environment, “The whole process from this office is making sure that the needs of the student is met”.

The collaborative resolution session was not borne without difficulty, however. One obstacle cited by all administrators who were interviewed was attorneys who represent parents. Administrators stated that the overall process tends to be more parent-friendly when attorneys do not represent parents. One Compliance Monitor added that, “parents don’t tend to understand the process, so the school district needs to spend more time taking them through the process”. Face-to-face meetings with parents were cited as resulting in positive resolution session meetings. In contrast, district administrators felt that some attorneys demand unrealistic solutions, hence preventing the process from reaching a quick and effective resolution.

Administrators argued that some attorneys who represent parents take a dim view on the new process, as did some “parents who want their day in court”. They contended that attorneys who represent parents do not fully understand the process or special education law; they do not appreciate that due process hearings do very little to get the parties to work together and can sometimes work against the interests of the student. Attorneys at the OCM agreed that due process hearings are expensive and lengthy and are not ideal in creating a collaborative atmosphere in working with parents for a long-term resolution.
In addition, the issue of attorney fees was cited as a stumbling block to the collaborative process. School district policy requires attorneys to file a fee petition with the school district General Counsel’s Office; staff decide what portion, if any, attorneys will receive for their services. If the case results in a hearing or trial, the attorney can petition the court for fees. According to OCM administrators, attorney fees are more likely to be awarded though court action than filing a petition with the General Counsel’s Office for fees. The OCM staff recognized that the IDEA 2004 reauthorization did not specifically make provision for attorney fees with regards to the resolution session; thus according to OCM administrators, the school district decided to take a tough approach with attorney fees in order to have quick resolutions.

Administrators also suggested that school district staff and site personnel sometimes posed difficulties to the collaborative nature of the process. In some instances, educators may have opposing views that may be inconsistent with what the law requires. The OCM administrators are responsible to ensure that school district staff understands the nature of the process and law by educating staff on the law as well as working on a collaborative resolution. The school district Student Support Services Procedures manual also assists to inform employees of the due process procedures. The procedures manual is written and updated by the same personnel that process the complaints in the OCM.

**Summary**

Documentation of the complaints filed under the 1997 IDEA is limited; however the description of the process was clear. Both mediation and due process hearings, conducted under the authority of the State Department of Education, were used to resolve
complaints before 2004. Compliance Monitors were responsible for gathering the
evidence for the hearings and the CCO was responsible for the implementation of the
recommendations.

By 2004, the OCM at the school district had already implemented the Withdrawal
by Resolution process, which involved meeting with the parents to resolve complaints or
due process hearing requests. According to the 2013 End-of-Year Report, the
Withdrawal by Resolution method, compared to any other method was used most
frequently to resolve due process complaints between 2005 and 2008. The Withdrawal
by Resolution method did not entirely succeed in replacing any of these methods between
2004 and 2008. Between the years, 2003 and 2008, at least 26 cases required a resolution
other than the Withdrawal by Resolution method.

As a result of the implementation of the Withdrawal by Resolution, a Coordinator
was hired to oversee the process if attorneys were not involved. Compliance Monitors
are responsible for the same functions as in mediation or due process hearings, but more
direct support of the parents was an added responsibility with the resolution session. The
resolution session allows OCM administrators the opportunity to work directly with
parents to resolve a complaint before a due process hearing. The process also allows
administrators to conduct the meetings, with or without an attorney present. OCM
administrators also described how parents, attorneys, and school personnel can
sometimes impede the resolution process.
Chapter V

Discussion, Implications, and Conclusion

In 2004, the United States Congress (Congress) reauthorized the Individuals with Disabilities Education Act (IDEA), mandating that the resolution session be added as a last step in parent-school negotiations regarding special education complaints. The purpose of this descriptive case study was to examine how one large urban school district was able to rapidly adopt the resolution session in its due process procedures and the impact that this adoption had on the perceptions that school district administrators held about the process and its adoption. Three research questions guided the study:

1. How did the legal requirements of the resolution session affect the way special education complaints were processed in a large urban school district?
2. How did school administrators directly involved in the resolution of disputes regarding students with disabilities understand the resolution session process of the school district?
3. What are the strengths and weaknesses of the process and what factors were important in the development of the process.

This chapter provides a discussion of the findings and is divided into four sections. The first section includes a discussion of the findings. This is followed by the implications of the findings and recommendations for future studies. Finally, the conclusion to the study is presented.

Discussion

Although inclusion of the resolution session was mandated by Congress, findings from this study suggest that this legal obligation was not the most important factor in the
rapid adoption of this last step before a due process hearing in special education complaints. The Office of Compliance and Monitoring (OCM) staff had largely adopted the precursor to the resolution session, which they called Withdrawal by Resolution, prior to the reauthorization being signed into law in December, 2004. According to the data found in the OCM 2013 End-of-Year Report, 13 of the 33 complaints filed in 2003-2004 were resolved by Withdrawal by Resolution. The trend continued in that the majority of complaints in the 2005-2006 school year were resolved via the Withdrawal by Resolution method; of the 52 due process complaints that were closed, 43 were resolved using the Withdrawal by Resolution method. Similarly, in the 2006-2007 school year, 27 of the 29 closed cases were resolved by the Withdrawal by Resolution method. Interviews and documentation suggest that the law appears to have legitimized more than precipitated the adoption of the resolution session.

The factor that appeared to have had a greater impact on the rapid adoption of the resolution session was that the OCM staff had control over the design and implementation of the process. According to the OCM staff interviewed, prior to the 2004 reauthorization of IDEA, mediation and due process hearings were the preferred methods of resolving special education complaints in the school district. Both of these methods were conducted under the authority of the State Department of Education. As the reauthorization of IDEA was considered, public testimony was sought by Congress. This appears to have provided an opportunity for the OCM staff to contemplate a different way to resolve special education complaints. Furthermore, because the 1997 reauthorization of IDEA allowed for alternative dispute resolution methods to be used, the OCM staff were able to enact their ideas before passage of the 2004 reauthorization.
The process they developed shifted control from the State Department of Education to the OCM staff. In essence, the rapid adoption appears to have been because the OCM staff were able to assume control over a process that had previously been managed by third parties: the State Department of Education, mediators, and hearing officers. The process also shifted the emphasis from processing complaints to effective communication between the parents and OCM staff.

The process undertaken by the OCM staff illustrated: (a) a shared vision; (b) a systems thinking approach; and (c) team learning. All three factors are related to Senge’s (1990) five disciplines of a successful learning organization. According to Senge, a learning organization is one that is continuously adapting and changing. Perceptions and actions of people who are part of the organization are challenged to achieve a long-term positive impact. Senge described five disciplines, which include systems thinking, shared vision, personal mastery, team learning, and mental models. These five disciplines were the core to creating a successful organization. Three of these disciplines appeared to have been present in this case study.

**Shared vision.** Senge (1990) described shared vision as what members of the organization would like to accomplish. A shared vision was described by Senge (1990) as “pictures of the future” (p.9), where enrollment rather than compliance is key. A shared vision is important because it provides a sense of purpose and a common focus for the community to reach their goals; the energy that goes into aligning this vision with roles and responsibilities makes a difference in the outcome. According to Senge, a shared vision can change people’s relationship with the organization.
There was evidence of a shared vision among the OCM staff that the resolution of special education complaints could be resolved in a more conciliatory and less adversarial means than through a due process hearing. Staff developed the process, which defined how a resolution would result; they shifted their thinking to align the process they thought was most successful in resolving conflict. The common language that staff at the OCM used to describe their department and responsibilities suggested a vision that was uniquely shared by the members. This common identity was evident though their stories about the work that they do personally and as a team.

The 2004 IDEA mandate did not provide guidelines as to how school district personnel should implement the resolution session. The absence of a prescriptive process appears to have allowed the OCM staff to design a system of resolving complaints according to their vision of a less adversarial manner than had previously been employed. The OCM staff started with what they perceived to be the primary advantage of mediation, the opportunity to interact with parents of students with disabilities, but in a less formal setting than a due process hearing. Although staff responsibilities were clearly defined, the manner in which the process was undertaken was described in the interviews as highly dependent upon the particular situation of the complaint. Responses suggested that each case was handled to accommodate the unique needs of the situation found in the complaint. Echoing Fullan (1993), the OCM staff agreed that the process needed to be fluid to also accommodate an evolving vision of an organization.

Creating an additional position and redirecting some of the work of the existing staff accomplished the rapidity of the process. A Coordinator was hired to facilitate the resolution session process and communicate with parents regarding the process. The
Compliance Monitors were still responsible for gathering evidence about the complaint, but they assumed the role of guiding parents through the resolution session process. The findings suggest that because all staff, from the school district attorneys to the Compliance Monitors were directly involved in developing the process over time, the commitment to a shared vision was strong.

Murrell, Schneider, and Gould (2009) discussed the impact of learning within a community in the creation of the Leadership Institute in Judicial Education (LIJE). The LIJE provides continuing education for judges and other legal personnel in the court system. Murrell et al. found that a shared vision of learning in an organization created a commitment to the future; people learned because they wanted to be part of implementing the shared vision.

**Team Learning.** Senge (1990) described this discipline as collective learning where others affect an individual’s experiences in the team, and team members are learning together. Teams share experiences and knowledge about their work with each other and this is when the critical team learning takes place. Team learning was most evident in the common language that staff at the OCM utilized to describe the resolution process adopted at the school district. For example, all five OCM staff described the resolution process as evolving from the experience of collaboration with each other and sharing information and feedback that was essential to the team. In addition, as soon as a complaint was filed at the school district, the CCO described gathering the Compliance Monitors assigned and the Coordinator to collaborate in the initial discussion with the parent or attorney. Essentially the team was involved from the start in this learning process. Likewise, it was the continuous direct collaboration with parents that allowed
staff at the OCM to continue discovering what they needed to learn about the process and its growth.

Importantly, the OCM staff did not view the change in the law as an imposition; rather it was described as an opportunity to design and implement a system that could evolve and adapt within the regulations. The OCM staff worked together to design the initial meeting process. With the passage of the 2004 IDEA regulations, the OCM staff continued to collaborate, modifying the process to include the new regulations. Senge (1990) posited on the importance of collaboration as being an important component of the team learning process. According to Senge, collaboration is achieved through dialogue and discussion where inquiry and reflection is part of process.

**Systems Thinking.** Systems thinking is one of the five disciplines in which, “people learn to better understand interdependency and change” (Senge, 1999, p. 32). Senge (1999) argued that for organizations to change, people in the organization need to be given opportunities to change the way they think and interact. The staff at the OCM in the school district had a unifying vision of adopting a resolution process to reduce the number of due process hearings and improve direct communication with parents by eliminating the third-party in the process of resolving conflicts. In order to facilitate direct communication with parents, the team at the OCM had to design an approach that would allow them to effectively collaborate with parents. Since meetings were already taking place, a systems thinking approach was required by the OCM team to implement a process that would remain in place through changes in personnel, climate, and mandated regulations. In order to make this happen, the staff at the OCM began to experiment with a process that contained a meeting, which led to a resolution, shaping and implementing
the process before the state designed a process. The systems thinking approach tied with team learning meant that the process designed was flexible enough to be changed by the interaction of staff who developed the process over time. Personnel at OCM understood the common goals of the resolution process to allow systems to grow over time, adapting to changes while reshaping their roles and responsibilities in resolving complaints about special education.

**Implications for Practice**

The rapid adoption of the process of implementing a federal mandate reflects the vision and norms of the members of an organization. The ability to shape the resolution session according to the shared vision of the OCM staff appeared to have been critical in the rapid adoption of the resolution session in the school district. The findings in this study can be used to guide practice for school districts implementing a federal or state law.

Since the introduction of the resolution session, school district personnel have designed various resolution processes, have successfully collaborated, and have resolved disputes within special education. The opportunity for school district personnel to proactively and directly communicate with parents, and engage in building long-term collaborative relationships should be encouraged. Findings from this case study endorse that when school district personnel are involved in designing the process, they are much more likely to facilitate a shared vision, which in turn could sustain long-term success in resolving conflicts.

The impact of a shared vision among school district staff in implementing federal legislation is key in building and maintaining a program. This shared vision is reflected
in everyday practice as staff conducts roles and responsibilities within the organization. This shared vision is flexible; fluid enough to meet different demands of a community and to incorporate changes in the law, which governs the process. Indeed all staff interviewed at the OCM expressed surprised that more school districts had not implemented the resolution session in some form, which led to one administrator’s experience with a hearing officer who stated, “I hear you guys are trying to put hearing officers out of business”.

The practice of using coordinators instead of attorneys to facilitate the resolution session should be explored by school districts in order to ensure that the students’ interests remain the primary focus. In addition, school district personnel can direct the funds that would have been used for attorney fees to accommodations that would effectively serve students.

**Recommendations for Future Studies**

Administrators pointed to the number of complaints that were resolved through the resolution session, which after 2005 was the primary method of resolving special education related complaints at the district. Accurate data should be documented and should continue to be analyzed to determine the success of resolving complaints via the resolution session.

Avoiding costly litigation as well as allowing parties to talk through the issues face-to-face were two of the most commonly cited reasons that made the resolution session a popular choice amongst administrators included in this study. School districts engaging in a common vision can successfully execute a federal law to better serve their families and students. District personnel with a shared vision are responsible for
designing and implementing the process. Future studies should focus on the effect of a shared vision amongst personnel and the impact of that shared vision on the implementation of the resolution session in school districts.

Future research should consider the type and nature of complaints that were resolved by the resolution session; some complaints may be effectively resolved by the resolution session. Because some of the resolution session meetings in the school district were facilitated via phone, a future study should consider the nature of the meetings that were facilitated using the phone, and how facilitation may differ from a face-to-face meeting.

This study considered the perspective of school district personnel who are responsible for resolving due process complaints. In order to determine the success of the resolution session, future research should also consider the perspectives and experiences of parents and students on the resolution process. Because parties can waive the resolution session to resolve conflict by other means, choice is still an important factor for both parents and school district. Further study is needed to gauge how school district personnel across the country are utilizing this choice and by what means are complaints resolved.

**Conclusion**

The resolution session was mandated in the 2004 reauthorization of the IDEA as the last step in resolving complaints before a due process hearing. Federal mandates are often perceived at the state and local level as federal intrusion into local issues. School district leaders may be slow to design or adopt processes that effectively implement such
mandates. The staff at the OCM in the school district under study rapidly adopted the resolution session to resolve special education complaints.

It appears that staff at OCM shared a common vision for the design and implementation of the resolution session. This systems thinking approach led to a process designed and managed by personnel who directly engaged with parents to resolve more due process hearings. The vision of resolving disputes without using the courts meant reducing the number of due process hearings and meeting face-to-face with parents to resolve conflict. Important to the process being designed by school district personnel, was the ability of staff to modify the process to accommodate the needs of the school district and the students designated under special education legislation. The notable emphasis on resolving conflicts before a due process hearing meant that the process did not involve a third-party; staff at the OCM could effectively focus on directly serving families.

The ability to design the resolution session without input from administrators at the state level appeared to have contributed to the OCM’s ability to adopt the resolution session rapidly. The shared vision resulted in a quick adoption and implementation of a federal legislation. It also reduced the number of due process hearings in the school years between 2004 and 2008.

The primary outcome of the successful design and implementation was OCM staff increased the likelihood of coming to a resolution before a due process hearing. The way the resolution session was written into law did not preclude attorneys, but the intent was to find a more amicable means of resolving issues of special education. It appears that by directly engaging with parents reduced the number of cases that went to trial.
Additionally, the number of complaints that were resolved via the resolution session increased.

In conclusion, the importance of a shared vision that seeks to solve problems, as opposed to comply with legal mandates, is supported by this research. Learning organizations, a shared vision, and a systems thinking approach are all components of a rapid and successful implementation. Finally, with that shared vision, it is possible to reduce the number of due process hearings for a more amicable means of resolving disputes in special education.
References


Education of the Handicapped Amendments of 1986, S.2294


Harley, M. S., & Redmond, P. V. (2007, October). *100% resolution vs. 0% hearings*. Paper
presented at the Pacific Northwest Institute on Special Education and the Law, Yakima, Washington.


Oberti v. Board of Education, 995 F.2D 1204 (United States Court of Appeals; 3rd Cir. 1993).


Appendix A

Special Education Due Process Complaint and Resolution Matrix

Parent files due process complaint with school district or State Educational Agency (SEA).

Resolution Session must convene within 15 calendar days

- Any agreement is legally binding.
- Either party can withdraw from an agreement within three business days.
- If the dispute is not resolved, due process hearing proceeds.

Impartial due process hearing proceeds
- Decision must be made within 45 days.
- Statute of limitations for contesting a decision is 90 days.

Federal or State Courts
- Federal or state courts may review the decisions of a hearing officer and the process
- The majority of States use the Federal courts.

Resolution
## Summary of Dispute Resolution Procedures within Special Education

<table>
<thead>
<tr>
<th>Dispute Resolution Procedures</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due Process Hearing</td>
<td>Formal due process safeguard for parents. Involves review of documentation, evidence, witnesses and cross-examination by attorneys representing the parties. Hearing officer makes the final decision as per IDEA procedure. May result in a review hearing on appeal.</td>
</tr>
<tr>
<td>Mediation/Arbitration</td>
<td>Involves a trained mediator who facilitates meetings between the parent and school district representative. Not mandatory under IDEA. IDEA does not stipulate if attorneys may be present</td>
</tr>
<tr>
<td>Local Complaints Process</td>
<td>Review of the complaint by the SEA.</td>
</tr>
<tr>
<td>Case Managers</td>
<td>Usually hired by the State to resolve disputes between parents and school districts via problem solving strategies</td>
</tr>
<tr>
<td>Immediate Assistance and Response</td>
<td>Usually a state education agency representative that provides assistance in problem solving via in person or telephone.</td>
</tr>
<tr>
<td>IEP Facilitation</td>
<td>Early dispute resolution process. Outsider who assists with the IEP facilitation and process to resolve issues and disputes (which arose from the IEP)</td>
</tr>
<tr>
<td>Pre hearing conference</td>
<td>Once a due process compliant has been filed, parent and school district representatives meet with a hearing officer who is assigned the case (or an external officer). Hearing officer will meet with the parties to try and resolve issues within the dispute.</td>
</tr>
<tr>
<td>Parent-to-Parent Assistance</td>
<td>A family involved in a conflict with the school district is matched to another family or parent who has child with a disability and is trained to dispense advice or legal assistance.</td>
</tr>
<tr>
<td>Resolution Session</td>
<td>As directed by IDEA where parents and school district representatives are required to meet within 15 days of the complaint being filed. Both parties may waive the meeting.</td>
</tr>
</tbody>
</table>

Table adapted from Alternative Dispute Resolution, Table 1, Mueller (p. 8, 2009)
Appendix C

Interview Guide for School District Personnel

Thank you for taking the time to provide information about how your school district implemented the Resolution Session (Review consent form for signature).

The semi-structured process of the interview (questions) allows for respondents to memorialize the event, design, implementation and process of the resolution session. Interviewees will state their name and position within the school district. These will not be published to observe confidentiality.

1. I would like to begin by asking you to describe the process that CCSD uses to resolve disputes related to special education.

2. Now I would like to ask you to go back to when the district designed the current Resolution Session. Why did this come about at all?

3. What year did this design and implementation of the process initially happen?

4. I realize that it has been awhile, but can you describe what the process looked like then?

5. What significant changes were made with the process? Were they all made at once or did they happen over time?

6. What problems were encountered with the process? What were the victories?

7. This school district has a reputation for effectively implementing the Resolution Session? Do you think the reputation is accurate? Why or why not?
For respondents who were not present at the initial design and implementation stage of the resolution session, all of the questions above about the implementation will be recast about their perception about how the process was designed and implemented. In addition the following questions will be asked.

1. How did you discover the process? Was there a process training, written procedure or guided manual?

2. How has the process been adopted within the school district?

Thank you so much for your time.
Appendix D

UNR IRB Exemption Letter

DATE: May 13, 2014
TO: Janet Usinger, Ph.D.
FROM: University of Nevada, Reno Social Behavior and Education IRB
PROJECT TITLE: [605755-1] The Role of the Resolution Session in the Processing of Special Education Complaints in a Large Urban School District
REFERENCE #: SUBMISSION TYPE: New Project
ACTION: DETERMINATION OF EXEMPT STATUS
DECISION DATE: May 13, 2014; Expiration Date: May 13, 2017; Next status report due May 13, 2015
REVIEW CATEGORY: Exemption category # 7 Flex Policy

The UNR Institutional Review Board has determined this project is EXEMPT FROM IRB REVIEW according to federal regulations. Please note, the federal government has identified certain categories of research involving human subjects that qualify for exemption from federal regulations. The IRB is authorized by the federal government to determine whether studies thought by the principal investigator (PI) to be exempt from federal regulations actually qualify for exemption criteria. Only the IRB has authority to make a determination that a study is exempt from federal regulations and from IRB review and approval. The above-referenced protocol was reviewed and the research deemed eligible to proceed in accordance with the requirements of the Code of Federal Regulations on the Protection of Human Subjects (45 CFR 46.101 paragraph [b])

- Application Form - 1_Application Part II SOC_050514.docx (UPDATED: 05/7/2014)
- Consent Form - Information Sheet (UPDATED: 05/7/2014)
- Consent Waiver - Waiver to obtain consent (UPDATED: 05/7/2014)
- Consent Waiver - Alteration of written consent (UPDATED: 05/7/2014)
- Letter - Site approval to conduct research (UPDATED: 05/7/2014)
- Letter - Recruitment e-mail (UPDATED: 05/7/2014)
- Questionnaire/Survey - Interview Questions (UPDATED: 05/7/2014)

We will retain a copy of this correspondence within our records.

If you have any questions, please contact Nancy Moody at 775.327.2367 or nmoody@unr.edu. Please include your project title and reference number in all correspondence with this committee.

Sincerely,
Nancy Moody JD MA
Director, Research Integrity Office
University of Nevada Reno

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within University of Nevada, Reno Social Behavior and Education IRB's records.
Appendix E

Approval Letter from Clark County School District

October 27, 2014

Saantheri (Sandie) B. Spoering
2154 12th Avenue
San Francisco, CA 94116

Dear Sandie:

The Research Review Committee of the Clark County School District has reviewed your request entitled: The Role of the Resolution Session in the Processing of Special Education complaints in a large urban school district. The committee is pleased to inform you that your proposal has been approved with the following provisions:

1. Participation is strictly and solely on a voluntary basis.
2. Provide letter of acceptance from any additional principals who may agree to be involved with the study.
3. Require a copy of your research findings and results.

This research protocol is approved for a period of one year from the approval date. The expiration of this protocol is October 26, 2015. If the use of human subjects described in the referenced protocol will continue beyond the expiration date, you must provide a letter requesting an extension one month prior to the expiration date. The letter must indicate whether there will be any modifications to the original protocol. If there is any change to the protocol it will be necessary to request additional approval for such change(s) in writing through the Research Review Committee.

We look forward to receiving your research project/study results. If you have any questions or require assistance please do not hesitate to contact this office at (702) 799-5195 or e-mail at lapitch@interact.ccsd.net.

Sincerely,

Lisa A. Pitch
Coordinator III
Department of Accountability & Research
Chair, Research Review Committee

clk

c: Michael S. Harley – SUPPORT
Research Review Committee
Kent Sabo

RRC-055-2014
Appendix F

RESOLUTION AGREEMENT

WHEREAS, [NAME OF STUDENT] (hereinafter referred to as the “Student”) by his parent(s) [NAME OF PARENTS] (hereinafter referred to as the “Parent(s)”), filed for a due process hearing on [DATE FILED] pursuant to the Individuals with Disabilities Education Act, as amended (hereinafter referred to as the “IDEA”) and its implementing regulations against the Clark County School District (hereinafter referred to as the “District”) concerning the failure to provide a Free Appropriate Public Education (hereinafter referred to as a “FAPE”) in the Least Restrictive Environment (hereinafter referred to as “LRE”) during the 201X-201X School Year; and

WHEREAS, the District agrees it is required to provide Student a Free Appropriate Public Education in the Least Restrictive Environment (LRE) if the student is found eligible to receive services under the provisions of the IDEA; and

WHEREAS, a dispute arose between the District and the Parent(s) regarding the provision of a FAPE in the Least Restrictive Environment (LRE) during the 201X-201X school year pursuant to the IDEA with respect to:

a)........

WHEREAS, the parties hereto have decided that it is in their best interests to resolve the dispute between them.

NOW THEREFORE, in consideration of the mutual undertakings of the parties, IT IS HEREBY AGREED by and between the Parent(s) and the District as follows:

1. XXXX

2. The Parent(s) agree that all issues set forth in the Due Process complaint filed on [DATE FILED], have been resolved.

3. Parent(s) shall withdraw the [DATE FILED] request for an impartial due process hearing, with prejudice.

STUDENT NAME Resolution Agreement
4. The parties agree that this resolution agreement shall be kept confidential; however, nothing herein shall preclude either party from using this agreement in a proceeding to ensure its implementation or the fact of its existence.

5. This agreement shall remain in effect until the agreed upon provisions are implemented or one year from the date of execution of this agreement, whichever is earlier.

6. It is further understood that this resolution agreement is a compromise of various disputed claims, and that the provision and location of services is not to be construed as an admission or acknowledgment of liability or responsibility whatsoever on the part of the District, or any individual, person or corporation, or agent, servant, employee, representative or board member thereof, herein released, by each of whom all liability or responsibility is expressly denied.

7. Finally, the parties agree that either party may void this Resolution Agreement between the parties within three (3) business days following execution of this agreement.

Based on the foregoing the parties hereby agree:

Dated this _____ day of ______ 2014 ________________________________

MICHAEL S. HARLEY, ESQ. (IL)
Compliance Officer

Dated this _____ day of ______ 2014 ________________________________

PHOEBE V. REDMOND
Assistant General Counsel

This offer is hereby accepted upon the terms and conditions specified herein I hereby withdraw my request for a due process hearing [DATE FILED].

Dated this _____ day of ______ 2014 ________________________________

[PARENT’S NAME]
Petitioner

Dated this _____ day of ______ 2014 ________________________________

[ATTORNEY NAME]
Attorney for the Petitioner

STUDENT NAME Resolution Agreement