



AASA Proposal for Improving IDEA Due Process System

In May, AASA published a controversial report, *Rethinking the Special Education Due Process System*, suggests a two-prong approach to replace the current IDEA due process system. First, make it more difficult for disputes to arise between parents and districts by adding language to the statute creating a mandated facilitated IEP meeting. Second, remove the current due process complaint and hearing options and replace them with a special education consultancy model. Details are below.

Step 1: IEP Facilitation

- IEP facilitation is used when agreement on the IEP cannot be reached, or there is a history of contentious interactions between the family and school, the participations anticipate that they will be unable to reach agreement on critical issues, or when a meeting is expected to be particularly complex and controversial. It is a proactive method for resolving disputes before emotions and positions become rigid.
- Parents are informed about the IEP facilitation option at the first IEP meeting they attend with the district and would be notified in writing about the option to engage in facilitation on an annual basis. Parents or the district can request a facilitator to attend an IEP meeting ahead-of-time, although the district must request the facilitator if agreement cannot not be reached after the initial IEP meeting.
- The facilitator is not a member of the IEP team and has no personal interest in the outcome. She is an employee of the state who is trained to assist in the resolution of special education disputes. Currently half of states have an IEP facilitation option in place that is organized at either the district or state level.
- The state employs the IEP facilitator; there is no cost to districts or parents to use facilitator.
- No lawyers may be present at the IEP facilitation meeting.

Step 2: Mediation

- Mediation is already a dispute resolution model codified in IDEA. However, AASA suggests three major changes to the mediation model and its use alongside IEP facilitation. First, mediation occurs when IEP facilitation is unsuccessful. Second, only two representatives of the school district are required to attend the mediation. Third, the mediation agreement is not legally binding and lawyers are not allowed to attend the mediation. Other than these three areas, the mediation language is identical to what is currently in IDEA.

Step 3: Consultancy System

- If IEP facilitation and mediation fail to produce an IEP acceptable to both parties, an independent, neutral special education consultant designated by the state is jointly selected by families and schools to review evidence of the child's disability and advise the parties on how to achieve FAPE in the LRE.
- Parents and districts jointly choose a consultant approved by the state. The consultant is an employee of the State and is required to have a minimum of five years of experience in the school setting, expertise in the child's primary disability, and experience administering or providing educational programs to children identified with the child's primary disability.
- The consultant is required to meet with both parties within fifteen days of the facilitated IEP meeting or mediation session.
- The consultant is tasked with the following: interviewing parents and relevant school personnel about the student and her weaknesses and strengths, recommending additional evaluations, accessing and reviewing

all relevant educational assessments and medical documents for the student, observing the student in a variety of school environments, and drafting a written report within 30 days of the initial meeting recommending a specific IEP for the student.

- Once the consultant's report is complete, the district and parent are obligated to follow the consultant designed IEP for a trial period. If the student does not benefit educationally from the new IEP, or either party is dissatisfied with the current IEP for other reasons, the consultant can suggest amendments to the IEP and another three-month period of testing can begin.
- If either party is dissatisfied with the IEP after attempting the consultant IEP, they could file a lawsuit in federal court and the consultant's notes and model IEP would be included as part of the record in any litigation. If parents wish to pursue compensatory education or reimbursement for expenses associated with obtaining private education in the absence of the school district's provision of FAPE, they can continue to do so in federal court as long as they have attempted to find agreement with the district through the facilitation and consultancy model first.

Why should you support this new model?

- In a survey of AASA members, 75% of respondents supported an IEP facilitation provision.
- This alternative to the due process system significantly reduces school district expenditures. There is no cost to engage with IEP facilitator, mediator and consultant. In addition, the district would not have to employ any lawyers, experts, or substitute personnel to engage in the facilitation/consultancy model. The district would also avoid other miscellaneous costs associated with due process hearings. Additionally, the potential for reimbursement for private placement of a student would be unattainable unless parents attempted to work with the district on finding compromise first.
- Many state associations provide insurance to districts for expenses incurred during litigation, but not for costs incurred during due process hearings. If agreement cannot be reached by the district and parents through the facilitation and consultancy process, many districts would spend less money under the AASA proposal since they would only be responsible for a small portion of litigation costs prior to insurance taking effect, rather than all the due process costs in addition to a portion of the litigation costs.
- The consultancy system does not undermine teacher and administrator judgment; rather, it supports these personnel by providing professional development as to how to appropriately educate students with disabilities. It is a much less stressful process for school personnel than a due process hearing, which is proven to lower retention rates for these employees.
- This model encourages pro-active problem solving by both parties and incentivizes parents to make a good-faith effort to resolve conflict with district since they have to go through multiple steps before seeing a judge.
- It emphasizes formulating a strong IEP to improve the academic performance of the child, rather than arguing over whether the school district erred in designing or administering the original IEP or whether the parents' demands for services and placements were unreasonable.
- It provides an evidence-based approach to making IEP determinations. Currently, there is no proof that hearing officers' due process decisions result in better outcomes for disabled students. While IDEA currently allows a hearing officer to access records and assessments compiled by school personnel and specialists employed by the school, there is no follow-up to see whether hearing officers' decisions have positively or negatively impacted student performance. In contrast, the consultant recommended IEP will be evaluated and tested over a period time agreed upon by the district and parents. Because the consultant is more adept at analyzing educational records and assessments than a hearing officer, and can also observe the student at school to make independent determinations about her needs, the consultant's IEP should be more appropriate than a hearing officer's final decree.
- It diminishes the adversarial relationship characteristic of special education disputes between parents and district. Jointly choosing a trusted consultant whose expertise both parties respect would reduce accusations of bias, misrepresentation and ill-intent.