

Survey – SPED Due Process Procedures

Do you agree? Yes or No.

_____. IEP facilitation is an excellent way to keep the IEP process on track in terms of coverage of topics, management of time and management of conflicting personalities.

_____. It is particularly useful for those cases where there have been multiple IEP team meetings and personalities have stood in the way in terms of meaningful discussion.

_____. I do not believe that IEP facilitation is being conducted by highly qualified individuals. The facilitators have not been effective in resolving contentious matters. Their function appeared to be nothing more than conducting the meeting.

_____. I have never encountered any facilitator who has specific training and experience in facilitating IEP meetings. They are ‘borrowed’ from other disciplines in the hope that their presence will somehow add value to the process. Usually they are superfluous to the process.

_____. I only find IEP facilitation helpful when Districts and Parents are having trouble communicating, but not when there is a substantive issue regarding the appropriateness of placement or services.

_____. I believe it is a valuable means to solve disputes arising out of miscommunication. I have not found it is a helpful means to resolve disputes arising out of disagreement with assessment results[,] current levels of performance and best practice with service delivery[,] times[,] amounts and different types of providers.

_____. Facilitation is a tool to assist parties to find common ground and reach agreement. When one party approaches the IEP meeting with a fixed goal / outcome and is unable / unwilling to consider alternatives, facilitation may help to highlight the differences but not facilitate a resolution.

Should IEP facilitation should be mandated? Yes or No.

_____. [D]ue process is very expensive and the parties should be forced through several different procedures prior to going to “court.”

_____. Too many times, due process hearings are filed without any attempts to engage the school district in meaningful communication about the pending issues. This results in fractured feelings between the school personnel and the family.

_____. It should never be required. If the parties do no[t] wish to do it on their own, it will not be successful.

_____. There are already resolution meetings or mediation requirements. No need to add a redundant layer of ADR.

_____. It really depends on the case. If you know going in that there's no hope of resolving the dispute, IEP facilitation is a waste of time. Because of this, I don't think it should be mandated.

Is the Resolution Session working? Do you agree?

_____. Many school districts do not agree to it because they see it as an unproductive step which only incurs extra costs for them.

_____. It's a waste of time. We almost always waive the resolution session and proceed directly to mediation. The presence of a mediator usually goes a long way toward helping the parties reach an agreement.

_____. Resolution sessions are ineffective because most often it consists of the same individuals arguing over the same issues they couldn't resolve at an IEP meeting. There is no one new involved in the process. It just unnecessarily delays resolution [of] the matter.

_____. The resolution session/period simply causes delays. School District[]s do not use it to resolve matters, but instead use it as a means of intimidating the parent, delaying the proceedings, and/or a form of discovery in preparation for the hearing.

_____. From a school attorney's perspective, voluntary mediation tends to be far more effective if used in that both parties seem to take comfort in and benefit from the facilitation of a neutral third-party. If the parties couldn't work out their issues at an IEP meeting or otherwise, sitting together again at a resolution session is usually not helpful to resolve the case. It can, however, be useful in creating a record of what a district tried to do to resolve a case since the documentation is admissible at a due process hearing (unlike mediation documentation).

Should the Two-Tier Due Process Option Be Eliminated?

Reasons to Prefer a Two-Tier Structure. Do you agree?

_____. Because Court is not the answer. In Virginia in the federal system, we have "modified de novo" the due process is considered the trial, and that which is not raised is waived. This is harsh on parents who go to due process with "advocates" who are not lawyers while schools always have lawyers. A second tier would help parents.

_____. Federal courts are very quick to defer to the administrative decision. I think it makes sense to have an administrative panel review the decision of the individual hearing officer. Appeal to federal court is so lengthy and unlikely to succeed that it impedes use of the federal court process. While the case is pending, the student is languishing in her current educational placement, appropriate or not.

_____. [E]asier, quick and more cost effective means to correct problems in hearing decision with someone who understand special education -- federal court judges do not have such expertise.

Reasons to Prefer a One-Tier Structure. Do you agree?

_____. Less costly. The second tier is often a "rubber stamp" of the first level and creates a barrier to parents getting into court in a timely manner.

_____. In NYS, our two-tier system is widely known to have been compromised by the New York State Education Department. All litigation is undertaken with the understanding that the matter needs to be prepared for Federal Court, hearing records need to be more developed as a result (costing both parties time and money), and delays delivery of appropriate services to the child.

_____. The two tier process adds to the delays to a child - if a litigious district is involved and a student does not have a decent stay put, the parent has zero leverage and the child suffers for at least an additional year.

_____. The SRO makes decisions without the benefit of watching the witnesses testify. He cannot [assess] the true veracity of the witness through reading a transcript.