



**LEADERSHIP STRATEGIES
TO PREVENT
REQUESTS FOR DUE PROCESS HEARINGS**

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SPECIAL EDUCATION DIRECTORS' EXPERIENCES PREVENTING & RESPONDING TO REQUESTS FOR DUE PROCESS HEARINGS

- Qualitative Study; interviewed 10 SE directors
- Research questions
 - RQ1: Leadership actions of SE directors to increase cooperation & mitigate conflict between families & schools
 - RQ2: SE directors' experiences after receiving requests for due process *hearings*

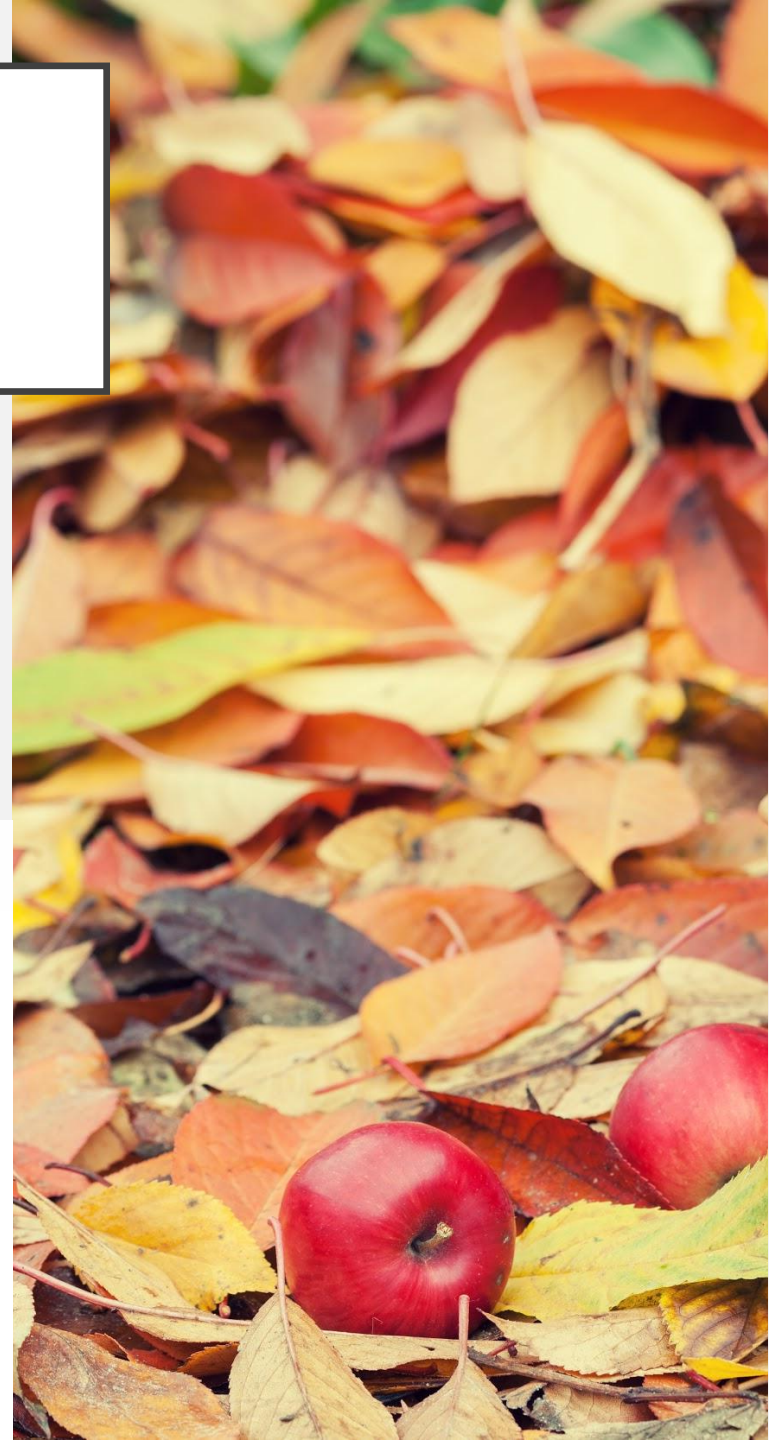


SPECIAL EDUCATION DIRECTORS' EXPERIENCES PREVENTING & RESPONDING TO REQUESTS FOR DUE PROCESS HEARINGS

Research conducted to understand

- Other directors' experiences
- The gap in the process that is intended to be collaborative
 - Structure of the law? or
 - Lack of district level procedures to identify and respond to concerns?

Full Dissertation here:



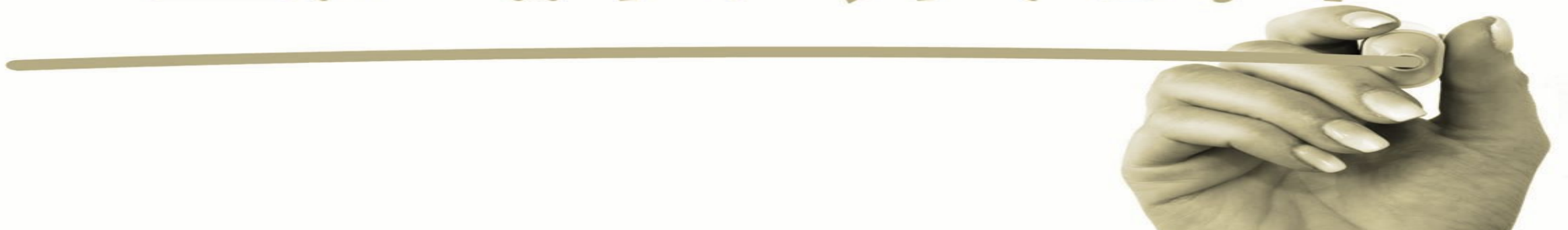


POSITIONALITY



- Source of data
- Participant perspective

LIMITATION




COMPREHENSIVE LITERATURE REVIEW

- Due process hearings result in a negative impact on stakeholders
- Leadership actions of SE directors mitigate conflict and increase cooperation

RESEARCH RECOMMENDATIONS

- Require a tiered system of alternative dispute resolution
- Reduce the involvement of attorneys
- **Build the capacity of SE directors (and other school admin) to be proactive leaders**

RQ2 FINDINGS



Research

Directors' Experiences

- Received requests unexpectedly
- ADR unproductive after request
- Settlement period
- Negative experiences with parent attorneys

God,



grant me the

serenity

to accept the things

I cannot change,

the **courage**

to change

the things I can,

and the

wisdom

to know the

difference.



RQ1 FINDINGS

Proactive leadership actions are critical

1. Build relationships
2. Understand concerns of parents
3. Use alternative dispute resolution to resolve conflict
4. Train stakeholders



RELATIONSHIPS



BUILDING RELATIONSHIPS KEY STRATEGY TO
AVOIDING DUE PROCESS REQUESTS

- Visible, available, responsive
 - Train others to bring concerns to your attention
- Culture of customer service
 - Keeping the focus on the student & having the right attitude
 - *Speed of Trust* by Stephen Covey

BUILDING RELATIONSHIPS KEY STRATEGY TO AVOIDING DUE PROCESS REQUESTS

- Attitude of the staff was a critical component to establish a culture of customer service.



*You have to store your ego and control your emotions.
If you can do that, [momentum shifts] from feeling [defensive to
focused on the student] and working with the family.
When an administrator or teacher digs their heels in, and they
aren't listening anymore, their ship is sinking.
You've got to be able to let go of those things and be open to how we
make this work.*

BUILD RELATIONSHIPS WITH EMPATHY



RELATIONSHIPS

- Considerable evidence that students' learning improves when school officials and families work together (Henderson & Mapp, 2002).
- Legal Lesson #8
 - [Video example of non-collaborative meeting](#)
 - [Video example of collaborative IEP meeting](#)

TOP TEN METHODS TO FOSTER IEP TEAM COLLABORATION

1. Build trust & create relationships
2. Put aside egos; everyone is equal
3. Share a goal
4. Share accountability
5. Become an active listener
6. Make communication easy
7. Be open to other team members' ideas
8. Know the team's strengths & limitations
9. Use creative & critical thinking
10. Stop making offers; make group decisions instead

COVER SHEET WITH PROCEDURAL SAFEGUARDS

Make sure families know who they can contact with questions, ideas, concerns, and for support. And how to reach those people!

Greetings Parents & Guardians,


Your child is important to us. **Name of Local School Corporation** is committed to working in partnership with you. The attached booklet is your copy of Indiana's Procedural Safeguards which outline our responsibilities to you and your child. An additional helpful resource, titled *Navigating the Course*, is a companion guide. It is available at this link <https://www.earlywood.org/domain/142> or a printed copy will be provided upon request.

If you have questions, concerns, or ideas about your child's educational program, we want to hear from you. Below is the contact information of people that can assist you. Please contact us so we can work together with you.


Your child's special education teacher of record
Teacher Name
teacher@email.k12.in.us
317-999-9999


Your child's building principal
Name
principal@email.k12.in.us
317-999-9999


District Director, Director of Special Education
Name
director@email.k12.in.us
317-999-9999


 **Executive Director of Earlywood Educational Services**
Dr. Angela Balsley
abalsley@earlywood.org
317-736-8495


We also encourage you to check out these resources:
[Corporation's web address]

 <https://www.facebook.com/ssjcsschools>

 <https://twitter.com/ssjcss>

 <http://www.earlywood.org>

 <https://www.pinterest.com/ssjcss/>

 <https://www.youtube.com/user/nd->

UNDERSTAND CONCERNS OF PARENTS

UNDERSTAND CONCERNS OF PARENTS

- Prior to the enactment of federal legislation in 1975, children with disabilities had no protected right to an education and their parents had no specific entitlement to provide input into their child's education (Kerr, 2000).
- Parent advocacy with momentum from civil rights movements
 - *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954)

- *Pennsylvania Association for Retarded Citizens [PARC] v. Pennsylvania (1971)*
 - Court found that the state was delaying or ignoring its constitutional obligations to provide publicly supported education for all students
- *Mills v. Board of Education (1972)*
 - Outcome established (1) no child could be denied because of lack of resources; (2) if excluded from LRE, provided with alternative services suited to the needs of the child; and (3) due process procedures.
- Education of All Handicapped Children Act in 1977 (P.L. 94-142)
 - Now referred to as IDEA, established FAPE, IEP, & more

DISABILITY

RIGHTS

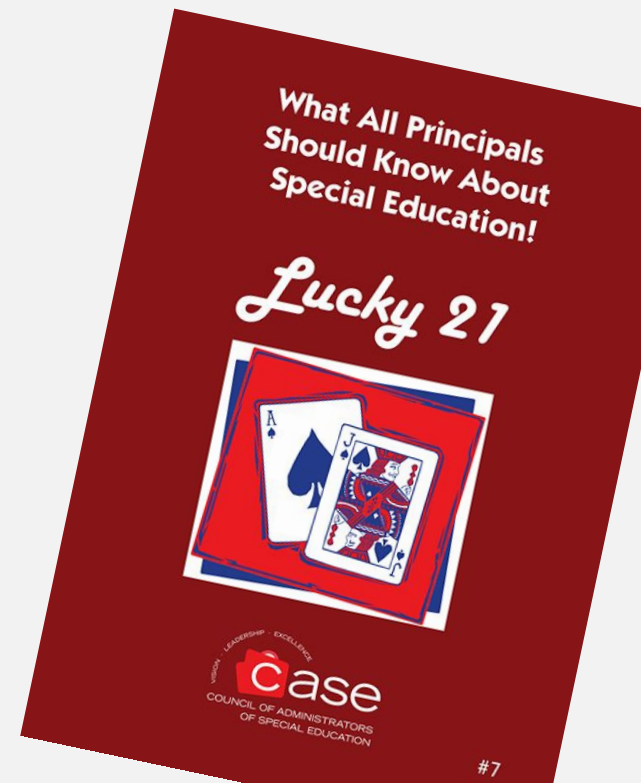
ARE CIVIL

RIGHTS

WHAT DO PARENTS OF STUDENTS IN SPECIAL EDUCATION NEED FROM THEIR PRINCIPALS?

- Know the child's name
- Model appropriate behavior. You set the tone of inclusion in your building
- Include ALL kids. Gen ed classrooms, assemblies, field trips. Everything!
- Admit when you don't know

Bateman, D. (2015). *What all principals should know about special education*. Council of Administrators of Special Education.



WHAT DO PARENTS OF STUDENTS IN SPECIAL EDUCATION NEED FROM THEIR PRINCIPALS?

- Come to meetings. Your presence lets parents know you care.
- Answer emails and phone messages
- Realize that the child is a child
- Use people first language
- Support for teachers
- Confidentiality

**USE ALTERNATIVE DISPUTE
RESOLUTION**

DISAGREEMENTS WILL OCCUR



- Special education is uniquely individualized
- Amicable relations can break-down
- District failed to provide FAPE in the LRE
- Some parents seek “optimal” program



UTILIZE ALTERNATIVE DISPUTE RESOLUTION

- Case conference committee meeting (reconvene, document)
- Facilitated IEP meeting
- State Complaint
- Mediation (before request for due process hearing)
- Mediation (after request for due process hearing)
- Resolution meeting
- Due process hearing



UTILIZE ALTERNATIVE DISPUTE RESOLUTION

Comparison Chart

Center for Appropriate Dispute Resolution in Special Education. (2015). *Quick guide to special education dispute resolution processes for parents of children with youth ages 3-21.*



FACILITATED IEP MEETING

- Offered for free in Indiana
 - Directors are aware of availability of free tool
 - IDOE & IN*Source recommend to parents
- Many directors report not using FIEP offered from IDOE
 - Trained on process prior; strategies used in house to get similar result
 - Not wanting to give up control
 - Prefers to demonstrate local willingness and investment in CCC process
 - Meetings are belabored & outcome is unclear

FACILITATED IEP MEETING

"We request FIEP when parents have the emphasis on the wrong syllable."

Helps to buffer & build understanding of the process

STATE COMPLAINT

- Many able to resolve without IDOE issuing a finding of fact
- Two reports of parents filing for state complaint, mediation, and due process hearing request all the same time
- Director from wealthier district reported parents wanting to “go straight to the top” and generally skip the state complaint process



STATE COMPLAINT

- Parent unhappy with outcome from complaint process
- Rectify situation & possible compensatory services
- Director used complaint investigation to motivate unwilling school stakeholders



MEDIATION (BEFORE REQUEST FOR DUE PROCESS HEARING)

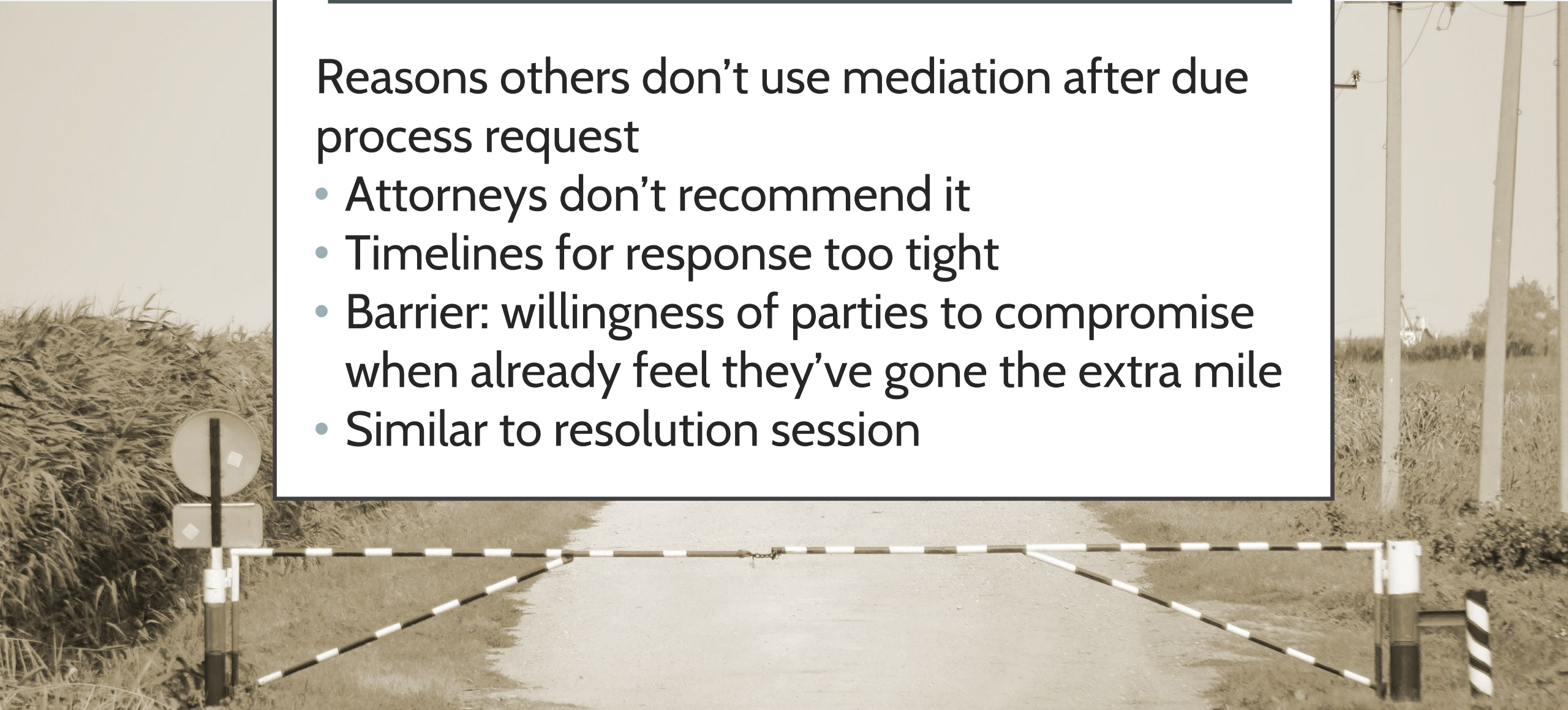
- Used when impasse reached with case conference
- Directors prefer not to involve attorneys
- Attractive option because no cost
- Success dependent on
 - Focus on student
 - Both parties willing to compromise
 - Skill of mediator

M E D I A T I O N

MEDIATION (AFTER REQUEST FOR DUE PROCESS HEARING)

Reasons others don't use mediation after due process request

- Attorneys don't recommend it
- Timelines for response too tight
- Barrier: willingness of parties to compromise when already feel they've gone the extra mile
- Similar to resolution session



RESOLUTIONS

- All directors participate in resolution in good faith
- Many are willing to offer significant compromise at the resolution meeting
- A couple participants noted ability to resolve shortly after the meeting
 - Parent represented by self or advocate, not attorney
- **Depends on the parent attorney**
 - Directors describe process as “worthless, pointless, frustrating”
 - Parents told not to agree to anything at the resolution session
 - Example: Months later & same outcome for significantly more fees
 - Destroys relationship
- Despite obstacle, directors still able to gain insights into proposed outcomes



DUE PROCESS (511 IAC 7-45-3)

- IDEA: if parents and schools are unable to resolve a dispute concerning a student's education, then they can file a due process hearing request
- Request starts a quasi-judicial process in which the parties either
 - (1) settle or dismiss the complaint or
 - (2) an independent hearing officer resolves the dispute through a due process hearing proceeding.



DUE PROCESS (511 IAC 7-45-3)

Parents and schools must complete this administrative process before they can appeal the decision to a federal or state court.

Thus, the filing of a due process hearing complaint engages attorneys and is the first step of a lawsuit.

If not resolved, may include presentation of evidence and cross-examination of witnesses.

TRAIN STAKEHOLDERS

TRAIN STAKEHOLDERS

Parents

- Navigating the Course
- IN*Source

Professionals

- Legal Literacy
- Negotiation Skills
- Leadership Actions



LEGAL LITERACY: BASIC LEGAL FRAMEWORK

- Almost every decision educators make about special education involves the law
- The U.S. Constitution does not contain the word “education” nor does it require Congress to enact laws governing education

STATUTES

- Passed by a legislative body
 - State legislature- state statute
 - Congress- federal statute
- Referred to as laws or legislation
- Codes= statutes grouped together by subject matter
- After statutes are enacted, they have authority until they are amended, rescinded, or deemed unconstitutional by a relevant court





STATUTES

- Courts interpret the meaning and application of statutes but they cannot change the language of the laws
- Legislature enacts general rules which are interpreted and applied to specific cases by courts
- Educational leaders must understand the language of statutes and how it should be applied
 - Look at regulations and relevant court cases



- Supplements to the law
- Indicate how law should be interpreted and implemented
- Regulations made by administrative agencies (such as the IDOE) are referred to as administrative law
- Indiana regulations are part of Indiana Administrative Code [IAC]
- Article 7 is an Indiana Administrative Code

CASE LAW

- One of the most important sources of law
- Sometimes referred to as common law
- Describes the collective body of law derived from court opinions
- Courts create binding laws as a result of their decisions
- Courts make laws by deciding cases (lawsuits between two parties) by interpreting legal principles



CASE LAW

- Because each case has a unique set of facts, new binding precedent is created every time a case is decided
- Courts must abide by precedent (past court decisions)
 - Provides the ability to predict how courts will decide
 - Within their jurisdiction
 - Indiana is part of the 7th Circuit Court with Illinois & Wisconsin



ADMINISTRATIVE COURT

Administrative agencies, such as the IDOE, are given the authority to resolve disputes related to their organization

- Cases are heard in separate systems called administrative courts
- Allows those with expertise to handle the cases
- Administrative law judges (independent hearing officers)
- Specialized training



SUBSTANTIVE & PROCEDURAL PROTECTIONS

SUBSTANTIVE PROTECTIONS

- Appropriate & according to the IEP (the substance of FAPE)
 - Details largely undefined
- IDEA prescribes *how* decisions about a student's special education are made, but not *what* decisions to make (Romberg, 2011)
- *Rowley* and *Endrew*: parents challenged the level of appropriateness

ROWLEY (1982)

- Access to education, not a guaranteed level
- “Appropriate” had a dual meaning
 - Procedural: compliance
 - Substantive: IEP reasonably calculated to yield educational benefit
- Rejected higher standards of commensurate, self-sufficient, and maximization
- Provide access, not increase potential

ENDREW (2017)

- U.S. Supreme Court revisited *Rowley's* standard of appropriate
- Tenth Circuit: *de minimus*
- The Supreme Court found that the *de minimus* standard was problematic
- Substantive standard: **an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances**

SUBSTANTIVE TAKEAWAYS FROM *ENDREW*

- Accurate PLOP based on data
- Measurable goals
- Solid progress monitoring
- Systematic reporting of data
- Demonstration of progress
- Reconvene if no progress
- Challenging individualized objectives linked to grade level standards
- Access to core curriculum
- Consider behavior support needs
- High standards & challenging content

We the People

PROCEDURAL PROTECTIONS

Procedural similar to general constitutional rights under the Fourteenth Amendment (due process & equal protection under law)

- *Winkelman v. Parma City School District (2007)*. U.S. Supreme Court granted parents independent, enforceable rights
- Mandated parent involvement in the IEP process; Believed to be crucial to ensuring that children with disabilities received FAPE
- Parents, if unsatisfied with the results of the process, are accorded a detailed set of due process rights to challenge the district's decision (Romberg, 2011).

THIRTEEN LEGAL RIGHTS OF PARENTS TO PARTICIPATE IN THE IEP PROCESS

1. Independent educational evaluations
2. Written notice
3. Requirement of parental consent
4. Access their child's educational records
5. Present and resolve complaints
6. Availability of mediation
7. Child's placement while due process is pending

THIRTEEN LEGAL RIGHTS OF PARENTS TO PARTICIPATE IN THE IEP PROCESS

8. Procedures for an interim alternative educational setting
9. Knowledge of rights for parents who place their child in a private school at public expense
10. Hearings
11. State-level appeals
12. Civil action
13. Attorneys' fees

PROCEDURAL GUIDANCE

TRAINING and LOCAL PROCEDURES in this area is critical!!!

- Procedural Safeguards & when to give them
- Number of days
- Intervention, referral & eligibility
- Requests, consents, timelines, & notices, OH MY ☺
- Case conference processes (notices, participants, roles, goals, data collection, progress monitoring, documentation)
- Considerations (LRE, BIP, ESY, AT, Transportation, graduation track etc)
- Discipline for students with disabilities (manifest, IAES, change of placement, services
- Resolving disagreement

NO-NO'S FROM JULIE WEATHERLY



Impede sufficient parental opportunity to participate in the decision-making process

- Causes parent to lose trust and may lead to denial of FAPE
- Ensure proper notice, use a draft IEP

Making recommendations & decisions based on cost

- If high costs anticipated, talk with your director before the conference

NO-NO'S FROM JULIE WEATHERLY



Making recommendations & decisions based upon the availability of resources

- When parents feel a child's individual needs are not being considered, a dispute will likely occur
- / in IEP. Avoid statements such as “we always do it this way” or “we’ve never done it that way.”
- Decisions based on what is appropriate

IMPLEMENTATION CONSIDERATIONS

- Did we develop an IEP based on general education standards?
- Have we defined what success looks like for each student?
- Is the instructional day the same length as that of students without disabilities?
- Does the physical classroom and building meet the students' needs?
- Is the student provided with opportunities to participate in extracurricular activities on the same basis with students without disabilities?
- Are the teachers and paraprofessionals trained?
- Do teachers understand their role in modifications in the IEP?

Bateman, D. (2015). *What all principals should know about special education*.
Council of Administrators of Special Education.

NEGOTIATION SKILLS

- Separate the people from the problem
- Focus on interests, not positions
- Invent options for mutual gain
- Insist on using objective criteria

Fisher, R., Ury, W., & Patton, B. (2011) *Getting to yes: Negotiating agreement without giving in*. Penguin Books.

THE INTERNATIONAL BESTSELLER

GETTING

↓↓↓ TO ↓↓↓

YES

UPDATED
and
REVISED

NEGOTIATING AGREEMENT WITHOUT GIVING IN

ROGER FISHER AND WILLIAM URY
AND FOR THE REVISED EDITIONS BRUCE PATTON
OF THE HARVARD NEGOTIATION PROJECT

WAIT, WHAT?

AND LIFE'S OTHER
ESSENTIAL QUESTIONS

JAMES E. RYAN

Dean of Harvard's Graduate School of Education

LEADERSHIP ACTIONS: COMMUNICATION

Wait, What? And Life's Other Essential Questions

Useful questions to engage with others

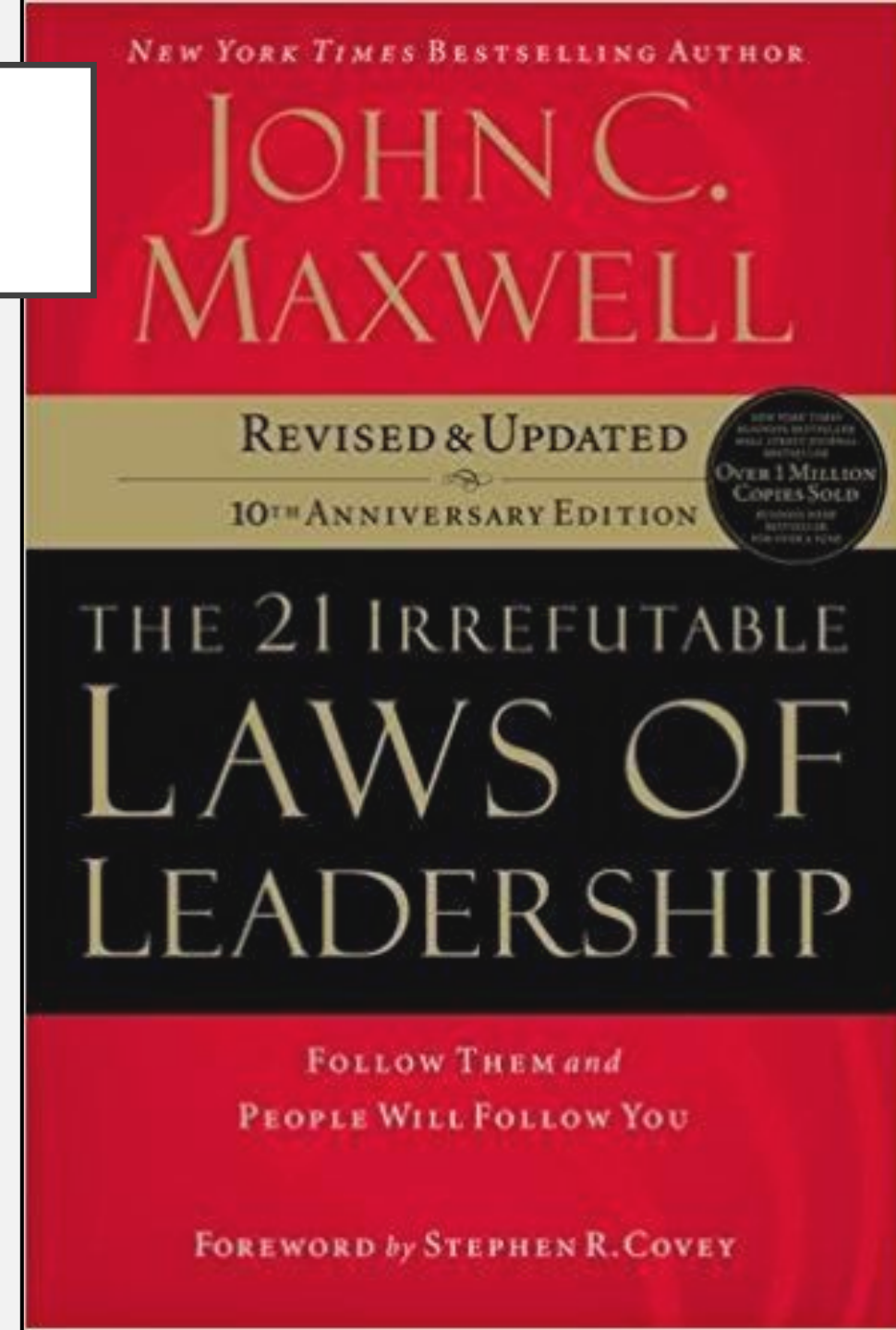
- Seek clarity
- Consider possibilities
- Suggest compromise or a starting point
- Offer to assist
- Consider what really matters

Ryan, J. E. (2017). *Wait, what? And life's other essential questions*. Harper Collins.

LEADERSHIP ACTIONS

The Law of Victory

- Great leaders find a way to win
- Strength of character
- Creativity is essential
- Three components of victory
 - Unity of vision
 - Diversity of skills
 - A leader dedicated to victory and raising players to their potential



SO WHAT ARE THE LEADERSHIP STRATEGIES TO PREVENT
REQUESTS FOR DUE PROCESS HEARINGS?

Build Relationships

Understand the Concerns of Parents

Use Alternative Dispute Resolution to

Resolve Conflict

Train Stakeholders