

Understanding & Advocating for Alternative Dispute Resolution (ADR) to Resolve Conflicts in Special Education

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Presented May 2022
CASE
Santa Ana, California



Understanding & Advocating for Alternative Dispute Resolution (ADR) to Resolving Conflicts in Special Education

- Explain **why** the IDEA contains current statutes specific to conflict resolution (i.e. due process hearings)
- Identify **why** due process hearings do not resolve conflict or focus on the child
- Identify **what** works instead (ADR)
- Review **how** California has provided for ADR in special education
- Understand **how** advocacy **is** making ADR a reality in California



Why Due Process Hearings are the Identified Way to Resolve Conflict in Special Education?

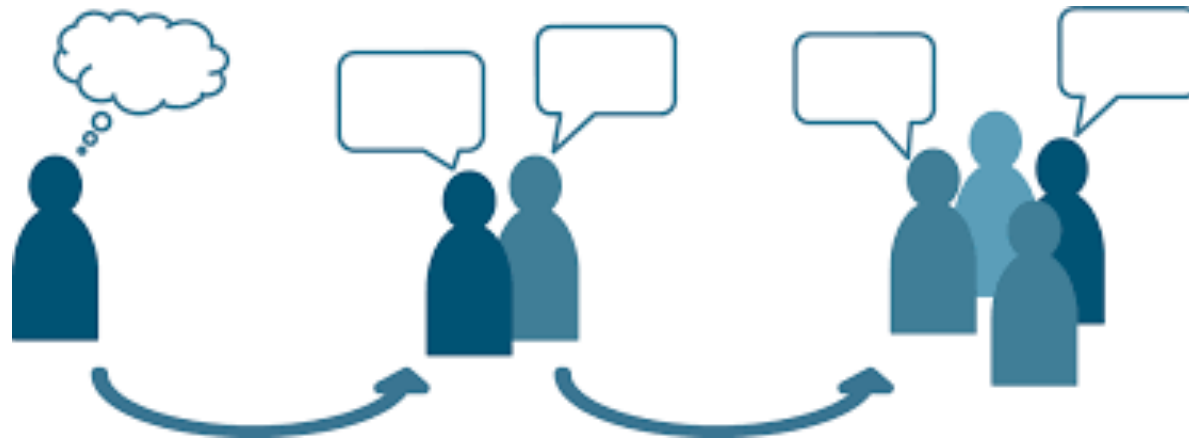
The United States in the Mid-20th Century

- Civil Rights Movement
- Parent Rights Movement
- US Courts as Social Change Agents
- Attempts by US Congress to identify other “enforcers” of IDEA



What are Your Experiences with Special Education Due Process?

Reflect on any experiences, share them with a colleague, share them with the group



Why Due Process Hearings Don't Resolve Conflict in Special Education

Research: What are the key findings on the outcomes of due process hearings in special education?

- Massive financial costs & burden on public education
- Massive emotional costs
- Do not result in better educational outcomes or students
- Inequity of use



Why Due Process Hearings Don't Resolve Conflict in Special Education

Research: What are the key findings on the outcomes of due process hearings in special education?

Massive financial costs & burden on public education

- Great fiscal costs to public education (Pudelski, 2013)
- 2010 estimate that school districts across the United States collectively spent over \$90 million per year on conflict resolution (Mueller, 2014)
- Costs in real dollars does not take into account the costs that result in time away from students and job responsibilities (Bateman & Linden, 2006)
- Taxpayer money intended to educate all children with disabilities instead goes to attorneys and the privileged (Ong-Dean, 2009)



Why Due Process Hearings Don't Resolve Conflict in Special Education

Research: What are the key findings on the outcomes of due process hearings in special education?

Massive emotional costs

- Personal and professional sensitivities damaged through due process (Rock & Bateman, 2009)
- Significant emotional and human cost of participating in due process activities and hearings (Bateman & Linden, 2006)
- In many cases, due process hearings damaged the parent-school relationship beyond repair (Mueller, 2009) and aggravated the situation pushing the relationship to the point of no return (Cope-Kasten, 2013)
- 95% of 200 superintendents surveyed across the United States collectively classified the stress related to due process as *high* or *very high* (Pudelski, 2013)
- One of the leading causes of attrition among special educators (Carter, 2011)

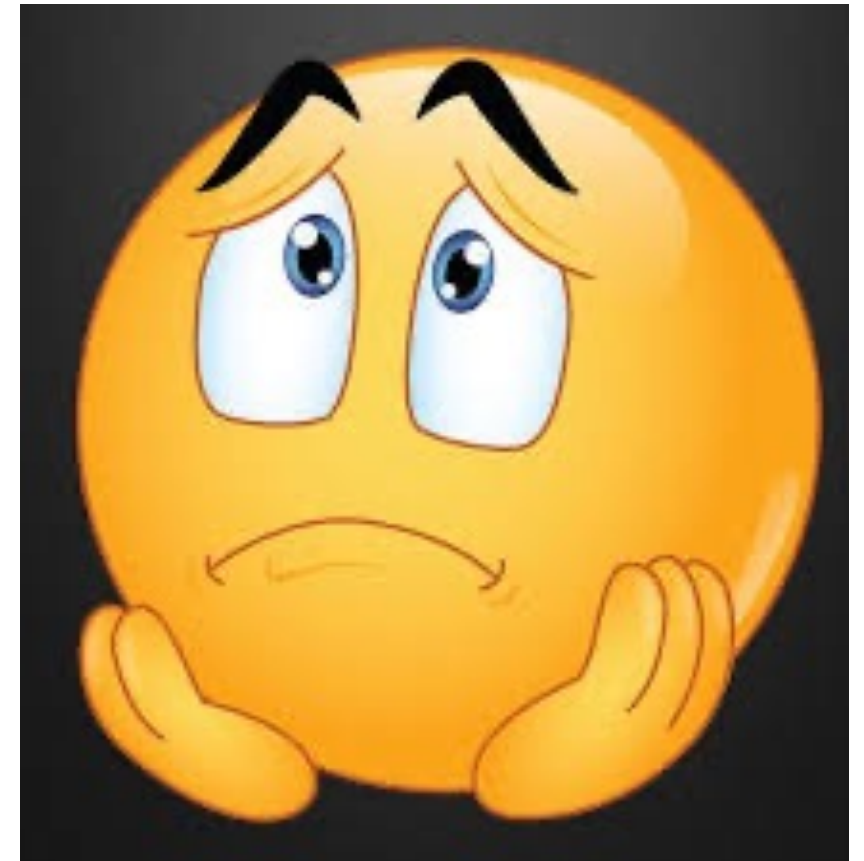


Why Due Process Hearings Don't Resolve Conflict in Special Education

Research: What are the key findings on the outcomes of due process hearings in special education?

Do Not Ensure Better Educational Outcomes for Students – Do Not Focus on the Child

- No educational benefit for the very children it was designed to protect (Cope-Kasten, 2013)
- No evidence of a correlation between dispute resolution activities and improved educational results for students (Pudelski, 2013)
- Taxpayer money intended to educate and provide programs for all children with disabilities instead goes to attorneys (Ong-Dean, 2009)



Why Due Process Hearings Don't Resolve Conflict in Special Education

Research: What are the key findings on the outcomes of due process hearings in special education?

Inequity of Use

- Those who can afford legal representation are more likely to file for due process and are the ones enforcing the mandates (Pasachoff, 2011).
- Parents in due process hearings were mostly white, upper- to middle-class, English speaking, and well educated (Massey and Rosenbaum, 2005).
- Taxpayer money intended to resolve conflict in special education instead goes to the privileged (Ong-Dean, 2009).



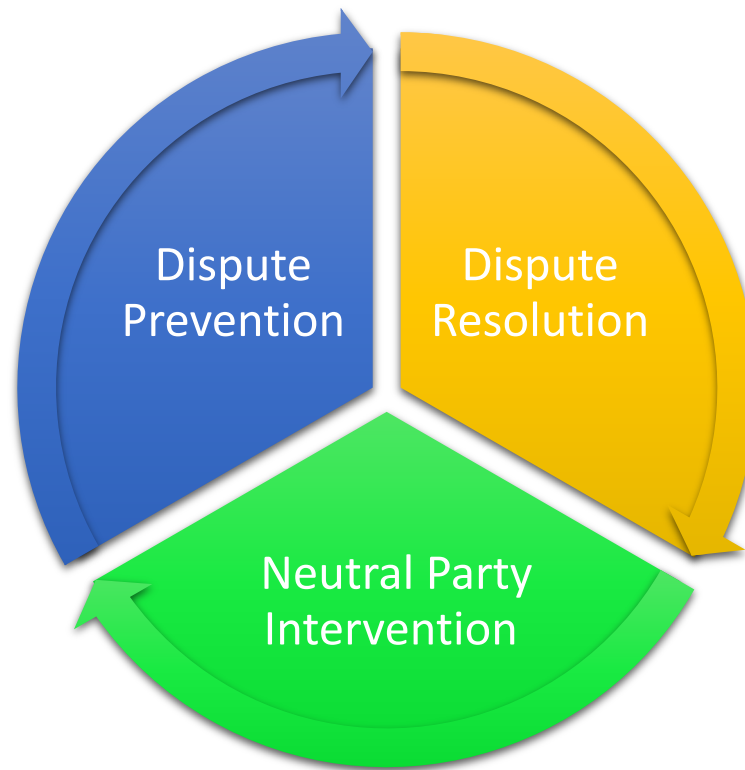
What Does Work to Resolve Conflict in Special Education?

- Improving the parent-school relationship rather than using highly procedure-driven, civil law actions (Besinaiz, 2009; Todis, Moses & Peter, 2008; Wellner, 2012; Reiman, Beck Coppola & Engiles, 2010)
- Alternative dispute resolution ADR activities (Cope-Kasten, 2013; Caretti, 2005; D'Alo, 2003; Hazelkorn, Packard, & Douvanis, 2008; Mueller, 2009; Nowell & Salem, 2007)
- Training, training, training in relationship building and resolving conflicts (Besinaiz, 2009; Bradley & Monda-Amaya, 2005; Frantz-Fry, 2012; Gallagher, 2013; Mueller & Carranza, 2011; Mueller et al., 2008; Neely, 2005; Pudelski, 2013; Rock & Bateman, 2009; Scheffel et al., 2005; Wellner, 2012)



So, what is ADR in Special Education?

'Umbrella' term describing practices, strategies, and activities within three general, inter-related categories:



Dispute Prevention



Demonstrate Respect
Effective Communication
Active Listening
Building Trust
Pre-meeting Work
Meeting Agendas
Meeting Norms or Working Agreements
Identified IEP Member Roles
Use of Visual Tools – Shared Understanding
Follow-up IEP Team Member Responsibilities
Parent Partners/Liaisons

Dispute Resolution



Identifying & Responding to Interests
Using Techniques for Dealing with Upset/Angry People
Emotional Regulation Strategies
Reframing Conflict
Creating Mutual Shared Meaning
Facilitated IEP meetings

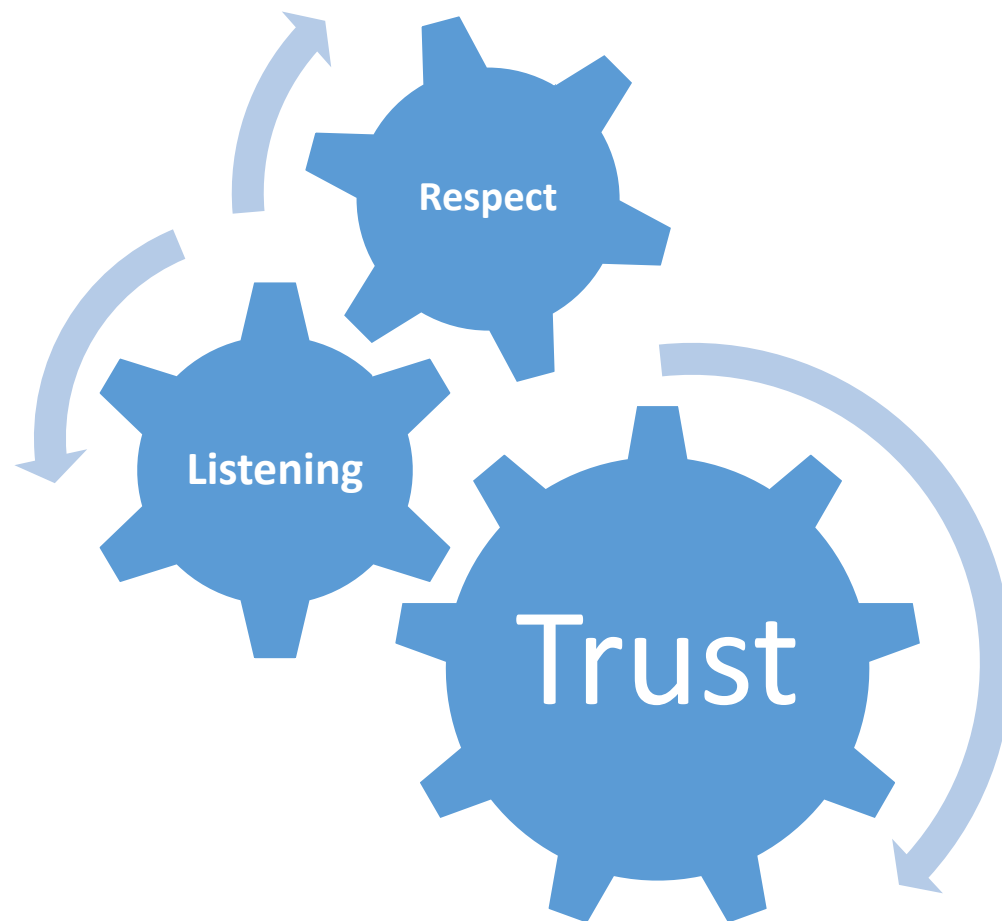
Neutral Party Intervention



Facilitated by a Neutral Party (EV SELPA ADR CADRE)
Facilitated IEP Meetings
Voluntary & Confidential Resolution Sessions
Voluntary & Confidential Mediation Sessions
Solution Panels

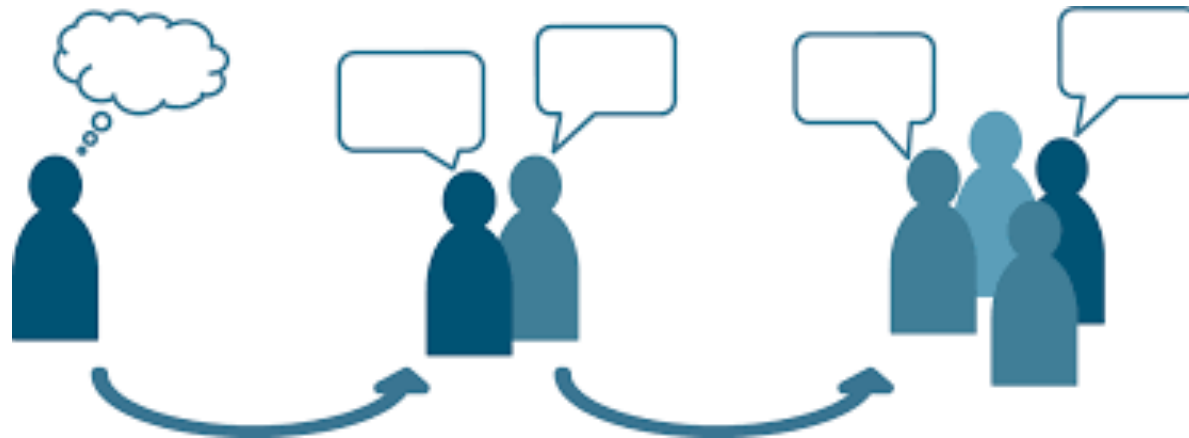


Commonality Among the Three



What are Your Experiences with ADR in Special Education?

Reflect on any experiences, share them with a colleague, share them with the group





History of ADR in Special Education in California 2000-2015

\$300,000*

(Set aside from federal special education funds)

ADR Grants 2000-2015 – Pilot Model

10 SELPAs & the Napa County Office of Education (COE)

Grants were provided in various amounts to each of the SELPAs (from \$15,000 to \$70,000)

*Office of Special Education Programs at the US Department of Education requirement & establishment of national resource center (CADRE, Eugene Oregon) with 1997 Reauthorization

History of ADR in Special Education in California 2015-2020 – Expansion Years

\$1,950,000

(set aside from federal special education dollars)

10 SELPAs – ADR Grants

(same 10 SELPAs & Nape COE, receiving same varying amounts)

And any other interested SELPA – ADR-E Grants (79 to 113 SELPAs over the five-year period) in the same amount for each SELPA the amounts changed each year depending on the number of SELPAs interested (from \$21,097 to \$14,600)



'Expansion' Resulted in More Familiarity and Involvement with Special Education ADR

- ❖ Annual SELPA ADR Conference
- ❖ Partner Work with CADRE



'Expansion' Resulted in More Use of ADR to Resolve Conflict in Special Education

Research on Use of the ADR-E Grants – “*Better than Court: Using Alternative Dispute Resolution Grant in California Special Education Programs*” (Sharon Cavallaro, Ed.D. & Patty Metheny, Ed.D.)

- ❖ 2018 survey of SELPAs receiving ADR or ADR-E grants

- ❖ Results

- ❖ Spending on professional development, creating & maintaining an ADR continuum, contracting with experts, facilitating IEP meetings, attending the annual SELPA ADR conference and report of reduction in number of CDE compliance complaints



'Expansion' Resulted in Desire for More ADR

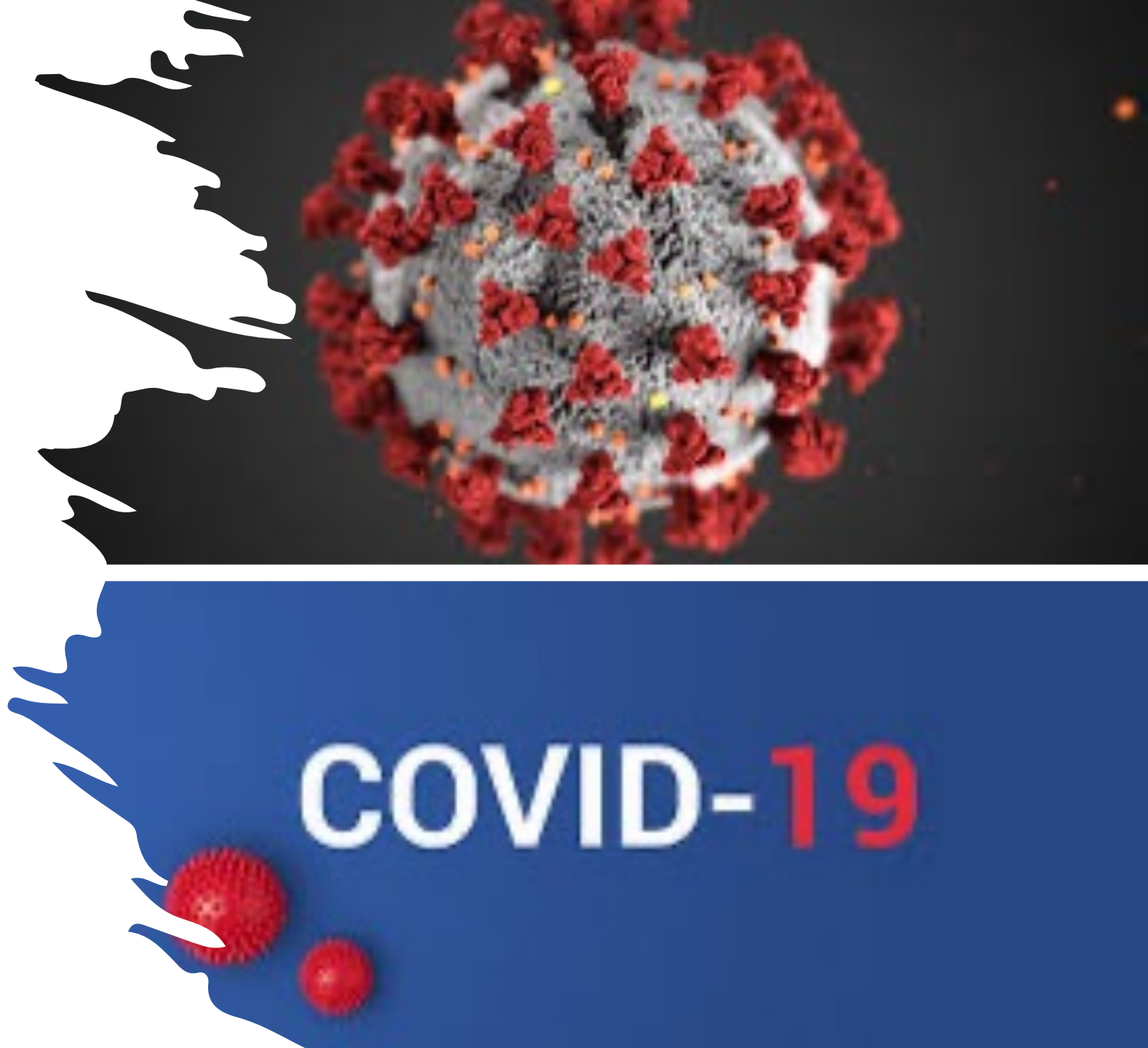
Momentum building.....

**But how to get more
funds - ADVOCACY**



2020

Urgency for Advocacy





Why?

Because LEAs continued to be held to the standard of providing agreed-upon FAPE...

Which meant conflict and the use of due process to resolve conflict in special education was very likely to increase.



And...

Concerns related to potential conflict and increased use of due process to resolve the conflict only intensified...

“No matter what primary instructional delivery approach is chosen, SEAs, LEAs, and IEP teams remain responsible for ensuring that a FAPE is provided to all children with disabilities.”

(September 28, 2020 / OSEP)



ADVOCACY



- Executive Committee
- Steering Committee
- Legislative Committee
- ADR Committee
- Membership
- Educators
- Parents

Legislative Sharing Day

ADVOCACY ACTIONS



Letter Writing Campaigns

Attending & Testifying at...
Advisory Commission on
Special Education

State Board of Education

Both Senate & Assembly
Budget Hearings

Identifying & Working with
government Staffers &
Legislators to Sponsor Bills

Meeting Locally with
Legislators

ADR in Special Education in California 2020-2021

A. \$1,950,000 (set aside from federal special education dollars)

10 SELPAs – ADR Grants (same 10 SELPAs & Nape COE, receiving same varying amounts)

And any other interested SELPA – ADR-E Grants (113 SELPAs each receive \$14,601)

AND

B. \$8.6 Million in ADR COVID 19 Grant (set aside from federal special education dollars)

113 SELPAs received various amounts dependent on the number of special education students in the SELPA



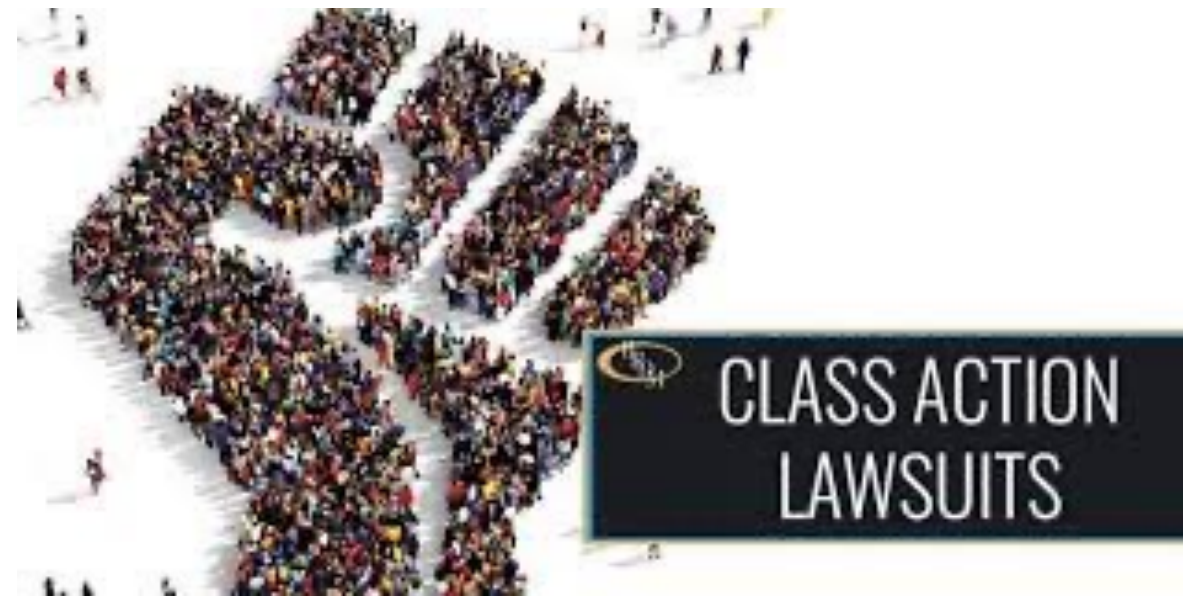


Distance Learning



Concerns Intensify 2020-2021

Potential Increased Due Process & Litigation



ADVOCACY INTENSIFIES



Executive Committee

Steering Committee

Legislative Committee

Identifying & Working with
Government Staffers & Legislators
to Sponsor Bills

ADR Committee

Membership

Educators

Parents

Legislative Sharing Day

ADR in Special Education in California 2021-2022

A. \$1,950,000 (set aside from federal special education dollars)

SPED ADR Grant for any interested SELPA
(102 SELPAs each receive \$19,144)

AND

B. **\$100 Million in Dispute Prevention & Dispute Resolution Funds & \$450 Million in Learning Recovery Funds** (state dollars allocated directly to SELPAs-LEAs)

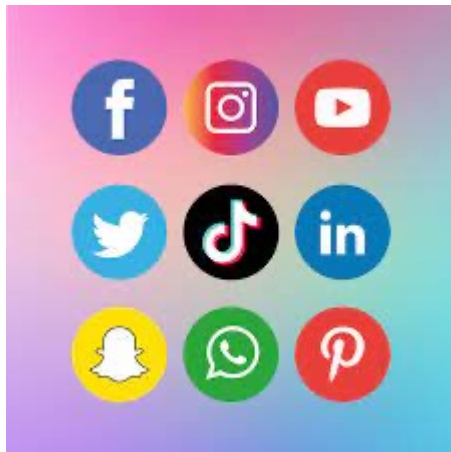
All SELPAs/LEAs receive these 'ADR' and LR funds based on ADA



ADVOCACY ON STEROIDS

MAKING IT HAPPEN.
EACH STUDENT. EVERY DAY.

<https://selpa.info/>



Executive Committee

Steering Committee

Legislative Committee

Communications Committee

Updated Website

Social Media

Podcasts

Films

Membership

Educators

Parents

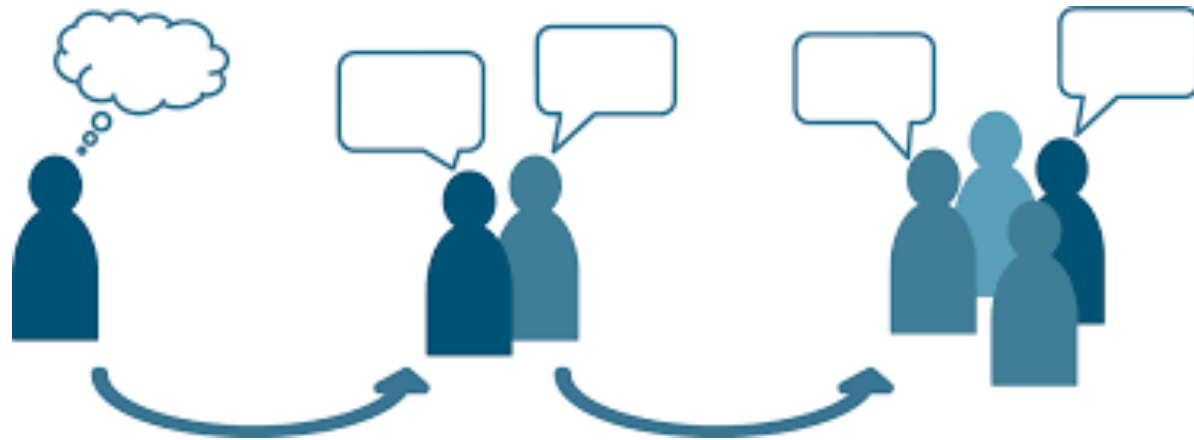
Legislative Sharing Day

ADVOCACY is So Necessary



How Can You Advocate for ADR in Special Education?

Reflect on any ideas, share them with a colleague, share them with the group



For more information...

<https://eastvalleyselpa.org/>

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