



# Special Education Dispute Resolution

**A Critical Safeguard for IDEA's Guarantee of  
Equal Education for Students with Disabilities**



## Executive Summary

For 50 years, the Individuals with Disabilities Education Act (IDEA) has guaranteed students with disabilities the right to a free appropriate public education (FAPE), supported by a system of dispute resolution that ensures accountability. Although these methods are used infrequently, they serve as a critical safeguard when disagreements arise between families and schools. As a last resort, dispute resolution processes – particularly due process hearings – help ensure that schools meet their legal obligations and that students receive the services to which they are entitled.

IDEA is rooted in the belief that all students deserve an education. The dispute resolution mechanisms exist for one purpose: to ensure that eligible children with disabilities receive the services and support they need to access that education. For a small segment of the population served by IDEA, these dispute resolution processes are the only reason a child is found eligible, an Individualized Education Program (IEP) is implemented, or a student’s lack of progress is examined. When the number of disputes increases, the appropriate response is not to restrict access to these mechanisms, but to examine how services, support, and compliance can be strengthened.



“What is needed now is not legislative revision, but a commitment to more consistent, equitable, and robust implementation and enforcement of the statutes and their regulations.”

Families with limited resources, those in rural areas, and families of color face significant barriers in securing appropriate educational services and in enforcing their rights under the law. Persistent disparities in educational placement and academic and post-secondary outcomes—particularly for students with intellectual disabilities—underscore these systemic challenges. Together, the dispute resolution mechanisms, anchored by the due process hearing option and systemic

enforcement of the law’s requirements, are intended to ensure that IDEA is implemented as written.

Those calling for amendments to IDEA at this time of federal chaos may not have fully considered how such changes could ultimately harm children with disabilities. What is needed now is not legislative revision, but a commitment to more consistent, equitable, and robust implementation and enforcement of the statutes and their regulations. Families, schools, and state agencies would benefit far more from strengthened oversight, improved technical assistance, adequate funding, and uniform compliance practices. Rather than amending the law, the path to improvement lies in ensuring that the rights already guaranteed in IDEA are fully realized in practice. Our goal should be to ensure consistent, equitable implementation and ensure that Congress provides adequate federal investment as originally promised to states.

## History

Since the passage of IDEA, families of children with disabilities have routinely relied on public schools to educate their children, supported by the law’s guarantee of a free and appropriate public education. Before 1975, such a guarantee did not exist: the schoolhouse door was often firmly shut in their faces. Prior to IDEA’s federal protections, public schools educated only one in five students with disabilities. Over one million children with disabilities were excluded entirely, and another 3.5 million did not receive appropriate services, with many states maintaining laws that barred students who were blind, deaf, had intellectual disabilities or were classified as “emotionally disturbed.”<sup>1</sup>

It was not until 1975, when a bipartisan Congress passed The Education for All Handicapped Children Act (EAHCA) and Public Law (PL) 94-142 was signed into law by President Gerald Ford, that these protections were established. For 50 years, any public school in a state that accepts federal funds has been required to provide students with disabilities equal access to public education. Under PL 94-142, states accepting federal funds were required to evaluate children with disabilities and, together with their parents, develop an Individualized Education Program (IEP) outlining the specialized instruction, services, and supports needed to enable the child to access an education. Importantly, the original law – and its subsequent amendments (now known as the Individuals with Disabilities Education Act (IDEA))<sup>2</sup> – included several dispute resolution mechanisms, ensuring that parents could challenge school district decisions when disagreements arise. IDEA’s dispute resolution options have withstood the test of time, even though only a relatively small number of parents use them.

This report examines the role and strengths of the dispute resolution system, with an emphasis on the due process option, clarifies how families use available procedures, and identifies areas for improvement. While challenges exist within the current system, they do not justify dismantling or abandoning the existing framework or weakening the protections established under current law.

## IDEA Full Funding

IDEA authorizes federal funding for special education and related services and, for states that elect to accept such funding, establishes the principles governing the provision of those services. Congress has never fully funded IDEA to the 40 percent of the national average per-pupil expenditure (APPE) promised (20 U.S.C. §1411(a)(2)) when the law was passed in 1975.<sup>3</sup>

According to a Congressional Research Service (CRS) report, the appropriation for IDEA Part B grants for school year 2024- 2025 — which covers special education for school-aged children —

---

<sup>1</sup> National Council on Disability, *Back to School on Civil Rights* (2000), <https://www.ncd.gov/assets/uploads/reports/2000/ncd-back-to-school-2000.pdf>.

<sup>2</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (2004).

<sup>3</sup> Congressional Research Service, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*, R44624 (2026), <https://www.congress.gov/crs-product/R44624>.

provided just 10.2 percent of APPE, far below the 40 percent “full funding” level.<sup>4</sup> Between 1981 and 2025, the percentage ranged between 10.2 and 19.4 percent and states offset IDEA costs by more than \$24 billion annually.<sup>5</sup> Any discussion of improving outcomes under the statute must begin with funding IDEA as Congress intended.

## A Core Tenet: Parental Participation and the Right to Challenge or Disagree

Congress built IDEA on the principle of parent participation. Parents are to be meaningful and informed partners with school personnel in making important decisions about their child’s education throughout the IEP process. Those steps include evaluating the child, identifying a disability, determining present levels of performance, developing educational goals and objectives, and providing necessary accommodation, modifications, specialized instruction services, and placement of the child. If necessary, the IEP also includes strategies and services to manage challenging behaviors and other special factors related to that child’s unique circumstances.

Where parents disagree with the school or assert that the school is not providing FAPE, IDEA includes the following dispute resolution options<sup>6,7</sup>:

The infographic consists of four vertical panels, each with a distinct color and icon. Each panel contains a title, an icon, and a brief description of the process.

- FILING A STATE COMPLAINT** (Teal panel): Icon of a clipboard with a checkmark. Description: Submitting a written complaint to the state education agency alleging that a school or district has violated special education law. The state investigates and issues findings, along with required corrective actions if violations are found.
- REQUESTING MEDIATION** (Green panel): Icon of two people talking. Description: Asking for a voluntary process in which a neutral mediator facilitates negotiation of disputes between parents and the school about special education services without going to a hearing.
- FILING FOR DUE PROCESS** (Blue panel): Icon of a gavel. Description: Initiating a formal legal proceeding by filing a due process complaint to resolve a dispute about special education rights. An impartial hearing officer decides the case after the family and their representative present evidence and witness testimony. This includes the right to expedited due process in certain situations.
- ATTENDING A RESOLUTION MEETING** (Purple panel): Icon of three people at a table. Description: A required meeting between parents and the school that occurs after the filing of a due process complaint, giving both sides an opportunity to resolve the dispute before a hearing takes place.

<sup>4</sup> Congressional Research Service, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*, R44624 (2026), <https://www.congress.gov/crs-product/R44624>.

<sup>5</sup> Ibid.

<sup>6</sup> Center for Appropriate Dispute Resolution in Education (CADRE), *Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)* (2025), <https://cadreworks.org/resources/cadre-materials/quick-guide-special-education-dispute-resolution-processes-parents>.

<sup>7</sup> Note: The resolution meeting can be waived by the parent who decides they prefer mediation. See 20 U.S.C. § 1415(f)(1)(B).

This paper focuses on filing for due process (due process) because it draws the most criticism. Although rarely used, due process is the backbone of special education protections and is a core pillar of the law. The School Superintendents Association's (AASA's) recent portrayal of due process as a system spiraling into chaos – one in which families of children with disabilities frequently file for hearings, where due process is always lengthy and adversarial, and where the process rarely leads to meaningful change<sup>8</sup> -- is both **inaccurate** and **dangerous**.

Due process, grounded in the Fifth and Fourteenth Amendments to the U.S. Constitution, guarantees that no person is deprived of life, liberty, or property without fair procedures.<sup>9</sup> It ensures the right to be heard in disputes with government agencies, reflecting the principle that fair processes prevent unjust outcomes. For students with disabilities, this protection is critical, as they may be denied FAPE for reasons related to their disability or failures in the educational process. Congress included due process in IDEA so that “no child with a disability can be deprived of an education without the opportunity of exercising the right to protest what happens to him or her,”<sup>10</sup> envisioning it as a critical mechanism to ensure fairness, prevent exclusion, give parents a voice, and ultimately ensure that students with disabilities receive the education they need and deserve.

Due process hearings under IDEA are formal administrative forums where parents and school districts present evidence to an impartial hearing officer. These hearings are administered by state education agencies, and hearing officers are charged with ensuring adherence to federal timelines and making decisions based on statutes, regulations, and precedents. Both parents and districts can initiate hearings.

Due process hearings are not the source of dysfunction; they are the safeguard against it. We propose that, rather than considering proposals to eliminate due process hearings, we can and must take steps to strengthen the process and make it more efficient and equitable.

## Start With the Data

A serious conversation about due process must begin with the numbers.

The Center for Appropriate Dispute Resolution in Special Education (CADRE) maintains a federally funded National Dispute Resolution Longitudinal Database, covering data from 2004 to the present.<sup>11</sup> The database draws on multiple sources, including state-reported data (Annual Performance Reports / APRs), Section 618 (child count and services) data via the Data

---

<sup>8</sup> The School Superintendents Association's (AASA), *Rethinking Special Education Dispute Resolution at IDEA's 50th Anniversary* (2025), <https://www.aasa.org/docs/default-source/resources/reports/rethinking-special-education-dispute-resolution-at-idea-s-50th-anniversary.pdf>.

<sup>9</sup> U.S. Const. amends. V, XIV.

<sup>10</sup> H. Rutherford Turnbull III & Ann Turnbull, *Free Appropriate Public Education: The Law and Children with Disabilities* (6th ed. 2000).

<sup>11</sup> Center for Appropriate Dispute Resolution in Special Education (CADRE), *National Dispute Resolution Longitudinal Database* (2025), <https://cadreworks.org>.

Accountability Center, OSEP's Annual Reports to Congress, and CADRE's own adjustments and reconciliations.<sup>12</sup>

Data are organized both as raw counts of dispute-resolution events and as rates per 10,000 children served under IDEA (Part B Child Count), which allow for comparisons across states and over time while accounting for differences in size and population.<sup>13</sup>

According to CADRE data and related reporting:

- Over the last decade, the total volume of formal dispute-resolution activity under IDEA (written state complaints, mediations, and due process complaints) has increased significantly. One recent report notes a 71.6% increase in activity from the 2012–13 school year to 2022–23. Use of alternative dispute resolution (ADR), such as mediation, has also increased.
- New York alone accounts for 22,538 out of the 34,339 due process complaints filed nationwide in 2022-23. Excluding New York, the year-over-year increase in due process complaints is just 4.5% nationally.
- Despite the increase in activity, a large majority of due process complaints do *not* end in formal adjudicated hearing— most are resolved through negotiation, withdrawn, or dismissed.<sup>14</sup>

As noted above, the overall reported increase is misleading. Data from New York, the District of Columbia (DC), and Puerto Rico significantly skew the national data due to exceptionally high levels of due process filings that are not observed elsewhere in the U.S. For example, New York reports nearly 450 due process filings per 10,000 students<sup>15</sup>, compared to just 4.5 due process filings per 10,000 students across the rest of the country. Beyond these outliers, just a handful of states exceed 25 filings per 10,000 students: California (54.10), Connecticut (28.66), Maryland (31.90), New Jersey (35.25), and Pennsylvania (27.00).

## Focus on the True Reason for the Numbers: Students Are Not Receiving Services

The focus needs to shift from concerns about the volume of due process complaints to addressing the underlying issue: the failure to provide mandated services. The principal reasons for the high rates in New York, DC, and Puerto Rico are failures to provide services mandated in students' IEPs.<sup>16</sup> Once a service is outlined in an IEP, the state Department of Education (DOE)

---

<sup>12</sup> Ibid.

<sup>13</sup> Center for Appropriate Dispute Resolution in Special Education (CADRE), *National Dispute Resolution Longitudinal Database* (2025), <https://cadreworks.org>

<sup>14</sup> Kara Arundel, *Special Education Formal Disputes See Notable Increases, K-12 Dive* (2025), <https://www.k12dive.com/news/special-education-formal-disputes-school-family-relationships/737830/>

<sup>15</sup> New York City Comptroller, *Course Correction: Expanding and Strengthening Special Education Services Improves Student Outcomes and Reduces Costly Due Process Claims* (2023), <https://comptroller.nyc.gov/reports/course-correction/>. Though CADRE reports data by state, New York City (which is one school district) accounts for 98% of the due process activity reported in New York State.

<sup>16</sup> New York City Comptroller, *Course Correction: Expanding and Strengthening Special Education Services Improves Student Outcomes and Reduces Costly Due Process Claims* (2023), The New York City Comptroller explains, "In the 2021-22 school year, 13,800 IEP recommendations for related services such as speech therapy,

is legally required to provide those services.<sup>17</sup> This data reflects an extraordinary number of students not receiving what their IEP teams determined was necessary and highlights the disparate impact on underserved students.<sup>18</sup>

According to a report by U.S. Government Accountability Office (GAO), in 2016-17 there were about 35,142 dispute-resolution events (including mediations, due process complaints, and state complaints) among about 6.8 million students ages 3–21 served under IDEA (at that time) — a rate of roughly 52 per 10,000 students (approximately one-half of one percent of IDEA-served students).<sup>19</sup>

Data from a more recent CADRE summary (for multiple years) show that disputes per 10,000 IDEA-served children have generally remained in a similarly low range (see “Dispute Resolution Activity per 10K Child Count” chart) — until the 2021-2022 school year, when the number of due-process complaints increased. Despite the increase to over 60,000 in 2023-24, the data still indicates that on a national level, only a small fraction of school-age students with disabilities end up involved in formal dispute-resolution.<sup>20</sup> Even among those students, only a small fraction become involved in fully litigated due process hearings. This fact was previously explored in depth in our 2017 paper: *Quality Education for America’s Children with Disabilities: The Need to Protect Due Process Rights*.<sup>21</sup>

The overall increase in number of special education disputes in 2023-24 are most likely the result of a number of factors: increased family awareness of the right to receive IEP services; rising academic expectations for all students; staff shortages hampering districts’ ability to provide appropriate programs; greater recognition of students’ educational deficits following COVID-era disruptions; cost-cutting initiatives by school districts; and increased awareness of evidence-based literacy programs and other necessary supports. None of these factors suggest that parents are misusing the due process system. The question should be what can be done to improve service delivery and ensure compliance with the law?

---

physical therapy, occupational therapy, or counseling for K-12 students went unfulfilled.” ... “Additionally, the DOE failed to fully provide nearly 20,000 K-12 students with SETSS or placement in an ICT or special class. For English language learners the situation is even more dire: while 88% of students citywide received their mandated SETTS or special class, a mere 36% of English language learners fully received the bilingual SETSS, ICT, or Special class DOE is legally required to provide to them.” <https://comptroller.nyc.gov/reports/course-correction/>

<sup>17</sup> Individuals with Disabilities Education Act, 20 U.S.C. §§ 1412(a)(1), 1414(d).

<sup>18</sup> Special Education Legal Fund, *Understanding the Outplacement Process* (2021), <https://spedlegalfund.org/understanding-outplacement/>

An additional issue contributing to the high volume in New York is that school administrators are not given the authority to offer additional services or outplacements. Outplacement in the context of IDEA services refers to the process of placing a student with a disability into a specialized, often private, educational setting when the local public school district cannot provide a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).

<sup>19</sup> U.S. Government Accountability Office, *Special Education: IDEA Dispute Resolution Activity in Selected States Varied Based on School District Characteristics*, GAO-20-22 (2019), <https://files.eric.ed.gov/fulltext/ED605464.pdf>.

<sup>20</sup> Center for Appropriate Dispute Resolution in Special Education (CADRE), *2025 National IDEA Dispute Resolution Data Summary*, <https://cadreworks.org/files/2025-national-idea-dispute-resolution-data-summary-final-accessible0pdf>

<sup>21</sup> Selene A. Almazan, Andrew A. Feinstein, & Denise Stile Marshall, *Quality Education for America’s Children with Disabilities: The Need to Protect Due Process Rights*, Child, and Family Law Journal: Vol. 5: Iss. 1, Article 2. (2017) <https://lawpublications.barry.edu/cflj/vol5/iss1/2/>

Special education due process filings remain exceedingly rare nationwide. Fully adjudicated hearings are even more rare. For example, IDEA due process hearings from 2012–2017 had a filings-to-decisions ratio that varied widely by state but averaged 19:1 overall.<sup>22</sup> The remaining cases were settled or withdrawn, though reliable data are unavailable to determine the number of each.

## Trust Erodes Before Due Process—Not Because of It

Due Process hearings do not erode trust between families and schools. Rather, lack of educational progress, coupled with loss of trust in the school and district, leads families to file for a hearing. Common subjects of due process complaints include Child Find, eligibility, denial of FAPE (substantive and procedural), failure to provide mandated IEP services, placement disagreements, or requests for tuition reimbursement for private school placement.<sup>23</sup>



“Due Process is not the cause of the breakdown between family and school; it is the safety valve parents turn to when they believe they have run out of options.”

COPAA members have experience engaging in due process hearings. The examples below illustrate some of the reasons why parents pursue a hearing:

- The parent seeks an inclusive education for a child with intellectual disabilities.
- The student has extensive support needs, but the district will only meet those needs through ability-based segregation.
- The student is frequently suspended for disability-related behavior without appropriate behavioral evaluations or development of a behavioral program.
- The district refuses to consider a general education placement with appropriate support.

When districts acknowledge parental concerns but fail to make meaningful changes to the IEP or fail to listen to the parent or the child, parents may turn to the most powerful enforcement mechanism they have. Due process is not the cause of the breakdown between family and school; it is the safety valve parents turn to when they believe they have run out of options.

---

<sup>22</sup> Perry A. Zirkel and Gary L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, *West's Education Law Reporter* 376 (2020): 870–876

<sup>23</sup> Perry A. Zirkel & Cathy L. Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions Under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525, 538–40 (2014)

## The First Time Someone Listens

Few parents wish to pursue a due process hearing. These proceedings are often intimidating, costly, time-consuming, and yield uncertain outcomes. Yet in many cases, a due process hearing provides parents with their first experience of being truly heard by the district, the first time their child's lack of progress is treated as a problem to be solved rather than a nuisance to manage, and the first time their child's needs are addressed in a way that produces measurable progress. For some families, it is also the first-time school administrators meaningfully consider their child as an individual rather than a number.

Consider these stories from cases decided in 2025:

*I.M. - An elementary school student with autism, intellectual disability, and a speech impediment struggled to communicate and displayed challenging behavior and frequently escaped from school. Following his second-grade year, the school district placed the student in an Extended School Year (ESY) program that met for half-day sessions for 4 days a week for 3 weeks. During ESY, the student ran away on 18% of school days. But during the break after ESY ended, the student regressed. After school started in the fall, he ran away on 40% of school days. The following year, the school district offered ESY for six weeks. However, during the month-long recess after ESY ended, the student again regressed. In the first two weeks of his fourth-grade year, he ran away 3 times, followed by an extremely dangerous episode that could have been life-threatening. He also had 20 toileting incidents during the first six weeks of the year. Despite the severity of the student's regression, the district refused to provide additional ESY services during the summer and other breaks. The parent filed a due process complaint. The IHO ordered full-time ESY services and year-round access to a voice-assisted tracking device. On the school district's appeal, the district court affirmed.<sup>24</sup>*

*W.A. - William A. is dyslexic and graduated from high school with a 3.4 grade-point average, however, he actually could not read. His IEPs focused on more advanced reading skills such as fluency, rather than the basic skills of decoding and encoding, of learning how letters make sounds, and how sounds make words that must be mastered before skills like fluency can be developed. He completed schoolwork with extra time using AI at home. The ALJ defined the issues in the due process hearing as (1) whether William could learn to read and (2) whether doing so required something different from what the school had offered in William's IEPs. The ALJ credited the testimony of the parents' experts and held that the answer to both "is a resounding yes." The ALJ ordered the school to provide William with compensatory education in the form of 888 hours of dyslexia tutoring from a trained reading interventionist.<sup>25</sup>*

---

<sup>24</sup> *N. E. Indep. Sch. Dist. v. I.M.*, 163 F.4<sup>th</sup> 193 (5<sup>th</sup> Cir. 2025)

<sup>25</sup> *William A. v. Clarksville-Montgomery Cty. Sch. Sys.*, 127 F.4<sup>th</sup> 656 (6<sup>th</sup> Cir. 2025)

These individual stories highlight the importance of the dispute resolution system in the lives of students with disabilities. A single due process hearing may affect one child, while repeated disputes over the same issue should prompt changes in district practice. In turn, recurring patterns should lead to systemic reform. Unfortunately, they have not. States should treat these disputes as canaries in a coal mine—early warning signals of deeper systemic problems that must be addressed. States have an obligation to act on the systemic issues that due process cases reveal. Unfortunately, they have not taken sufficient action to date.



“Effective enforcement of the federal law by state education agencies against local school districts would dramatically reduce the number of formal dispute resolution actions taken by parents.”

Effective enforcement of the federal law by state education agencies against local school districts would dramatically reduce the number of formal dispute resolution actions taken by parents. In 2025, the U.S. Department of Education issued 10 state-based audit reports that collectively paint a troubling picture of states failing to meet their obligations to serve and protect students with disabilities under the IDEA. According to COPAA’s analysis, the auditors

examined written state complaints, mediation, and due process hearings—all protections under IDEA designed to ensure that parents can raise concerns and resolve disputes in the way that works best for them. With respect to due process requirements specifically, auditors issued findings of non-compliance in six states that identified patterns of incorrectly applied timelines, regulations that ran afoul or deviated from IDEA due process requirements, the lack of reliable systems to track cases to be processed or that had been adjudicated, and the lack of training and knowledge among hearing officers.

## The Equity Gap: Deep, Structural, and Urgent

The most significant flaw in the current special education system is inequity. Families with limited financial resources, those in rural communities, and those whose primary language is not English face substantial barriers—not only in dispute resolution, but in accessing an equitable education for their child. For these families, procedural protections often operate more as theoretical rights than as meaningful, enforceable safeguards.

These inequities disproportionately affect families of color and families of students identified with intellectual disabilities. Barriers to accessing education in the least restrictive environment remain high. In 2022, only approximately 21 percent of students with intellectual disabilities spent 80 percent or more of the school day in general education settings<sup>26</sup>, indicating that the

---

<sup>26</sup> National Center for Education Statistics, *Students With Disabilities, Condition of Education* (2024) <https://nces.ed.gov/programs/coe/indicator/cgg>

majority are placed in more restrictive environments and remain segregated from their same-age peers.

Analyses of state-level data indicate that students with disabilities who are Black were less likely to be placed in general education classrooms and were three times more likely than those who are White to be placed in restrictive settings.<sup>27</sup> In California, where students requiring more intensive support are frequently educated in segregated settings, 6.6% of students with disabilities who are Black are educated in separate schools or residential facilities, much higher than any other race. Black and Latinx students are placed in segregated settings at significantly higher rates than their white peers.<sup>28</sup>

## The Length of Due Process Hearings

The length of a due process hearing varies widely, ranging from one day for simple disputes to several days or weeks for complex cases. There are claims that hearings have become longer and more adversarial. However, the GAO found that while the Department of Education uses multiple measures to assess dispute resolution, it lacks critical data on the timeliness of due process decisions—limiting effective oversight. There is also insufficient data on hearing length, extensions, and decision timelines.

When we do have the necessary information to discuss reform, we caution strongly that procedural form cannot take precedence over keeping the child at the center of the process.

## Restoring Fairness in IDEA Due Process

Three decisions issued by the Supreme Court have diminished parental ability to file for due process.

*Schaffer v. Weast*, 546 U.S. 49 (2005), placed the burden of proof on the party bringing a due process action, except where state law provides otherwise. In practice, parents file virtually all due process actions, yet school districts possess far greater resources, access to data, and technical expertise. For that reason, districts should bear the full burden of demonstrating that the IEPs they propose provide the student with a free appropriate public education.

This ruling distorted the due process framework, requiring parents to prove the inadequacy of an IEP while lacking the full panoply of information needed to do so. It is harder for parents to challenge inadequate services when the district holds all relevant information. Eight states<sup>29</sup> (including Connecticut, Delaware, Illinois, New Hampshire, New Jersey, Nevada, New York, and Washington) and the District of Columbia, place the burden of proof on school districts through state enactment.<sup>30</sup>

<sup>27</sup> Morgan PL, Woods AD, Wang Y, Farkas G, Hillemeier MM, Mitchell C. *Which Students With Disabilities are Placed Primarily Outside of U.S. Elementary School General Education Classrooms?* *J Learn Disabil.* 2023;56(3):180-192. doi:10.1177/00222194221094019

<sup>28</sup> *Policy and System Changes Impacting Students with Disabilities, Report of California's Statewide Task Force on Special Education* (2021) <https://www.cde.ca.gov/sp/se/sr/taskforce2015.asp>

<sup>29</sup> As reported by the Council of Parent Attorneys and Advocates (2026) <https://www.copaa.org/page/BOP>

*Arlington v. Murphy*, 548 U.S. 291 (2006) prevented families from recovering expert witness fees. To prevail in a due process hearing, the parents need the testimony of independent experts. Denying reimbursement undermines the ability of parents to secure the expertise necessary to mount a viable case. It means that parents with limited incomes have no ability to secure appropriate educational services for their children. School districts, on the other hand, employ experts at taxpayer expense. Maryland<sup>31</sup> and District of Columbia<sup>32</sup> have passed legislation aimed at removing or reducing this barrier.

*Buckhannon Board and Care Home v. West Virginia*, 532 U.S. 598 (2001) while not a special education case, restricted the award of attorneys' fees to a prevailing party only to fully adjudicated cases. Previously, fees had been available under the catalyst theory where parental advocacy successfully pressured a school to correct its failure to provide a FAPE without a formal court ruling. This decision discourages parents who cannot afford to pay retainers or legal fees from pursuing legitimate claims.

Together, these precedents raise the financial and practical barriers for families seeking justice under IDEA, effectively restricting due process to those who can afford it. Restoring a fair burden of proof, ensuring reimbursement of essential expert support, and recognizing the catalyst effect in fee awards are all necessary steps toward a system where due process is accessible to all families, not just those with substantial financial resources.

## Hearing Officer Quality

Each state has different requirements for hearing officers. As a result, the quality of the hearings is inconsistent and often inadequate, even within the same state. While national standards may be unrealistic, states should be required to adopt clear competency standards, conduct annual reviews, and publicly report performance.

## Proposal to Replace Due Process Hearings

The 2013 publication of AASA, entitled *Rethinking Special Education Due Process*, recommended the elimination of the current due process hearing system and replacing it with a consultant-based IEP process.<sup>33</sup> Fortunately, AASA has backed away from that proposal in its

---

<sup>30</sup> Note: Louisiana is another state in process. House Bill 342 passed the Louisiana House 99-2 and is making its way through the legislature. <https://legis.la.gov/legis/BillInfo.aspx?i=250080>

<sup>31</sup> The Special Education Project stems from HB903 (Access to Attorneys, Advocates, and Consultants for Special Education Program and Fund), a Maryland law that created funding for special education attorneys, advocates and consultants (2024) [https://mgaleg.maryland.gov/2024rs/Chapters\\_noln/CH\\_171\\_hb0903e.pdf](https://mgaleg.maryland.gov/2024rs/Chapters_noln/CH_171_hb0903e.pdf)

<sup>32</sup> District of Columbia Code § 38-2571.03(a)(7), *Procedural Safeguards; Due Process Requirements* <https://code.dccouncil.gov/us/dc/council/code/sections/38-2571.03>

<sup>33</sup> The School Superintendents Association (AASA), *Rethinking Special Education Due Process* (2013) <https://www.aasa.org/docs/default-source/resources/reports/aasarethinkingspecialduedueprocess.pdf>

2025 publication, *Rethinking Special Education Dispute Resolution at IDEA's 50<sup>th</sup> Anniversary*<sup>34</sup> yet there remains the suggestion that due process is the cause broader systemic challenges in special education. As the data show, this is simply not true.

## Eliminating A Parent's Right to Due Process Would Gut IDEA

To fully protect children with disabilities whose IEP is not being fully implemented by a district, we must preserve and strengthen IDEA's dispute resolution mechanisms. Unfortunately, the chaotic and destabilizing actions of the current Administration – including reductions in staff at the Department of Education, the shifting of functions to other federal agencies, and the decimation of the Office for Civil Rights (OCR) – have threatened education equity for students with disabilities. OCR has jurisdiction to protect the civil rights of students, including those with disabilities. The special education due process system has jurisdiction to ensure that students are appropriately identified and afforded a free appropriate public education. Although distinct, they do overlap. A fully staffed, adequately resourced, and empowered OCR is essential to safeguard students' civil rights and address existing case backlogs; however, strengthening OCR alone is unlikely to significantly reduce the volume of special education due process filings.

Similarly, the written state complaint process needs to be enhanced. A written state complaint is often a viable and affordable option for parents. It's free, requires basic information, and must be resolved within 60 days, far faster than other avenues. Parents and districts can stop the state complaint process if they reach an agreement; otherwise, the state issues a finding. A 2018 study found that 62 percent of investigations concluded that districts were not compliant.<sup>35</sup> However, there are major caveats. In a 2023 COPAA report *IDEA Written State Complaints: Making the System More Accessible, Equitable and Responsive for Students with Disabilities*.<sup>36</sup> families reported that corrective actions were often weak, ignored, and not followed up on. They also reported that investigators often sided with districts without compelling evidence and that mediation frequently failed to resolve disputes.

While investigators can order compensatory services in state complaints, they rarely lead to financial reimbursement. Agreements may be legally binding on paper but often lack the force of a true legal judgment, giving schools little incentive to change. Officials deciding state complaints are often not attorneys and may lack sufficient legal training. Further, state complaints and the findings from those complaints need to be made publicly available, so all stakeholders in the state know the rules. In some states, complaints can't be appealed.<sup>37</sup>

---

<sup>34</sup> The School Superintendents Association (AASA), *Rethinking Dispute Resolution at IDEA's 50th Anniversary* (2025), <https://www.aasa.org/docs/default-source/resources/reports/rethinking-special-education-dispute-resolution-at-idea-s-50th-anniversary.pdf>

<sup>35</sup> Kirsten Hansen & Perry A. Zirkel, *Complaint Procedure Systems Under the IDEA: A State-by-State Survey*, 31 *Journal of Special Education Leadership* 108 (2018)

<sup>36</sup> The Council of Parent Attorneys and Advocates (COPAA), *IDEA Written State Complaints: Making the System More Accessible, Equitable and Responsive for Students with Disabilities* (2023), <https://www.copaa.org/page/state-complaint-summary-report>

<sup>37</sup> Kathleen B. Boundy, *State Complaint Basics: Six Considerations and Concerns Prior to Filing a State Administrative Complaint*, The Advocacy Institute, <https://www.advocacyinstitute.org/iscrc/considerations.shtml>

Several states have adopted an appeals mechanism in their State Administrative Procedures Act that authorizes dissatisfied complainants to seek judicial review of state administrative complaint decisions.<sup>38</sup> Nonetheless, state complaints remain an option that, if strengthened, could better function as Congress envisioned when it enacted IDEA.

## **Dispute Resolution Alternatives**

As we have already stated, current law provides a variety of alternatives to dispute resolution. Due to the complexity of the law and the procedural challenges inherent in these processes, parents regularly need legal representation to prevail. There is no question that due process hearings are expensive, time-consuming, stressful, and yield uncertain outcomes. A family must enter the process knowingly and have the time, stamina and often, the ability to fund the case. The cost of representation often makes access to due process unavailable to families with limited economic means.

Proposals have been made to create additional alternative dispute resolution mechanisms. We would support the creation of such alternatives if two conditions are met:

- First, their use must be voluntary, and both sides must agree to use the alternative.
- Second, access to a truly neutral third-party decision-maker must be offered and available.

Special education law has developed in such a way that there are few neutral individuals who are well versed in the law and are available for alternative dispute resolution proceedings. Most experts in special education law are current or past employees of the school system, and parents often question their impartiality when they participate in or play a key role in these processes. Expanding the impact of the current dispute resolution options will require the development of a cadre of qualified, neutral, third-part experts.

## **Mediation and Resolution Sessions**

Early resolution is ideal—when it is real. In some districts, including NYC, staff who attend mediation or resolution sessions lack the authority to agree to anything meaningful. A process that often results in another IEP meeting cannot meaningfully be regarded as a path to resolution.

## **IDEA Reauthorization is Not Necessary**

IDEA Part B is permanently authorized. It does not need to be reopened by Congress, nor are amendments necessary to continue serving students and schools. Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA), like

---

<sup>38</sup> *T.S. v. Utica Cmty. Sch.*, No. 11-CV-13092, 2013 WL 5954425, at [pin cite] (E.D. Mich. Nov. 7, 2013) (“If Plaintiffs are dissatisfied with the results of the state resolution procedure...they can seek judicial review under Michigan’s Revised Judicature Act, Mich. Comp. Laws § 600.631.”)

IDEA, are also permanent federal laws. These statutes do not sunset, and they do not depend on reauthorization to remain in force. Instead, they stand as foundational civil rights protections that provide continuous, unequivocal safeguards against discrimination based on disability in the United States.

Those urging reauthorization are effectively advocating for changes they wish to see in the law, without fully considering the impact their agenda will have on the civil rights protections of students. What is needed now is not legislative revision, but a commitment to consistent, equitable, and robust implementation and enforcement of the statutes and their regulations. Students, families, schools, and state agencies would benefit far more from strengthened oversight, improved technical assistance, adequate funding, and uniform compliance practices than from altering the law. The path to real improvement lies in ensuring that the rights already guaranteed are fully realized in practice.

## **The Bottom Line**

Efforts to weaken procedural protections in the name of efficiency risk exacerbating existing disparities by further limiting access for the families most in need of support.

COPAA supports proposals that:

- Maintain and advance student and parent protection.
- Provide necessary federal and state funding to districts as promised by IDEA.
- Scale up teacher training in evidence-based practices that effectively support students with disabilities learn and make progress.
- Invest in training for IEP facilitators and Impartial Hearing Officers to strengthen this critical safeguard.
- Create a cost-free dispute resolution option for families unable to secure professional help.
- Expand federal funding for advocacy organizations serving families of limited means.
- Strengthen oversight to address systemic issues proactively, reducing the need for individual cases to escalate.

## **Conclusion**

Over the past 50 years, the Individuals with Disabilities Education Act has provided a free appropriate public education for millions of students with disabilities. Evidence shows that IDEA

produces improved outcomes<sup>39</sup> which could continue to advance as the challenges outlined in this paper are addressed. Families of low or middle economic means cannot afford to access the rights provided by the law. Too often bureaucratic school systems ignore the individualization requirements of the statute. And both the federal government and state governments have done an inadequate job of ensuring state and district compliance with the law.

All the challenges listed here would be far more consequential to both children with disabilities and to society at large if it were not for parental enforcement of the law. Thankfully, the federal statute makes a range of dispute resolution mechanisms available to families. Data shows that the majority of disputes are resolved through these options. Finally, it is the due process hearing that makes the entire system work. Its presence often encourages early resolution, ensuring that students can access the education to which they are entitled.

**All aspects of IDEA's due process must remain viable for children and families.**

---

<sup>39</sup> S. Coffey, J. Goodman, A. E. Schwartz, L. Stiefel, M. A. Winters & Y. H. Yoon, *Special Education Substantially Improves Learning: Evidence from Three States*, Wheelock Educational Policy Center, Working Paper (2026-1) <https://wheelockpolicycenter.org>