

# TURNING KNOWLEDGE INTO ACTION

**USC ADR 2021 RETROSPECTIVE**  
ADR QUARTERLY - WINTER 2021

**USC Gould**  
School of Law  
*Center for Dispute Resolution*

USC GOULD CENTER FOR DISPUTE RESOLUTION

USC Gould's Center for Dispute Resolution continued to provide thought leadership at the forefront of ADR education and positively shape the future of the field through the collaborative work of its faculty, alumni and students throughout 2021.

Before we embark on another year, we reflect on some of their accomplishments and contributions that have created measurable impact in 2021 and set the stage for continued successes in 2022.



# Expanding the Dialogue

## **In the wake of COVID-19: An awakening of special education dispute resolution Q&A with USC Gould Lecturer Richard Erhard**

*USC Gould School of Law Lecturer in Law Richard Erhard's experience in special education spans nearly 30 years and two states, including his service as a special education teacher, coordinator, special education local plan area (SELPA) director and assistant superintendent of student services. He is president/principal of the consulting firm Richard Erhard and Associates, LLC, which focuses on mediation and consultation services for conflict resolution. In addition, he is an associate member of the American Bar Association, and San Diego County Bar Association Dispute Resolution sections.*

*A member of the Southern California Mediation Association's board of directors Erhard, who will assume the Presidency of the Association in 2022, discusses how policies (past and present), shifts in public perception, and the pandemic have contributed to shaping special education.*



### **Historically, what are the types of policy challenges facing special education?**

Special education has always been plagued by two distinct public policy issues: lack of funding and a marginalized population. In 1975, when the Education of All Handicapped Children Act (EAHCA) was enacted under PL 94-142, the intent was for the federal government to fund the Act at the 40% level. In 1990, the Act was reauthorized as the Individuals with Disabilities Education Act (IDEA), PL 101-476 and although the Act has been reauthorized numerous times since its inception in 1975, including the most recent reauthorization in 2004 as PL 108-446, it has never been funded at the 40% level. Over the last 46 years, funding has never reached even the 20% funding level.

Furthermore, children with disabilities have been the subject of a marginalization of status, due largely to the public misperception that individuals with disabilities are in some way less able to contribute to society. While funding for special education has not increased, thankfully public perception of individuals with disabilities as being “able,” as opposed to simply “disabled,” is improving.

### **Over the years, what factors have helped to shift public sentiment around special education?**

The overarching reason for the change in public perception is education. However, the process of educating the public is costly, hard fought and takes place in multiple venues,

including: public and private schools, institutions of higher education and the courts. Education through the courts is extremely costly, both in fiscal and human terms and in some cases, actually culminates in the Supreme Court of the United States. Here, the Court's decision, in landmark precedent setting cases, changes the interpretation of the Act and hopefully therefore, public perception.

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View a recent virtual lecture by Richard Erhard titled "The Human Condition: Is Disability Special, Exceptional, or a Fact of Life?" on the topic of special education and the public policy implications of disability laws that have become increasingly litigious. [Watch here.](#)

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### **What parties are generally involved in special education court cases?**

As with most litigation, there are most often only two sides present in special education litigation, and the litigants are typically parents of children with disabilities and the school districts their children attend. However, given the aforementioned cost of litigation and public policy concerns regarding this cost, a third side is now emerging. In his book, *The Third Side: Why We Fight and How We Can Stop*, William Ury, co-author of *Getting to Yes*, describes the third side as the community at-large; supporting the “emergent will of the community.”

### **What impact has the pandemic caused in addressing special education disputes?**

In the wake of the COVID-19 pandemic, parents of children with disabilities are filing complaints in record numbers, seeking compensatory education for learning loss due to a significant interruption to their child's education, reportedly due to the school closures. This dramatic increase in court filings is taxing the already overburdened institutionalized dispute resolution process in California.

### **In light of the increase in complaint filings amid the pandemic, what has been the response from state lawmakers?**

In the spring of 2021, given the increase in filings, a “Third Side,” the California Legislature – recognizing the overburdened dispute resolution process – emerged, passing two bills: AB 130 and AB 967; authorizing significant fiscal resources for special education. Combined, they represent millions of dollars dedicated to the development, training and implementation of special education dispute resolution practices throughout the state for all parties: parents, schools and their communities. These immense resources may actually provide the long needed catalyst for an awakening of special education dispute resolution in California.