

Center for Dispute Resolution ADR Quarterly - Fall 2020

As the USC Gould Center for Dispute Resolution embarks on a new remote fall semester, we are proud to once again welcome an incredible class of students dedicated to redefining their careers through ADR education.

With recognized leading digital education approaches, including breakout discussions meant to not only engage the class, but also to mimic real-life ADR practice, the Center is fostering conversation at the forefront of online dispute resolution. We hope to see you in person soon as we continue to develop essential learning environments that will be relevant to the future of ADR education.

Expanding the Dialogue

Special Education Dispute Resolution in the Era of COVID-19

Richard Erhard, USC Gould Lecturer in Law

Since last spring, many public schools across our nation have either been shuttered, partially open, preparing to open, or in a state of open today, closed tomorrow limbo. Parents, students, teachers, administrators and communities are faced with myriad untenable issues surrounding the implementation of compulsory education laws on one hand, while concurrently struggling with the implementation of service delivery models, duty-bound to ensure one of the most fundamental precepts of public education: the provision of a safe learning environment for students and staff.



Despite the effect of the COVID-19 pandemic on public education, the Individuals with Disabilities Education Act, mirrored by state statutes, provides no respite to the requirement for school districts to provide a free, appropriate public education (FAPE) to students with disabilities. Under the best of circumstances, the provision of FAPE is the source of most special education legal disputes. Due to mandated school closures, this issue is further exacerbated, creating additional rationale for due process complaints, taxing an institutionalized special education dispute resolution system already carrying a huge administrative burden.

The institutionalization of the special education dispute resolution system rests on the word "free" in the FAPE acronym. Unlike contemporary commercial mediation, where parties typically share in the cost of the mediation, under the FAPE requirement, all services, including the right to mediation, must be free.

Professor Nancy Welsh's 2004 article "Stepping Back Through the Looking Glass: Real Conversations with Real Disputants About Institutionalized Mediation and Its Value," in the *Ohio State Journal on Dispute Resolution*, provides vivid insight to the institutionalization of mediation in special education disputes. Welsh notes the behaviors characterizing

mediation are developed in response to the "expectations of the professionals who dominate these environments," i.e., judges and attorneys. "The irony, of course, is that mediation was conceived originally as a process that responded to the needs and expectations of the disputants, as distinct from the institutions or professionals serving those disputants," she writes.

Responding to the needs and expectations of special education disputants through alternative service delivery models (ASDM) is one unanticipated consequence of the COVID-19 pandemic. Institutions of higher education, including USC Gould School of Law, support online dispute resolution (ODR) through digital course offerings. Furthermore, select local education agencies now implement digital Individualized Education Program (IEP) facilitation, by third-party neutrals. These initiatives are unblocking the halls of traditional institutionalized dispute resolution models.