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An examination of mediation as an alternative to special education due process proceedings in Nebraska.

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**AN EXAMINATION OF MEDIATION AS AN ALTERNATIVE TO
SPECIAL EDUCATION DUE PROCESS PROCEEDINGS IN NEBRASKA**

A Field Project

Presented to the

Department of Educational Administration

and the

Faculty of the Graduate College

University of Nebraska

In Partial Fulfillment

of the Requirements for the Degree

Specialist in Education

University of Nebraska at Omaha

by

Mark C. Draper

December 1989

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FIELD PROJECT ACCEPTANCE

Accepted for the Graduate Faculty, University of Nebraska, in partial fulfillment for the requirements for the degree Specialist in Education, University of Nebraska at Omaha.

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	i
LIST OF TABLES.....	v
CHAPTER	
I. INTRODUCTION.....	1
Statement of the Problem.....	5
Significance of the Problem.....	5
Hypothesis.....	6
Methodology.....	6
Delimitations.....	8
Limitations.....	8
Assumptions.....	9
Definition of Terms.....	9
Organization of the Study.....	12
II. REVIEW OF RELATED RESEARCH.....	13
III. DESIGN OF THE STUDY.....	26
Subjects.....	26
Apparatus.....	27
Procedure.....	29
IV. PRESENTATION AND ANALYSIS OF DATA.....	31
V. SUMMARY, CONCLUSIONS, RECOMMENDATIONS.....	49
Summary.....	49
Conclusions.....	50
Recommendations.....	53
REFERENCES.....	55

APPENDIX A.....	59
Jury Members.....	60
APPENDIX B.....	62
Letter to Jury Members.....	63
APPENDIX C.....	64
Jury Response Form.....	65
APPENDIX D.....	66
Institutional Review Board Exemption Information Form.....	67
APPENDIX E.....	69
Institutional Review Board Approval...	70
APPENDIX F.....	71
Survey Participant Letter.....	72
APPENDIX G.....	73
Survey Participant Abstract.....	74
APPENDIX H.....	75
Survey Participant Glossary.....	76
APPENDIX I.....	78
Special Education Administrator Conflict Resolution Survey.....	79
APPENDIX J.....	83
Other Conflict Resolution Options.....	84
APPENDIX K.....	85
Other Issues that lead to either Mediation or Due Process.....	86

APPENDIX L.....	88
APPEALS.....	89
APPENDIX M.....	90
Satisfactions and Dissatisfactions....	91

LIST OF TABLES

TABLES	PAGE
1. Subjects in Sample - State and Representation....	31
2. Have you ever been involved in a due process hearing?.....	32
3. Have you ever been involved in a mediation proceeding?.....	32
4. What method of conflict resolution have you used to resolve special education conflicts?.....	32
5. What was the issue that led to either mediation or due process?.....	35
6. Was the identification, evaluation, placement or service delivery changed as a result of due process or mediation?.....	35
7. Was the decision rendered at the due process hearing or mediation proceeding appealed?.....	38
8. How would you rate your personal satisfaction with the conflict resolution process?.....	38
9. How would you rate your skills as a participant in the conflict resolution process?.....	40
10. How would you rate your personal satisfaction with the role of the due process hearing officer or mediator?.....	40
11. How would you rate the financial costs incurred by your school district or cooperative in the conflict resolution process?.....	42
12. How would you rate the amount of time expended in preparation for the conflict resolution process?.....	42
13. Was legal assistance secured by your local school district or cooperative to assist in the conflict resolution process?.....	43
14. How would you rate your stress as a participant in the conflict resolution process?.....	45

15. How would you rate the stress to your support staff from your conflict resolution experience?.....45
16. How would you rate your satisfaction with the time frame required for your conflict resolution experience?.....46

CHAPTER I

INTRODUCTION

Prior to the Education of All Handicapped Children Act of 1975 (EAHCA), the educational rights of special education students in the United States were not clearly defined and varied greatly from state to state. With the adoption of EAHCA, procedural guidelines were legislated for the free and appropriate education of all handicapped children ages three through twenty-one. Procedural guidelines called for in EAHCA included the establishment of individualized education programs (IEP's). A second procedural guideline was the requirement that handicapped children be served in the least restrictive environment in an educational setting. Procedural guidelines were also included providing handicapped individuals with due process rights in regards to the assessment, identification, placement and educational programming recommendations of the special education personnel and members of multi-disciplinary teams in local education agencies (Cremins, 1983; Geren, 1979; Singer & Nace, 1985). This researcher elected to study the implications of the due process rights afforded handicapped students in special education through EAHCA.

Under EAHCA, due process rights are afforded parents and guardians of handicapped individuals when they disagree with 1) a proposed special education diagnosis or testing materials for the identification of a handicapping condition, 2) a proposed placement in an educational program or setting, or 3) any of the recommendations made by school personnel for implementation through an IEP. When it is apparent that all efforts to resolve a disagreement between school personnel and parents have failed, either party may request a due process hearing as an attempt to resolve differing points of view (Singer & Nace, 1985, Budoff & Orenstein, 1982, Jones, 1981).

Numerous sources have documented that due process hearings are lengthy and costly to all parties, are formal and intimidating proceedings, and are adversarial in nature (Broward County Schools, 1982; Ekstrand & Edmister, 1984; Singer & Nace, 1985; Yoshida & Byrne, 1982).

The National Association of State Directors of Special Education (NASDSE, 1985) examined the effectiveness of due process hearings and noted that participants felt that their rights were protected through due process proceedings. However, the

participants in this study also noted that the due process experience was not satisfying because of the adversarial nature of the experience. Both parents and school officials recommend that alternatives be explored to formal dispute resolution or due process hearings (Budoff & Orenstein, 1982).

A comment on the EAHCA regulations noted that many states have sought alternatives to formal dispute resolution, such as due process hearings, due to the concerns addressed by Budoff & Orenstein (1982) and the NASDSE (1985). The primary alternative to due process hearings, as noted in an EAHCA regulations comment, is the concept of mediation. Mediation can serve as an intermediary alternative to due process hearings and has been noted as a successful alternative in several states (Singer and Nace, 1985). Mediation is an informal dispute resolution process that also proves to be less costly and less time consuming than a formal due process hearing. Mediation activities can be conducted by mediators who are skilled in special education rules, regulations, and programmatic best practices. Mediators generally receive specific training in the procedures of the process and principles of arbitration (Singer & Nace, 1985).

Both parents and school participants in mediation activities note a high degree of satisfaction with the process and actually rate their satisfaction with the mediation option higher than with the mandated due process procedures (NASDSE, 1985).

Mediation may not be employed as an attempt to block the due process rights of either the parent, guardian, or educational service provider. In some states, mediation is only recommended as an alternative that may be explored, while in other states it is a required process prior to the due process hearing.

In Nebraska, mediation is an option for special education conflict resolution because it is not precluded from complaint procedures or appeals information in the Special Education Standards and Regulations (State of Nebraska, 1989). However, trained special education mediators are unavailable in the state. If conflicts regarding special education services can not be resolved through attempts made by either party, a request for a formal due process hearing must be filed with the Nebraska State Department of Education - Special Education Unit. Between 1978 and 1987, 191 due process hearing requests were filed in Nebraska. Of those filings, 59 were withdrawn by one of the parties prior to the hearing

date, 43 were dismissed by the hearing officer, 22 were settled by stipulation, and 67 were decided by the hearing officer or upon appeal to a higher authority (State of Nebraska, Special Education Administrative Handbook, 1987).

With due process hearings as the only available option in Nebraska, other avenues for dispute resolution could be explored. For example, Iowa provides trained mediators, free of charge, to special education disputants desiring to pursue alternative conflict resolution proceedings before a due process hearing. Mediation has proven effective in other states and could be encouraged as an option in Nebraska.

Statement of the Problem

The purpose of this study was to evaluate the satisfaction ratings of special education directors/supervisors who have participated in conflict resolution proceedings in Nebraska and to compare their perceptions to the satisfaction ratings of special education directors/supervisors who have participated in conflict resolution proceedings in Iowa.

Significance of the Problem

There is limited information that reports satisfaction in mediation and due process proceedings.

A review of the literature showed few resources that allow a close examination of the perceptions of special education directors/supervisors who have participated in either due process or mediation before due process. Several midwest states recommend or require mediation activities before due process. An analysis of participant satisfaction would be useful in examining mediation as an alternative to employ before due process hearings in Nebraska. This study analyzed and researched these concerns.

Hypothesis to be Tested

The following hypothesis was utilized to examine the problem.

Hypothesis - There is no significant difference between the attitudes of special education directors/supervisors who have participated in due process hearings and those who have participated in mediation proceedings.

Methodology

The following steps were employed by the researcher in collecting and analyzing pertinent information on mediation as a viable option to due process hearings in Nebraska.

1) The researcher developed a survey instrument that requested information from an identified sample regarding their participation in due process hearings and mediation proceedings. Inquiries on the survey instrument included requests for identification of the issues that lead to the due process action or mediation, the end result, personal satisfaction with the process, time constraints, financial concerns, emotional costs, stress, length of time of the activity, and appeals of decisions rendered or collaborated.

2) The researcher piloted the survey instrument to a jury of ten Nebraska educators with experiences in the conflict resolution arena.

3) The researcher sampled special education administrators and supervisors from Nebraska and special education administrators and supervisors from Iowa.

4) Nebraska participants in the study were polled regarding their participation in various conflict resolution arenas and their satisfaction with the available options.

5) Iowa participants in the study were polled regarding their participation in various conflict

resolution arenas and their satisfaction with the available options.

6) Survey Instruments were mailed to the sample in October 1989.

7) Replies were returned to the researcher in pre-addressed, postage paid envelopes.

8) A follow-up mailing was conducted to those participants who did not respond by the designated deadline.

9) Attempts were made to achieve a high rate of return. The survey instrument was coded and participants were offered the opportunity to request survey results.

10) The survey data were organized and analyzed. Appropriate conclusions were drawn in relation to the stated hypothesis.

Delimitations

The specific sample of participants was determined by the researcher. Sample participants were identified by their role as a special education director/supervisor in either Nebraska or Iowa.

Limitations

The researcher was dependent upon the reliability of the respondents to provide accurate information

and/or perceptions of their participation in either due process hearings or mediation proceedings. This sample was not derived from a stratified random sample. The selected sample included special education directors and supervisors from Nebraska and Iowa. The author attempted to select representative school districts and cooperatives of similar enrollments in each state. The conclusions drawn from this study were limited to the responses returned to the researcher for analysis.

Assumptions

The researcher assumed that the individuals who were selected for the project provided accurate information regarding their participation in either due process hearings or mediation proceedings. The researcher further assumed that by polling 215 special education directors/supervisors from both Nebraska and Iowa, the collected data was not as potentially reliable as a stratified random sample or any other alternative random sampling that could have been employed.

Definition of Terms

1. Appeal - taking the decision reached in a due process hearing to a higher authority, such as a state education agency, a state or federal court.

2. **Appropriate Education** - the provision of an education that is appropriate to a student's specific special education needs. Appropriate education typically involves personalized instruction with sufficient related services to permit the student to benefit educationally from the instruction, even if the student is not achieving to maximum potential. Often interpreted as the provision of special education services as written in the IEP.

3. **Conflict Resolution** - alternatives explored to solve the problems between parents and the school.

4. **Due Process Hearing** - a hearing concerning a parent-school conflict conducted by an impartial due process hearing officer who makes a decision based upon the evidence presented by both the parents and the school.

5. **Due Process Hearing Officer** - the individual who conducts the due process hearing and makes the decision based upon evidence presented by both parties.

6. **Evaluation** - issues related to the individualized testing or assessment of a student for special education purposes.

7. **Identification** - issues related to the labeling or classifying of a student having one or more special education need which may lead to the student

being recommended to or receiving special education services.

8. Legal Assistance - the representation by an attorney at a due process hearing or mediation proceeding.

9. Mediation - a proceeding designed to promote reconciliation, settlement, or compromise between two parties in conflict.

10. Mediator - the individual who works with the parties in conflict so they can reach an agreement acceptable to both the parents and the school.

11. Placement - issues related to the school or class placement of a child recommended for or receiving special education services.

12. Related Services - Transportation and other developmental, corrective or supportive services necessary to assist a student to benefit from special education. These included: speech pathology, audiology, psychological services, physical and occupational therapy, early identification and assessment of disability, counseling services, medical services for evaluative or diagnostic purposes, school health services, social work services, and parent counseling and/or training.

Organization of the Study

Chapter I includes the introduction to the study. Chapter II contains the review of related research and literature pertaining to due process and mediation principles. Chapter III contains the discussion of the methods used in gathering data and the methods of treatment of the collected data. Chapter IV presents the findings of the study. Chapter V contains a summary of the study, conclusions and recommendations.

CHAPTER II

Review of Related Research

The review of the literature was directed to the protection of rights of children with handicapping conditions. Much can be found in the literature concerning the due process concerns dictated through current legal mandates. However, less information is available concerning alternative avenues of conflict resolution. Mediation is the most relevant alternative to due process hearings in special education.

Historically, humankind has had a difficult time dealing with those who are different. Different may mean minority group members, the elderly, the poor or the handicapped. According to Cremins (1983) the handicapped have been treated by society in three stages of evolution. These stages include periods of abuse and neglect, segregation and isolation, and painfully slow integration and participation in society. With the passage of the Education for all Handicapped Children Act of 1975 (EAHCA), federal policy was joined with federal dollars to ensure free and appropriate educational services for handicapped children. EAHAC ensured that the educational future would be brighter for handicapped children and free them of past societal patterns of abuse, neglect,

segregation and isolation. Integration and full participation in public education for handicapped individuals was mandated and funded by the federal government through EAHAC.

EAHCA was phased in from 1975-1982. The law requires free and appropriate public education for all handicapped children ages three to twenty-one (Cremins, 1983; Geren, 1979; Singer & Nace, 1985). To implement free and appropriate education for the handicapped, several procedural requirements were outlined.

The first procedural requirement calls for the development of an individualized education plan (IEP). The IEP is a written document that is reviewed annually at a meeting in which the child's parents are equal participants with school personnel or service providers. The IEP must specify the child's present level of performance, annual goals, short term objectives, and criteria for evaluating pupil progress (Cremins, 1983).

Another procedural requirement of EAHCA is the provision of services to the handicapped child in the least restrictive environment (LRE). LRE, as defined by Budoff and Orenstein (1982), implies that children are to be educated with non-handicapped peers to the maximum extent possible.

Parents and children have specific due process rights as defined in EAHCA. These include the right to challenge school systems regarding assessment, identification , placement, and educational program recommendations (Cremins, 1983).

The basic tenent of due process in special education is derived from the fourteenth amendment of the U.S. Constitution. The general purpose of the amendment is to provide citizens with protection from the state or state institutions. The fourteenth amendment stipulates that citizens may not be deprived of life, liberty or property without due process of law. Therefore, states may not deprive citizens equal protection of the law, nor can they be prevented from guaranteed constitutional rights (Shrybman, 1982).

EAHAC provides procedural due process protections for parents advocating in the best interest of their handicapped children. Parents must be provided prior notice, in written form, of any proposed changes in diagnosis, evaluation, or educational placement of their handicapped children. Parents can bring a complaint on any matter related to their child's evaluation or education based upon these protections (Singer & Nace, 1985; Budoff & Orenstein, 1982; Cremins, 1983).

EAHAC affords parents an impartial due process hearing to review their complaints. Further rights are afforded to contest a decision to the state education agency; if the complaint is initially filed and heard at the local level. A variety of methods are employed by states to afford parents these due process protections. If dissatisfaction is found at the state appellate level, an appeal may be filed in federal court. The parent or education agency may file suit in federal court if they are dissatisfied with the ruling from a state appeal. Inferior court actions may be and have been appealed to the U.S. Supreme Court (Singer & Nace, 1985; Budoff & Orenstein, 1982; Jones, 1981).

It has been documented by numerous sources that due process hearings are lengthy and costly (Broward County Schools, 1982; Ekstrand & Edmister, 1984; Singer & Nace, 1985). Due process hearings are formal proceedings. Cross-examination of witnesses and the inclusion of evidence are two factors in those proceedings (Ekstrand & Edmister, 1984).

According to Ekstrand (1983), due process proceedings are not only costly and time consuming, but adversarial in nature. Due process hearings place intense emotional strain on both parties (Yoshida & Byrne, 1982). Parents and school personnel under

normal circumstances, work cooperatively for the well being of handicapped children. In a hearing, they are placed in an unfamiliar legal proceeding where they may be asked to testify, endure cross-examination, and spend countless hours in preparation (Singer & Nace, 1985).

Formal hearings use witnesses extensively. These individuals are from both public and private school systems and outside agencies. Extensive documentation is required. Exhibits include: IEP's from several years, progress reports, teacher assessments, school and independent evaluation results, letters between parents and school personnel, and treatment reports from professionals outside the school (U.S. Department of Education, 1987). Witnesses are called upon to report and clarify comments and findings reported in exhibits, depositions, and documents (Budoff & Orenstein, 1982).

The effectiveness of due process proceedings was examined in a study by the National Association of State Directors of Special Education (NASDSE, 1985). Parents and school personnel related feelings that their rights were protected, to a high degree of satisfaction, in due process proceedings. However, a low degree of satisfaction was noted in regard to the

overall due process experience. Parents and school officials recommended that alternatives to dispute resolutions be sought and implemented (Budoff & Orenstein, 1982).

EAHAC does not mention mediation as a way to resolve parent complaints, nor do the regulations pertaining to EAHAC, as initiated by the U.S. Department of Education. However, a comment in the regulations note the following:

Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and provision of a free appropriate public education to those children. Mediations have been conducted by members of state educational agencies or local education agency personnel who were not previously involved in a particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the develop-

ment of an adversarial relationship and with minimum emotional stress. However, mediation may not be used to deny or delay a parents' rights to formal due process (34 C.F.R. Section 3000.506).

In 1976, Massachusetts became the first state to implement mediation in special education (Singer & Nace, 1985). Since that time, numerous states have recommended mediation as a part of due process proceedings. NASDSE reports that eleven states provide for some limited definition of mediation in their state due process regulations. Twenty-two other states encourage the use of mediation or other settlement proceedings prior to formal due process hearings (1985).

Budoff and Orenstein (1982) describe mediation as an informal process conducted with the agreement of both parents and school personnel. Mediation can provide the benefits of an impartial atmosphere that is desired and frequently unachieved in due process proceedings (Nissen, 1984). It is intended to aid in the resolution of differences, clarify issues, and allow for compromise between the parent and school (Broward County Schools, 1982). Mediation can produce more creative approaches to problem solving than the

stilted lines of questioning in official hearings (Nissen, 1984). It involves less cost than a due process hearing and is less stressful for all parties (Broward County Schools, 1982).

Mediation can be implemented at any time after a disagreement occurs between the parent and school. However, not all issues can be resolved through mediation. Mediation should not be used when a parent request is illegal or professionally improper. For example, mediation would not be appropriate when a parent requests identification of a child as learning disabled when there is insufficient data to support the diagnosis (Ekstrand, 1983).

A review of the literature suggests that most special education mediators receive skill development training (Singer & Nace, 1985; Gallant, 1982). According to Gallant (1982), mediator training should focus on skill acquisition in the following areas: due process procedures of the federal law and other pertinent state regulations, best practices in both special education and related services, group management, group dynamics, interpersonal communication, techniques to resolve nonadversarial disputes, and contract and agreement writing. Singer and Nace (1985) note that in Massachusetts and

California, special education mediators had varying professional backgrounds. Occupations included persons with training in religion, social work, accounting, corrections, education, paralegal work, and law.

The literature reveals that, in most cases where mediation is employed prior to due process, mediators are contacted by school officials who recognize a need for mediation in dispute resolution. The mediator then contacts the parent and requests their participation in a mediation session (Singer & Nace, 1985). Although styles of mediation practice vary from application to application, most sessions begin with all of the participants in a joint meeting. The purpose of the meeting is to clarify concerns and inform the parties of the mediation process. Next, the parties are separated and negotiations take place with the mediator serving as the go-between. Once resolution has been reached, the parties are reunited and an agreement is formalized in writing. If no resolve can be attained, the mediator informs the parties of the next actions available to them (Gallant, 1982).

Frequently, mediation is a process of reaffirming good intentions and relations between two disputing parties. It is an attempt to resolve issues and strike a balance of harmony (Beer, 1976). Similar power

balances are described by Lemmon (1985). In describing balance of power, Lemmon notes the importance of respect for human dignity, open exploration of options, recognition of human emotions and intelligence, and impartiality and confidentiality.

Although mediation is a successful alternative to due process in many special education instances, there may be situations where the process must be terminated. Considerations for termination of mediation include: a party that does not fully understand the mediation process, a party that lacks the ability to identify and express interest, a party that is unwilling to honor mediation guidelines, a party that is so seriously deficient in information that any agreement would not be valid, a party that indicates agreement - not out of free will - but out of fear of one of the other parties, when one or both parties agree that they want to end mediation (Lemmon, 1985).

Although mediation offers a more inexpensive and less stressful alternative to due process in special education, Budoff and Orenstein (1982) offer several suggestions that can, in some cases, help build rapport between parents and local education agencies. By examining and implementing these suggestions, Budoff and Orenstein suggest that mediation activities and due

process hearings may be minimized. Their suggestions included the following: 1) more effective inservice training for school personnel in learning how to work with parents; 2) development of early warning systems to flag parents who have special grievances, anger toward school or difficulty in accepting their child's handicap; 3) more time with parents before educational planning meetings; 4) development of quality control systems to ensure that written educational plans reflect what parents have been told in advance of meetings; 5) parental visitation of proposed alternative placements for children with school personnel; and 6) school personnel, as well as parents, learning to control their resentment more effectively at meetings.

Mediation has been growing in interest to members of educational, religious, and community groups since the social unrest of the 1960's and 1970's (Westbrook, 1985). The literature on mediation shows current applications in counseling, regular education, special education, social work, divorce proceedings, labor disputes, community relations, intergovernmental affairs, and other disciplines (Singer & Nace, 1985; Beer, 1986; Haynes, 1985; Lemmon, 1985; Shrybman, 1982; Yoshida & Byrne, 1979).

The benefits of mediation are well recognized. Savings, in terms of time and money, by both parents and school districts, are well documented. Participant satisfaction in mediation activity is preferred to the due process hearing. In over 50 percent of the documented cases where mediation was introduced prior to a due process hearing, a higher degree of satisfaction was noted by both parents and school officials (NASDSE, 1985).

Mediation provides parents the opportunity to gain new insights and skills which can be useful in future negotiations with school personnel (U.S. Department of Education, 1987). Parents who used mediation were reported to feel more confident in their ability to represent their child's interests, less intimidated, and more able to communicate effectively with educational officials regarding their child's needs and services (NASDSE, 1985).

Mediation has the potential for high degrees of success due to reduced formality, cost, and non-adversarial procedures. Many parents and special educators believe that positive dispute settlement procedures should not be limited to the times when parties' differences escalate to the point where a due

process hearing is the only available option (Budoff & Orenstein, 1982).

CHAPTER III

Design of the Study

This study was conducted during October and November of 1989. The study examined the perceptions and attitudes of special education supervisors and administrators in regard to their experiences in conflict resolution situations, such as mediation proceedings and due process hearings.

Subjects

It was the original intent of this researcher to access a sample of parents of handicapped children, special education teachers, and special education supervisors and administrators who had participated in mediation activities in midwestern states that border Nebraska. This sample was to be polled and compared with a similar sample of parents of handicapped children, special education teachers, and special education supervisors and administrators who reside in Nebraska and are not presently afforded the opportunity to access mediators for special education conflict resolution.

Due to the confidentiality concerns of representatives of several state education departments in states that border Nebraska, the original intention became unworkable. This researcher found that without

the cooperation of the state department of education mediation coordinators from neighboring states, accessing former participants in mediation proceedings became unfeasible.

The study was restructured to focus solely on special education administrators or supervisors from Iowa and Nebraska. Special education administrators or supervisors from Iowa were selected from those school districts where the total school district enrollment numbered 1,000 students or more and from the special education administrative or supervisory staff from the Iowa Area Education Agencies. One hundred and forty-seven (147) special education administrators or supervisors were polled from Iowa. Special education administrators or supervisors from Nebraska who were members of the Nebraska Association of Special Education Supervisors (NASES) were selected for the Nebraska sample. Sixty-seven (67) special education administrators or supervisors were polled from Nebraska.

Apparatus

This researcher's assessment instrument was a survey modeled after the Parent Satisfaction Survey (McGinley, 1987). The Parent Satisfaction Survey survey was developed at the University of Kansas for

use in collecting data for United States Department of Education, Office of Special Education and Rehabilitative Services Grant No. G00860382. The McGinley (1987) survey was designed to poll parents who had participated in mediation or due process proceedings and examine the effectiveness and satisfaction of those two conflict resolution alternatives.

This researcher's assessment instrument, the Special Education Administrator Conflict Resolution Survey was designed to 1) determine if subjects had participated in mediation proceedings or due process hearings, 2) identify the issues that lead to either mediation or due process, 3) determine the results from utilization of different conflict resolution alternatives, 4) determine the level of satisfaction with the processes, 5) determine the level of satisfaction with the mediator or hearing officer, and 6) determine the financial and emotional costs that resulted from participation in conflict resolution forums.

As no test-retest procedure was used to develop an index of reliability for this instrument, the survey was piloted to a jury of ten educators (see Appendix A) who are knowledgeable in the area of special education

conflict resolution. (see Appendix B) Feedback was provided this researcher by the jury (see Appendix C) and minor modifications and adaptations were made to the survey instrument as a result of stated concerns by the jury. The survey instrument was designed to closely correlate with the issues of note that surfaced from the review of the existing body of research on mediation and due process in special education.

Procedure

The survey was submitted to the Institutional Review Board for acceptance as exempt research (see Appendix D) and was granted exempt status via phone confirmation on October 18, 1989. Formal written confirmation was provided this researcher on October 20, 1989. (see Appendix E)

An informational packet was developed and enclosed with each survey that was distributed to the identified subjects. Enclosed with the survey was a letter of introduction (see Appendix F) that defined the purpose of the study and assured the confidentiality of all participants. Also enclosed was an abstract (See Appendix G) and accompanying glossary (see Appendix H) that was specifically designed to correlate with the survey instrument.

The survey was mailed to 214 subjects on October 18, 1989 by first class mail. Sixty-seven (67) participants from Nebraska and 147 participants from Iowa composed the final sample size. Each subject was requested to return the completed survey to this researcher in an enclosed, self-addressed, stamped envelope no later than November 3, 1989. On November 3, 1989 a follow-up post card was mailed to each subject who had not returned his/her survey by the requested date. On November 11, 1989 the surveys were tallied.

Of the 214 surveys that were mailed to subjects on October 18, 1989, a 71.4% response was recorded with 153 subjects responding. Iowa respondents totaled 96 for a 65% response. Nebraska respondents totaled 57 for a 85% response.

CHAPTER FOUR

Presentation and Analysis of Data

The purpose of this chapter is to present data obtained from a survey of 214 special education administrators and supervisors in Iowa and Nebraska.

**Table I. Subjects in Sample
State and Representation**

<u>Iowa</u>	<u>Nebraska</u>
44 - Area Education Agency (AEA) Directors or Supervisors	67 - Members of Nebraska Association of Special Education Supervisors (NASES)
103 - Local Education Agencies with student enrollment of 1,000 +	(NASES members are from Educational Service Units (ESU) and Local Education Agencies with enrollment of 1,000 +)
147 Subjects from Iowa	67 Subjects from Nebraska

214 Total Subjects in Sample

Table I. shows that 44 Area Education Agency (AEA) special education directors or supervisors from Iowa were polled. One hundred and three (103) Iowa Local Education Agency (LEA) special education directors or supervisors from LEA's with a minimum of 1,000 students enrolled in their LEA were also surveyed. The 67 members of the Nebraska Association of Special

Table 2. Have you ever been involved in a due process hearing?

	<u>YES</u>	<u>NO</u>	<u>TOTAL</u>
Iowa	29 - (30.2%)	67 - (69.8%)	96 (100%)
Nebraska	25 - (43.9%)	32 - (56.1%)	57 (100%)
		TOTAL	153

Table 3. Have you ever been involved in a mediation proceeding?

	<u>YES</u>	<u>NO</u>	<u>TOTAL</u>
Iowa	37 - (38.5%)	59 - (61.5%)	96 (100%)
Nebraska	26 - (45.6%)	31 - (54.4%)	57 (100%)
		TOTAL	153

Table 4. What method of conflict resolution have you used to resolve special education conflicts? (Please check all that apply.)

	<u>Iowa</u>	<u>Nebraska</u>	<u>TOTAL</u>
Mediation	30	22	52
Mediation before a due process hearing	31	18	49
Due Process Hearing	25	22	47
Other	12	7	19
TOTAL	<u>98</u>	<u>69</u>	<u>167</u>

Education Supervisors (NASES) were polled as Nebraska subjects in the study. NASES members represent Educational Service Units (ESU), which are comparable to Iowa AEA's. Similarly, nearly all of the school districts in Nebraska with enrollments of over 1,000 students are represented by administrators/supervisors who are NASES members.

A 71.4% response rate was achieved and 153 surveys which were returned to this researcher over a month time frame from mid-October to mid-November. A follow-up mailing added an additional 6% to the 65.4% response prior to the second mailing to non-responding subjects. From the Iowa sampling, 65% responded. From the Nebraska sampling, an 85% response was achieved.

The survey consisted of 15 items divided into two separate sections. Section One of the survey identified attempted methods of conflict resolution, such as due process hearings or mediation proceedings, and the issues that led to either due process or mediation.

Table 2 represents the responses to question 1a, "Have you ever been involved in a due process hearing?" As noted, 29 respondents (30.2%) of the Iowa subjects polled had participated in a due process hearing and 67 respondents (69.8%) of the Iowa subjects polled had not

participated in a due process hearing. These figures represent 96 total respondents to the survey from Iowa for a 65% response to the survey.

Table 2 also represents the 25 respondents (43.9%) of the Nebraska subjects polled who had participated in a due process hearing and the 32 respondents (56.1)% who had not participated in a due process hearing. These figures represent 57 respondents to the survey from Nebraska for an 85% response to the survey request.

Table 3 represents the responses to question 1b on the survey, "Have you ever been involved in a mediation proceeding?" As noted, 37 respondents (38.5%) of the Iowan subjects polled had participated in a mediation proceeding and 59 respondents (61.5%) of the Iowa subjects polled had not participated in a mediation proceeding. These figures represent 96 respondents to the survey from Iowa for a 65.3% response to the survey.

Table 3 also represents 26 respondents (45.6%) of the Nebraska subjects polled who had participated in a mediation proceeding and 31 respondents (54.4)% of the Nebraska subjects polled who have not participated in a mediation proceeding. These figures represent 57

Table 5. What was the issue that led to either mediation or due process? (Please check all that apply.)

	<u>Iowa</u>	<u>Nebraska</u>	<u>TOTAL</u>
Identification of Handicapping Condition	16	4	20
Evlauation	10	8	18
Placement	31	27	58
Appropriate Education Issues	21	13	34
Related Services Issues	23	10	33
Other	6	1	7
TOTAL	<u>107</u>	<u>63</u>	<u>170</u>

Table 6. Was the identification, evaluation, placement, or service delivery changed as a result of due process or mediation?

	<u>YES</u>	<u>NO</u>	<u>TOTAL</u>
Iowa	26 - (57.8%)	19 - (42.2%)	45 (100%)
Nebraska	19 - (57.5%)	14 - (42.5%)	33 (100%)
	TOTAL		78

respondents to the survey from Nebraska for an 85% response.

If both of the responses to involvement in due process and mediation were negative, the subjects were instructed not to answer further items and requested to mail the survey to this researcher in an enclosed, postage paid, self-addressed envelope.

If responses to either of the questions were positive, the subjects were requested to continue completing the survey.

Table 4 represents the responses to question 2 on the survey, "What method of conflict resolution have you used to resolve special education conflicts? (Please check all that apply.)" As noted, Iowa subjects who were polled reported 30 incidences of mediation to 22 reported by Nebraska subjects. Similarly, Iowa subjects reported 31 mediations before a due process hearing while Nebraska subjects reported only 18. Due process hearings total 47 reported cases from the two states with 25 cases being noted from Iowa and 22 reported from Nebraska. Respondents from both states noted 19 conflict resolution options labeled as other. (see Appendix J)

Table 5 represents question three from the survey, "What was the issue that led to either mediation or due

process? (Please check all that apply.)" As noted, placement concerns accounted for the most prevalent response to this question from both Iowa subjects and Nebraska subjects. Iowa subjects reported placement to be the issue that led to mediation or due process in 31 situations, while Nebraska subjects reported placement to be the issue that led to mediation or due process in 27 situations. Appropriate education issues were the second most prevalent issue that led to conflict resolution alternatives with Iowa respondents noting 21 incidents and Nebraska's noting only 13 incidents for 34 reported concerns. Related services were a very close third area of concern with 33 incidences cited by respondents from the two states. However, related services issues are clearly more pressing in Iowa than Nebraska. A proportionately larger number of incidents were reported by Iowa subjects. The issue that led to the fewest mediation or due process proceedings in both states was the identification of handicapping conditions. Iowa subjects also reported other concerns that led to conflict resolution. (see Appendix K)

Table 6 represents question 4 from the survey, "Was the identification, evaluation, placement, or service delivery changed as a result of due process or mediation?" Iowa respondents noted a .3% higher

Table 7. Was the decision rendered at the due process hearing or mediation proceeding appealed?

	<u>YES</u>	<u>NO</u>	<u>TOTAL</u>
Iowa	12 - (26.6%)	33 - (73.4%)	45 (100%)
Nebraska	10 - (30.3%)	23 - (69.7%)	33 (100%)
	TOTAL		78

Table 8. How would you rate your personal satisfaction with the conflict resolution process?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>TOTAL</u>
Iowa						
(n)	1	3	20	20	1	n=45
(%)	2%	7%	44.5%	44.5%	2%	100%
Nebraska						
(n)	2	5	12	13	1	n=33
(%)	6%	15%	36%	40%	3%	100%

incidence of change due to due process or mediation decisions than Nebraska respondents. Nearly 60% of the cases heard in either conflict resolution setting resulted in same change as a result of the rendered decision.

Table 7 represents question 5 from the survey, "Was the decision rendered at the due process hearing or mediation proceeding appealed?" In both states, respondents noted that well over two-thirds of the cases were not appealed. Iowa subjects reported that 69.7% of the decisions were not appealed, while Nebraska subjects reported that 73.4% of the decisions were not appealed. Overall, the percentage of appeals in Nebraska were slightly less than found in Iowa. Appeals were made to several different appellate settings that clearly varied between the two states. (see Appendix L)

Section two of the survey requested that subjects identify, by way of a Likert scale, their level of satisfaction with the results of their conflict resolution experience, determine their level of satisfaction with the actual process, rate the performance of the hearing officers or mediators, and provide information regarding the financial and

Table 9. How would you rate your skills as a participant in the conflict resolution process?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>TOTAL</u>
Iowa						
(n)	0	0	13	27	5	n=45
(%)	0	0	29%	60%	11%	100%
Nebraska						
(n)	0	1	10	15	7	n=33
(%)	0	3%	30%	46%	21%	100%

Table 10. How would you rate your personal satisfaction with the role of the due process hearing officer or mediator?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>TOTAL</u>
Iowa						
(n)	2	4	11	23	5	n=45
(%)	4%	9%	25%	51%	11%	100%
Nebraska						
(n)	3	3	10	14	3	n=33
(%)	9%	9%	30%	43%	9%	100%

emotional costs associated with formal conflict resolution.

Table 9 reflects the level of personal satisfaction the subjects noted from their conflict resolution experiences. Iowa subjects reported 89% personal satisfaction in the moderate to high level, while Nebraska subjects reported less personal satisfaction with their conflict resolution experiences and responded with a 76% satisfaction rating in the same areas.

Subjects were requested to rate their skills as a participant in the conflict resolution process and these results are reported on Table 9. Subjects from Iowa reported by a 60% margin that felt their skills were high as participants in conflict resolution situations. Nebraska subjects reported that they felt only slightly less confident in their skills as conflict resolution participants with 66% response in the high to very high range compared to Iowa subjects who responded with 71% in the high to very high range.

Table 10 reflects the personal satisfaction of the respondents with the role of the due process hearing officer or mediator. Less than 20% of the respondents rated the hearing officers and mediators in the very low or low range. Only 11% of the Iowa subjects and 9%

Table 11. How would you rate the financial costs incurred by your school district or cooperative in the conflict resolution process?

	Very Low	Low	Moderate	High	Very High	N/A	TOTAL
Iowa							
(n)	5	4	15	9	9	3	n=45
(%)	11%	9%	33%	20%	20%	7%	100%
Nebraska							
(n)	2	3	5	12	8	3	n=33
(%)	6%	9%	15%	36%	25%	9%	100%

Table 12. How would you rate the amount of time expended in preparation for the conflict resolution process?

	Very Low	Low	Moderate	High	Very High	TOTAL
Iowa						
(n)	1	6	6	8	24	n=45
(%)	2%	13%	13%	18%	54%	100%
Nebraska						
(n)	0	3	5	13	12	n=33
(%)	0%	9%	15%	40%	36%	100%

Table 13. Was legal assistance secured by your local school district or cooperative to assist in the conflict resolution process?

	<u>YES</u>	<u>NO</u>	<u>n/a</u>	<u>TOTAL</u>
Iowa				
(n)	29	16	0	n=45
(%)	65%	35%	0%	100%
Nebraska				
(n)	24	7	2	n=33
(%)	73%	21%	6%	100%

If yes, how would you rate the fees charged to your school district or cooperative by your attorney?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>n/a</u>	<u>Total</u>
Iowa							
(n)	0	2	5	3	19		n=29
(%)	0%	7%	17%	10%	66%		100%
Nebraska							
(n)	0	0	4	3	17		n=20
(%)	0%	0%	17%	13%	70%		100%

of the Nebraska subjects rated the hearing officers or mediators in the very high range. From 73 - 76% of the respondents rated their personal satisfaction with the hearing officers or mediators in their conflict resolution experiences in the moderate to high range on the provided rating scale.

Respondents to the survey rated the financial costs incurred by their school district or cooperatives fairly evenly across the scale. Table 11 also shows similar distribution on the reported scale from both Nebraska and Iowa subjects.

Table 12 shows the ratings from respondents as to the amount of time expended in preparation for conflict resolution processes. Seventy percent (70%) of the Iowa and Nebraska subjects reported that high or very high amounts of time are spent in preparation for conflict resolution.

As reported on Table 13, legal assistance was secured by local schools and cooperatives in Iowa 65% of the time and in Nebraska 73% of the time. Sixty-six percent (66%) of the Iowa respondents who secured legal assistance rated attorney fees as very high. Similarly, 70% of the Nebraska respondents rated attorney fees very high. Moderate ratings were noted by 17% of the respondents from both states.

Table 14. How would you rate your stress as a participant in a conflict resolution process?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>Total</u>
Iowa						
(n)	0	11	19	10	5	n=45
(%)	0%	25%	41%	23%	11%	100%
Nebraska						
(n)	0	3	14	9	7	n=33
(%)	0%	9%	43%	27%	21%	100%

Table 15. How would you rate the stress to your support staff from your conflict resolution experience?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>Total</u>
Iowa						
(n)	1	4	10	22	8	n=45
(%)	2%	9%	22%	49%	18%	100%
Nebraska						
(n)	0	0	9	14	10	n=33
(%)	0%	0%	27%	43%	30%	100%

Table 16. How would you rate your satisfaction with the time frame required for your conflict resolution experience?

	<u>Very Low</u>	<u>Low</u>	<u>Moderate</u>	<u>High</u>	<u>Very High</u>	<u>Total</u>
Iowa						
(n)	5	9	19	8	4	n=45
(%)	11%	20%	42%	18%	9%	100%
Nebraska						
(n)	3	8	10	9	3	n=33
(%)	9%	25%	30%	27%	9%	100%

Participant stress was rated by the subjects and the results are noted on Table 14. Nebraskan's reported stress from participation in conflict resolution situations as being moderate to high by 70% of the respondents. Twenty-one percent (21%) noted that stress was very high in those situations. Iowa subjects reported stress to be moderate to high by 64% of the respondents and 25% of the respondents reported stress from involvement in conflict resolution as low.

The stress to support staff from conflict resolution experiences was rated as high and very high in 73% of the cases in Nebraska and 67% of the cases in Iowa. Table 15 also notes that no cases were identified as being of very low or of low stress in Nebraska.

Table 16 reflects the wide disparity of ratings from the question inquiring about satisfaction with the time frame required for conflict resolution experiences. Both Iowa subjects and Nebraska subjects reflected dissatisfaction with the time frames by noting very low, low or moderate satisfaction over 64% of the time in Nebraska and 73% of the time in Iowa.

Appendix M lists the numerous and varied comments provided by the Iowa and Nebraska subjects who were requested to note their satisfactions and

dissatisfactions with their conflict resolution experiences. These remarks proved to be insightful in validating issues of concern as reported in the body of literature on due process and mediation in special education.

CHAPTER FIVE

Summary, Conclusions and Recommendations

Summary

The primary purpose of this study was to gather information regarding levels of participation in due process hearings and mediation proceedings by special education administrators and supervisors in Iowa and Nebraska, identify the issues that lead to either mediation or due process, and determine the results from utilization of these different conflict resolution alternatives.

The secondary purpose of this study was to gather information regarding subject satisfaction with conflict resolution alternatives, time constraints, financial concerns, emotional costs, and stress.

An examination was made of the available literature on the topic of special education conflict resolution alternatives, with special focus on due process and mediation.

Following the review of the literature, a survey instrument was developed and piloted.

The survey was conducted from mid-October 1989 through mid-November 1989. Surveys were distributed to 214 special education administrators and supervisors in Iowa and Nebraska. Nebraska participants represented

members in the Nebraska Association of Special Education Supervisors (NASES). NASES members are representatives from Educational Service Units (ESU's) and school districts with total enrollments in excess of 1,000 pupils. Iowa participants represented the special education administrators and supervisors from the Iowa Area Education Agencies (AEA's) and the special education administrators and supervisors from Iowa school districts with total enrollments in excess of 1,000 students.

Conclusions

According to the data collected from the survey and the literature researched in this study, the following conclusions were drawn:

1) The majority of the respondents to the survey, from both Iowa and Nebraska, had not participated in a due process hearing or mediation proceeding. Conflict resolution alternatives had been utilized by fewer than half of the subjects polled.

2) The issue that led to the most mediations and due process hearings was the placement of handicapped students.

3) As the result of a due process hearing or mediation, the identification, evaluation, placement or service delivery changed in over 57% of the cases.

4) Fewer than 30% of the subjects surveyed elected to appeal the decision rendered at the due process hearing or mediation proceeding.

5) Subjects reported a moderate to high personal satisfaction with their conflict resolution experiences.

6) The subjects surveyed rated their skills as a participant in the conflict resolution process as moderate to very high. The subjects clearly felt confident in their abilities.

7) The subjects surveyed rated their personal satisfaction with the due process hearing officer or mediator lower than the rating they gave themselves as a participant in the process.

8) The rating for financial costs incurred by the school districts or cooperatives was one of the most varied responses on the survey. Subject perceptions on this issue were clearly mixed. The majority of the responses fell in the moderate to high range on the provided scale.

9) The amount of time expended in preparation for the conflict resolution process was mixed and ranked across the scale that was provided. The majority of responses were in the high to very high range.

10) Legal assistance was secured by local school districts and cooperatives by over two-thirds of the subjects who had participated in due process or mediation.

11) Over two-thirds of the subjects who had secured an attorney rated the fees charged very high on the provided scale.

12) The majority of the respondents rated their stress as a participant in a conflict resolution process as moderate to high.

13) The stress to support staff was rated much higher than the stress as an administrative participant in a conflict resolution process.

14) Subjects responses were widely varied when asked to respond to their satisfaction with the time frame required for conflict resolution.

15) Written remarks from subjects directly correlated with the information located in the literature review on due process and mediation.

16) Mediation is a conflict resolution process that has been attempted by 45.6% of the Nebraska respondents to this survey.

Recommendations

Based on the findings and literature researched in this study, the following recommendations are presented for further examination.

1) The responses generated on the survey by subjects from Iowa and Nebraska mirror the findings in the literature review. Special education administrators and supervisors from Iowa and Nebraska find conflict resolution alternatives to be time consuming and costly. They perceive their skills to be adequate and higher than the skills of due process hearing officers or mediators. Given this notion, a performance evaluation of due process officers and mediators should be an ongoing task of state education officials. Performance ratings of hearing officers and mediators should be regularly reviewed and performance evaluation might be appropriately afforded all parties in the conflict resolution process.

2) Increased in-service opportunities for support staff should be explored to prepare personnel for skills acquisition in conflict resolution situations, such as mediation proceedings or due process hearings. Similarly, in-service opportunities could focus on stress reduction techniques for support staff. Proactive measures in this area might be more

beneficial than reactive measures taken at a time of crisis.

3) A more consistent information base should be developed and presented to Nebraska subjects regarding mediation best practices. While a large number of subjects responded that they have used mediation in conflict resolution alternatives, this researcher is aware of no trained mediators in Nebraska. It is this researcher's conclusion that Nebraska subjects are using some mediation components in conflict resolution situations and not using a third party mediator, as is consistently noted in the literature. An overview of the benefits of a trained mediator vs. sole use of mediation techniques could be explored with the Nebraska Association of Special Education Supervisors or the Nebraska Department of Education - Special Education Unit.

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APPENDIX A
JURY MEMBERS

JURY WHICH VALIDATED SURVEY ITEMS

**Ms. Ann Bird, Consultant - Special Education Unit
Nebraska Department of Education
3223 North 45th Street
Omaha, Nebraska 68104**

**Mr. Ken Bird, Director of Special Education
Westside Community Schools
909 South 76th Street
Omaha, Nebraska 68114**

**Dr. Roger Breed, Assistant Superintendent
Elkhorn Public Schools
502 Glenn Street
Elkhorn, Nebraska 68022**

**Dr. Dennis Flood, Director of Special Services
Elkhorn Public Schools
502 Glenn Street
Elkhorn, Nebraska 68022**

**Ms. Kay Gordon, Director of Special Education
Educational Service Unit #3
4224 South 133rd Street
Omaha, Nebraska 69137**

**Dr. John Hill, Professor
Department of Special Education
and Communication Disorders
University of Nebraska at Omaha
Kayser Hall
60th and Dodge Streets
Omaha, Nebraska 68182**

**Dr. Jeffrey Johnston, Assistant Superintendent
Gretna Public Schools
801 South Street
Gretna, Nebraska 68028**

**Mr. Dave Kaslon, Director of Special Education
Blair Community Schools
140 South 16th Street
Blair, Nebraska 68008**

**Dr. Peter Seiler, Administrator II
Nebraska School for the Deaf
3223 North 45th Street
Omaha, Nebraska 68104**

**Dr. Dick Winter, Psychologist
Gretna Public Schools
801 South Street
Gretna, Nebraska 68028**

APPENDIX B
LETTER TO JURY MEMBERS

September 27, 1989

Dear Colleague:

As you know, the due process hearing has historically been the major avenue pursued by parents and school districts to attempt to resolve special education conflicts. A review of the literature outlines some positive outcomes associated with this procedure, yet negative effects are also cited. Other methods of conflict resolution should be examined as alternatives to the due process hearing. The use of mediation is the most prevalent alternative cited in the literature. However, little empirical data is available to confirm the effectiveness of this alternative strategy.

In partial completion of my Educational Specialist degree from the University of Nebraska at Omaha, I have elected to do research into the effectiveness of mediation as an alternative method of conflict resolution. The research will compare the satisfaction of special education administrators and/or supervisors who have participated in due process proceedings in Nebraska with the satisfaction of special education administrators and/or supervisors from Iowa who have experienced alternatives, such as mediation activities, to due process proceedings.

I am deeply interested in your feedback to the enclosed survey instrument, abstract, and glossary of terms that will be forwarded to my sample participants. I would deeply appreciate it if you would take a few minutes to review this information and note your comments on the attached response form. Your feedback is critical to making my research more effective.

Thanks for your assistance with this project.

Sincerely,

Mark C. Draper
Educational Specialist Candidate
University of Nebraska at Omaha

APPENDIX C
JURY RESPONSE FORM

Mark C. Draper
Educational Specialist Candidate
University of Nebraska at Omaha

Jury Response Form

1) Do the items in the survey ask the information in a clear and understandable way?

2) Are the directions in the survey clearly designed and appropriate?

3) Do you feel that the definitions provided in the Glossary are adequate?

4) Does the information contained in the abstract help provide clarity to the project?

5) Other comments...

APPENDIX D
INSTITUTIONAL REVIEW BOARD EXEMPTION INFORMATION FORM



The University of Nebraska
Institutional Review Board
For the Protection of
Human Subjects

Office of the Executive Secretary, IRB
5017 Conkling Hall
University of Nebraska Medical Center
42nd & Dewey Avenue
Omaha, NE 68105-1065
(402) 559-6463

EXEMPTION INFORMATION FORM

PROPOSAL TITLE: The Special Education Administrator Conflict Resolution Survey

INVESTIGATOR(S) NAME & DEGREE: Mark Draper, M.A. & Sandra K. Squires, Ed.D.

DEPARTMENT & SCHOOL: Special Education & Communication Disorders, UNO

ADDRESS: Draper, 1322 S. 33rd St., Omaha, NE 68105

TELEPHONE NUMBER: (402) 422-1582

PURPOSE OF THE STUDY:

Survey special education administrator and determine level of satisfaction with conflict resolution alternatives.

DESCRIPTION OF SUBJECT POPULATION AND METHOD(S) OF RECRUITMENT:

67 Nebraska Special Education Administrators/Coordinators

144 Iowa Special Education Administrators/Coordinators

Mailing lists from Nebraska Special Education Administrator Directory and Iowa Directory of Public Schools

INFORMED CONSENT: Some technically exempt research projects ethically require informed consent (written or oral). If, in the investigator's opinion, the study requires informed consent, the method used to obtain informed consent should be described and any written consent forms submitted. If the study does not require consent, it should be so stated and justified.

A letter with a survey will be mailed to these individuals inviting them to participate. Their response will indicate their willingness to participate.

EXEMPTION INFORMATION FORM

Page 2

DESCRIPTION OF PROCEDURES:

The investigators are mailing a letter, an abstract of the study, a glossary which correlates to the terms in the survey, and the survey to the Iowa and Nebraska Special Education Administrators/Coordinators. A return envelope is enclosed for the coded survey. A phone call follow-up is planned to those who have not responded.

EXEMPTION CATEGORY: This proposal qualifies for exemption under 45 CFR 46:101(b) paragraph(s) 3 and is justified as follows:

This is a survey in which there is no sensitive issue addressed.

All data will be reported as group data.

Mark C. Dragn
SIGNATURE OF INVESTIGATOR

10/17/89
DATE

Lauda H. Dreyer
SIGNATURE OF ADVISOR
(for student investigator)

10/17/89
DATE

The IRB reserves the right to request the investigator provide additional information concerning the proposal.

APPENDIX E
INSTITUTIONAL REVIEW BOARD APPROVAL



The University of Nebraska
Institutional Review Board
For the Protection of
Human Subjects

Office of the Executive Secretary, IRB
5017 Conkling Hall
University of Nebraska Medical Center
42nd & Dewey Avenue
Omaha, NE 68105-1065
(402) 559-6463

October 20, 1989

Mark Draper, M.A.
Sandra Squires, Ed.D.
Special Education
UNO

IRB # 151-90

TITLE OF PROPOSAL: The Special Education Administrator Conflict Resolution Survey

Dear Mr. Draper and Dr. Squires:

I have reviewed your Exemption Information Form for the above-mentioned research project. According to the Information provided this proposal is exempt from IRB review under 45 CFR 46:101B 3.

It is understood that an acceptable standard of confidentiality of data will be maintained.

Sincerely,

A handwritten signature in dark ink, appearing to read 'E. Prentice'.

Ernest D. Prentice, Ph.D.
Executive Secretary

EDP/lmc

APPENDIX F
SURVEY PARTICIPANT LETTER

October 15, 1989

Dear Colleague:

As you know, parents and school personnel occasionally disagree as to the appropriateness of educational programs and services provided for students in special education. As special education administrators and supervisors, we are interested in learning how conflicts are resolved and the levels of satisfaction with the conflict resolution alternatives that we access. You are an expert in conflict resolution, yet you may not have taken part in a due process hearing or a due process alternative, such as mediation.

We are conducting research to determine the level of your satisfaction with the conflict resolution alternatives that are available to you in your home state. Enclosed with this letter is a brief survey that will take only a few minutes to complete, an abstract, and a glossary of terms to assist you in understanding the terminology that is used.

Your voluntary cooperation and help are greatly appreciated.

We would be most grateful if you would return the completed survey in the enclosed self-addressed, postage paid envelope by no later than November 3rd, 1989.

We will send you a copy of the results if you so indicate on the last page of the survey.

All information will be kept confidential. The code that appears in the upper right hand corner of the first page of the survey is for bookkeeping purposes only.

We thank you again for your time and help.

Sincerely,

Mark C. Draper, M.A.
Principal Researcher

Sandra K. Squires, Ed.D.
Associate Professor

Enclosures

APPENDIX G
SURVEY PARTICIPANT ABSTRACT

ABSTRACT

Historically, a due process hearing has been the major vehicle utilized by parents of the handicapped to resolve conflicts involving the provision of appropriate education for their children in local education agencies or cooperatives. A review of the literature notes some positive outcomes from participation in this process. However, the literature also notes high emotional costs, high fiscal costs, and the natural development of adversarial relationships involved in this process. Because of these and other valid concerns, alternatives such as mediation are worthy of exploration.

The purpose of this research is to examine the effectiveness of due process hearings and mediation activities. In order to achieve this purpose, the Special Education Administrator Conflict Resolution Survey was developed to measure administrative satisfaction with both due process hearings and mediation, and the outcomes of these processes in respect to several variables.

APPENDIX H
SURVEY PARTICIPANT GLOSSARY

GLOSSARY

This glossary is designed to be used with the attached survey. The terms noted below correspond in order with the underlined topics on the survey. It is our hope that this glossary will assist you in more effectively completing the Special Education Administration Conflict Resolution Survey.

Conflict Resolution - Alternatives explored to solve the problems between parents and the school, in this case a due process hearing or mediation.

Due Process Hearing - A hearing concerning a parent-school conflict conducted by an impartial due process hearing officer who makes a decision based upon the evidence presented by both the parents and the school.

Mediation Proceeding - A proceeding designed to promote reconciliation, settlement, or compromise between two parties in conflict; in this case the parents or the school.

Identification Issues - Issues related to the labeling or classifying of a child having one or more special education needs which may lead to the child being recommended for or receiving special education services.

Evaluation Issues - Issues related to the individualized testing or assessment of a child for special education purposes, usually to determine if the child's needs merit receiving special education.

Placement Issues - Issues related to the school or class placement of a child recommended for or receiving special education services.

Appropriate Education - The provision of an education that is appropriate to a child's specific special education needs. Appropriate education typically involves personalized instruction with sufficient related services to permit the child to benefit educationally from the instruction, even if the child is not achieving to his/her maximum potential. Often, appropriate education means the provision of special education services as written in the IEP.

Page #2
Glossary

Related Services - Transportation and other developmental, corrective and supportive services necessary to assist a child to benefit from special education. These include: speech pathology, audiology, psychological services, physical and occupational therapy, early identification and assessment of disability, counseling services, and medical services for diagnostic or evaluation purposes. These also include school health services, social work services in the schools, and parent counseling and/or training.

Appeal - Taking the decision reached in the due process hearing to a higher authority such as a state education agency, a state or a federal court.

Personal Satisfaction - The extent to which you were pleased with the process (either the due process hearing or mediation proceeding) and/or the result of such a process.

Due Process Hearing Officer - The individual who conducts the due process hearing and makes the decision based upon evidence presented by both parties.

Mediator - The individual who works with the parties in conflict so they can reach an agreement acceptable to both the parents and the school.

Financial Costs - Dollar expenses directly related to preparing for or taking part in the due process hearing or the mediation proceeding.

Legal Assistance - Having an attorney represent you in the due process hearing or the mediation proceeding.

Stress - Mental or physical tension from taking part in the due process hearing or the mediation proceeding.

APPENDIX I
SPECIAL EDUCATION ADMINISTRATOR
CONFLICT RESOLUTION SURVEY



University of
Nebraska
at Omaha

College of Education
Department of Special Education
and Communication Disorders
Omaha, Nebraska 68182-0054
(402) 554-2201

Special Education Administrator Conflict Resolution Survey

Section One

Code _____

The purpose of this section is to 1) identify methods of conflict resolution you have used in either a due process hearing or a mediation proceeding and 2) to identify the issues that led to either due process or mediation.

Place an X in the space next to the response that is most appropriate.

- 1) Have you ever been involved in a due process hearing?

_____ YES _____ NO

Have you ever been involved in a mediation proceeding?

_____ YES _____ NO

If you answered NO to both items, please do not answer any further items and place the survey in the enclosed postage paid, self-addressed envelope.

If you replied YES to either item, please continue to complete the survey.

- 2) What method of conflict resolution have you used to resolve special education conflicts? (Please check all that apply.)

_____ mediation

_____ mediation before a due process hearing

_____ due process hearing

_____ other Please specify _____

Page #2
Conflict Resolution Survey

- 3) What was the issue that led to either mediation or due process? (Please check all that apply.)

☐ identification of handicapping condition
☐ evaluation
☐ placement
☐ appropriate education issues
☐ related services issues
☐ other Please specify _____

- 4) Was the identification, evaluation, placement, or service delivery changed as a result of due process or mediation?

☐ YES ☐ NO

- 5) Was the decision rendered at the due process hearing or mediation proceeding appealed?

☐ YES ☐ NO

If yes, to whom? _____

Section Two

The purpose of this section is to 1) identify the results of your conflict resolution experience, 2) determine your level of satisfaction with the process, 3) rate the performance of the hearing officers and/or mediators and 4) provide information regarding financial and emotional costs from taking part in these processes.

Circle the rating on the scale that most closely represents your point of view.

EXAMPLE

1	2	3	4	5
very	low	moderate	high	very
low				high

Page #3
Conflict Resolution Survey

- 6) How would you rate your personal satisfaction with the conflict resolution process?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 7) How would you rate your skills as a participant in the conflict resolution process?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 8) How would you rate your personal satisfaction with the role of the due process hearing officer or mediator?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 9) How would you rate the financial costs incurred by your school district or cooperative in the conflict resolution process?

1	2	3	4	5	n/a
very	low	moderate	high	very	
low				high	

- 10) How would you rate the amount of time expended in preparation for the conflict resolution process?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 11) Was legal assistance secured by your school district or cooperative to assist in the conflict resolution process?

_____ YES _____ NO _____ N/A

If yes, how would you rate the fees charged to your school district or cooperative by your attorney?

1	2	3	4	5	n/a
very	low	moderate	high	very	
low				high	
\$250	\$500	\$750	\$1000	over \$1500	

Page #4
Conflict Resolution Survey

- 12) How would you rate your stress as a participant in a conflict resolution process?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 13) How would you rate the stress to your support staff from your conflict resolution experience?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 14) How would you rate your satisfaction with the time frame required for your conflict resolution experience?

1	2	3	4	5
very	low	moderate	high	very
low				high

- 15) Briefly list two reasons why you were satisfied and/or dissatisfied with your conflict resolution experience.

Satisfied

Dissatisfied

If you would like a copy of the survey results, please note below.

____ Yes ____ NO

Name _____
 Address _____
 City _____ State _____
 Zip Code _____

APPENDIX J**TABLE 4 - OTHER CONFLICT RESOLUTION OPTIONS**

NEBRASKA

"Cost of repair or purchase of special equipment"

"Transportation"

IOWA

"Method of instruction for hearing impaired"

"Physical therapy/occupational therapy services"

"Extended school year"

"Transportation"

"IEP acceptance by parent"

"Services for the autistic"

"School non-attendance due to health reasons"

APPENDIX K**TABLE 5 - OTHER ISSUES THAT LEAD TO EITHER
MEDIATION OR DUE PROCESS**

NEBRASKA

"Meet with appropriate personnel of all agencies/districts concerned"

"Second opinion evaluation, then mediation with additional in-district staff"

"I have used a 'cost analysis', both fiscal and human to help determine if the bill to be paid is worth the results. This has led to some decisions that may have been "won" but at too high a cost."

"consensus building"

"Working hard at the building/program level to anticipate and identify problems and seek resolution before getting even to a mediation stage."

"Informal parent contacts"

"Informal mediation"

"Pre-mediation conference between parent and district"

IOWA

"Informal meetings, formal conferences, outside assistance, independent evaluations."

"2nd opinion contracts."

"Agency-level 'mini-hearing' or similar 'administrative staffing' options are open to parents in this AEA 7. Director and parents share chairperson role in review of previous staffing. Student is in 'stay-put' mode when and administrative review is suggested."

"Met with family/lawyers...resolved 'conflict'"

"litigation"

"Federal District Court"

"Team meeting with parents"

"Court decision"

"State Department involvement with conferences"

"Involvement of impartial persons"

"Thorough review of student's educational history and IEP's"

"Department of Human Services hearing in District Court that discussed appropriate placement of a special education student"

"Office of Civil Rights Investigations-Kansas City Office"

"Court ruling, injunction, referee courts, Iowa Supreme Court"

APPENDIX L
TABLE 7 - APPEALS

NEBRASKA

"Court"

"State Department Hearing Officer"

"the district"

"NDE Hearing Officer"

"District Court" (noted twice)

"school district"

IOWA

"Federal District Court" (4 references)

"State Court" (noted twice)

"Federal Court"

"Federal District Court, 8th Circuit Court
of Appeals, U.S. Supreme Court"

"Court"

"Courts"

"District Court"

"State Department"

"State of Iowa, Independent Arbitrator"

APPENDIX M
SATISFACTIONS AND DISSATISFACTIONS AS NOTED
BY IOWA AND NEBRASKA SUBJECTS
ON SURVEY QUESTION 15

NEBRASKASatisfied

"Mediation works well without involving a lot and effort."

"The settlement was a compromise."

"It was an eye opening experience. I found out what the most appropriate setting and best education for the child was what the court looked at."

"Relatively speedy process."

"Negotiated a win/win situation and parents have become supportive of school."

"No one 'loses' when mediated."

"I never am satisfied in these proceedings, because we are placed in a win - lose arena, and my opinion is that everyone actually loses."

Dissatisfied

"Full hearings take too much time & money and are sometimes resolved on a technicality rather than on facts."

"It is still questionable to me whether the student should have received the related service."

"Although the hearing officer agreed with the school re: the placement, the placement with the contracting agency still could not be made without the parent's agreement to participate."

"Time and stress were too high."

"Stress to staff - minor issues lead to emotional issues if not handled responsibly."

"Too much time - strained relationship with parent - only one benefited was attorney - takes way too long."

"Mediators tend to be smug - and usually are very parent vs. district oriented. Hearing officers frequently don't know/understand the educational issues."

"We won. Our win supported our procedures & interpretation of the law."

"It gave both sides an opportunity to express their side/feelings."

"Conflict resolution involving trained, experienced in-district staff is more efficient, less time consuming and less stressful for all parties. SPED administrators and direct intervention staff need more training on effective conflict resolution techniques."

"Mediation has resulted very well for both parties."

"No one seems to win."

"The right decision was made."

"There is a process that basically works."

"Cost to district was very high. That is money that wasn't spent to educate kids. Personally very stressful."

"Hearing officer entered session with a stated bias."

"Third party mediators often are costly and involve large time commitments from staff...prolonging stress. Same applies to due process hearings. If we were more proactive and had better developed communication skills in conflict resolution, the majority of cases would be negotiated and resolved in district."

"Due process hearing was costly and ineffective."

"No one seems to win."

"The loss of perspective on the child."

"Even if the district prevails, it is a negative experience for all."

"The judge or hearing officer ruled in the school district's favor. So I was satisfied but..."

"The parents went ahead & sent the student to a private school anyway - and the state paid (in the end!) So even though the school district won.. the parents won because the state paid for the student's education at a state facility. It turned out a big expense and quite a fruitless expenditure of time."

"Little cost. Better IEP."

"Time involved. Stress!"

"Because the problem was solved. Nebraska Advocacy rep was excellent to work with throughout the process."

"Because the educational placement was mediocre. Residential was ordered by the hearing officer & was not available in the community."

"Yielded appropriate decision for all concerned."

"Too expensive and time consuming."

"All parties seemed to have a sense of deeper understanding and respect for other points of view. Kept situations out of legal arena."

"Staff frustrated with emotional energy expended in conflict resolution."

"We won! Excellent Hearing Officer."

"Time involved away from regular work. Staff Anxiety."

IOWA

"The results were good for the child - help was received."

"A lot of time passed from the beginning to the end of the process."

"The conflict was resolved in the necessary time frame."

"Where is the kid in this process?"

"The end result proved to be a satisfactory placement for the student."

"Mediation helped avoid a a due process hearing - saving time, money and most important, a school/parent relationship."

"Conflict resolution at the lowest level serves a better purpose than involving the court system."

"Child is always the loser in these cases if it can't be resolved adequately."

"We've never lost."

"An issue is put to rest. The decision is based on fact, not emotion."

"On more than one occassion the mediation process has allowed for a 'clearing of the air' among AEA, LEA and parents. It has also improved overall communication."

"Time involved for myself and our support staff in preparing for and during due process hearing that produced no changes (in placement, program or attitudes)."

"Not so much dissatisfied as frustrated with the anger and accusing attitude of parents who act through their frustrations."

"The preparation and stress to prepare for a case for what needs to be done can't be done easily because of student and parent resistance."

"Often negotiators seem to put too much weight on parent perceptions."

"One case - continuance requested by parent seven times and each time granted. Our district prepared each of those times. What manipulation! Of course, the parent was not paying for their attorney."

"Staff often feel that it is a win or lose process - it's not - it's a simple way to resolve a complex problem."

"University of Iowa Dept. of Law provided lawyers at no cost to the parents. They had nothing to lose but time."

"Put closure on issue. Both sides 'won'."

"It's a process to help parents obtain good programming for their child. It is a good check and balance process for educators."

"Mediation - improved communication. Mediation and Hearing - decision made - issues resolved."

"Our evaluations were deemed accurate. Mediator/admin. law judges(s) were well trained and rendered decisions on research and merits of case."

"It is a prescribed process to follow."

"Mediation has usually led to a compromise."

"Both parties were treated with respect."

"Sometimes the process is the only way to clarify issues so they can be resolved."

"Willingness to communicate."

"It did not destroy personal relationships. It gave an answer/course of direction and got everyone moving rather than debating."

"Very time consuming. Slow tedious process."

"Takes too long. Cost is high."

"Time consuming. Time lines very short."

"A means to an end. Not always a win-win situation. Becomes legal and costly."

"No one wins. Time lost - one case cost approx. \$75,000 of staff time."

"Cost and time involved."

"The parent point of view was the only view considered."

"Even though the decision went against the parents, there was no penalty when they did not follow through on the decision rendered."

"A complete waste of time money and energy. Nothing binding until federal court..."

"Attorney's made it too adversarial. It caused staff stress and time away from students."

"We had prepared a good, solid case. Our procedures were in order, and this was recognized by Hearing Officer and Judges."

"Time involved in preparation. Parents being very unrealistic - advocate for parent(s) giving bad advice.. 'we can win, protect your rights'."