



# ***Special Education Dispute Resolution***

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## Introduction

Have you ever been out hiking or even driving and come across a rock sculpture? They're called a CAIRN (karen) and traditionally serve as memorial or landmark. It's amazing when you're out hiking and you find one, or a city of them.

In thinking about this presentation, I landed on the CAIRN as an apt metaphor for what it is that we all do in serving students with disabilities. Sometimes its easy to make all the rocks balance, and sometimes rocks don't have a smooth edge and are quick to topple when the winds blow.

Today we're going to look at how the Office of Dispute Resolution provides a foundation for managing conflicts in special education.



## **Special Education Dispute Resolution**

 **Choosing Rocks: Options in Dispute Resolution**

 **Landslides: Recent Missteps in Idaho**

 **Balancing Tips**



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I'm going to cover:

1. The options available through our office
2. We're going to look at recent situations during the last year that brought formal complaints to our office.
3. Finally, we'll discuss some ideas for laying strong foundations and making the structures of your special education programs strong enough to stand, even in rough weather.



**Choosing Rocks:  
Options in Dispute  
Resolution**



## Office of Dispute Resolution

🪨 **Coordinator:** Melanie Reese

🪨 **Program Specialist:** Lily Robb

🪨 **Contractors Statewide**

- 18 Facilitators
- 8 Mediators
- 8 Complaint Investigators
- 3 Hearing Officers

• The SDE 504 Coordinator is Lisa Kramer (not in Special Education)

\*\* Special Education DR does not handle Office of Civil Rights (OCR) complaints



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The State Dispute Resolution is a two person operation with me and Lily. The two of us spend a great deal of time on the phone, but we also coordinate and track our dispute resolution systems I'll talk about in a moment. We field calls from Special Education Directors and Superintendents, but also Parents and Parent Advocacy Organizations. We listen and provide information. We talk people off of the proverbial ledge and given them a direction to solve problems.

But much of the work in providing districts and parents with options for handling conflicts, is at that hands of our extraordinary contractors. Our team is comprised of strongly vetted professionals who have backgrounds as retired school administrators, retired and current special education directors, service providers, attorneys, parent advocates with a wide variety of skills and aptitudes allowing us to put the right person in the right place when a situation arises.

We invest in time and training for each contractor to ensure they are up-to-date on the latest legal trends in special education, as well as have the meeting and people skills to help districts and parents build successful relationships.

Our team members work independently and together to make us one of the most successful, progressive, and federally compliant dispute resolution

programs in the country. I am proud to say that Idaho is a model state, recognized as a national leader, and invited share at legal and special education conferences regularly.



## Foundations for DR

- Conflict provides opportunities.
- Perceptions of neutrality, fairness, and transparency are the currency of the office.
- Everyone deserves to be heard and understood.
- Aim to resolve at the lowest level appropriate.
- Good outcomes are child-centered and legally defensible.



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Our contractors and our Office hold the following as true in our work. We can look at these statements as our foundation that serves as the basis for operation.

We believe . . .

1. Conflict is symptomatic of something wrong in the system. While conflict can be uncomfortable and inconvenient, it alerts us to the opportunity to improve our systems, our communication and our relationships. It gives us the chance to fix things that we wouldn't not have realized were broken without them being expressed by conflict.
2. If parents or districts do not see us as neutral, fair and transparent, we have no credibility. We are fond of the statement, "All information is neutral." If a parent calls me with a question about special education, they will get the same information I would present to a Special Education Director who calls. The first step in balancing the tables is to make sure every one has access to the same information. We are a resource without bias.
3. Sometimes people need to vent. Sometimes they are highly emotional. Sometimes they are frustrated because they are expected to do more with less. Sometimes people need to just talk long enough to figure out what the problem is. We're here for them.

4. Most of our calls are about sharing information and clarifying the manual or what the law states. Sometimes people call wanting to “File a Complaint!” If appropriate, we offer to be a bridge of communication. We’ll say, “Would you like me to call the SPED Director and discuss this with her? Would it be alright if I had her call you directly?” Often that’s enough. Sometime more is needed. We never suggest people should “File a Complaint” or a “Hearing,” but we will share all of our options available and answer questions on any processes we offer.
5. Ultimately we are in the business of supporting the education of children with disabilities. It is the kiddo at the heart of any conflict. With this in mind, we also are aware of the federal requirements for districts and the procedural safeguards afforded parents. All of our work needs to serve both interests.



The Individuals with Disabilities Education Act (IDEA) requires states to oversee three processes:

1. **Mediation:** a voluntary processes where a neutral third parties help conflicting parties come to formal written and legally enforceable agreements on matters related to IDEA.
2. **State Complaints:** a process whereby any agency or individual (usually parents) allege a district violated a legal requirement of the IDEA. We provide a complaint investigator who, within 60 days, provides findings. If the allegations are founded, the State orders corrective actions to bring about compliance. Our office issues those findings and tracks all corrective actions.
3. **Due Process Hearings:** a hearing is a quasi-judicial process where a neutral hearing officer is assigned to make a determination on any matter related to the identification, evaluation, education placement or provision of a free appropriate public education of a child. The HO is paid for by the district and is a onerous, time consuming, and expensive process.

Idaho offers two additional processes

4. **Informal conflict resolution:** where a neutral third party facilitates a conversation in order to aid parties to work together productively and effectively in the education of a child with disabilities. We have facilitated meetings with

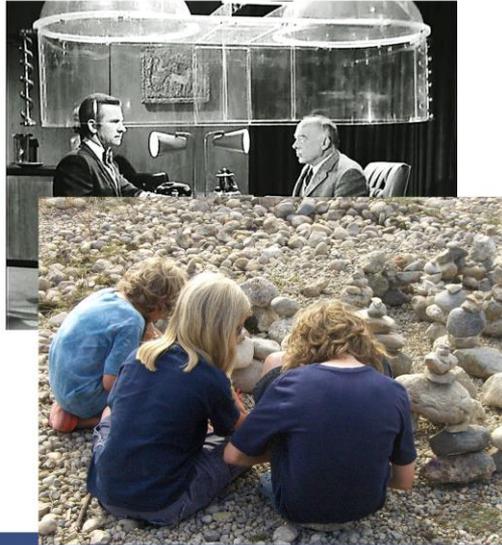
parents and teachers, case managers and service providers. These are informal and any agreements are self-enforceable.

5. Facilitation: We will facilitate any meeting related to SPED including IEP Meetings, eligibility meetings, disciplinary meetings, and resolution meetings arising out of a filed due process hearing.

These last two processes, while not required by the feds, are why Idaho is on the cutting edge in DR. People are noticing how a little proactivity saves time and money.

## Technical Assistance and Education

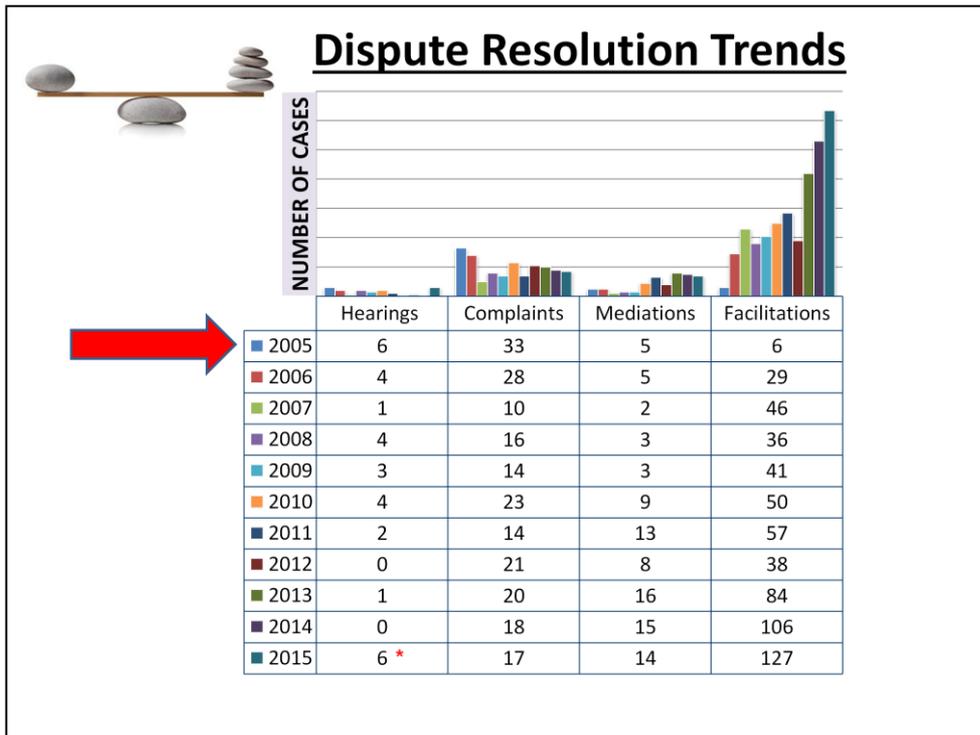
- Provide information to districts, families, advocacy groups, and others about the IDEA and special education in Idaho
- Provide training to districts and agencies on IDEA and improving communication



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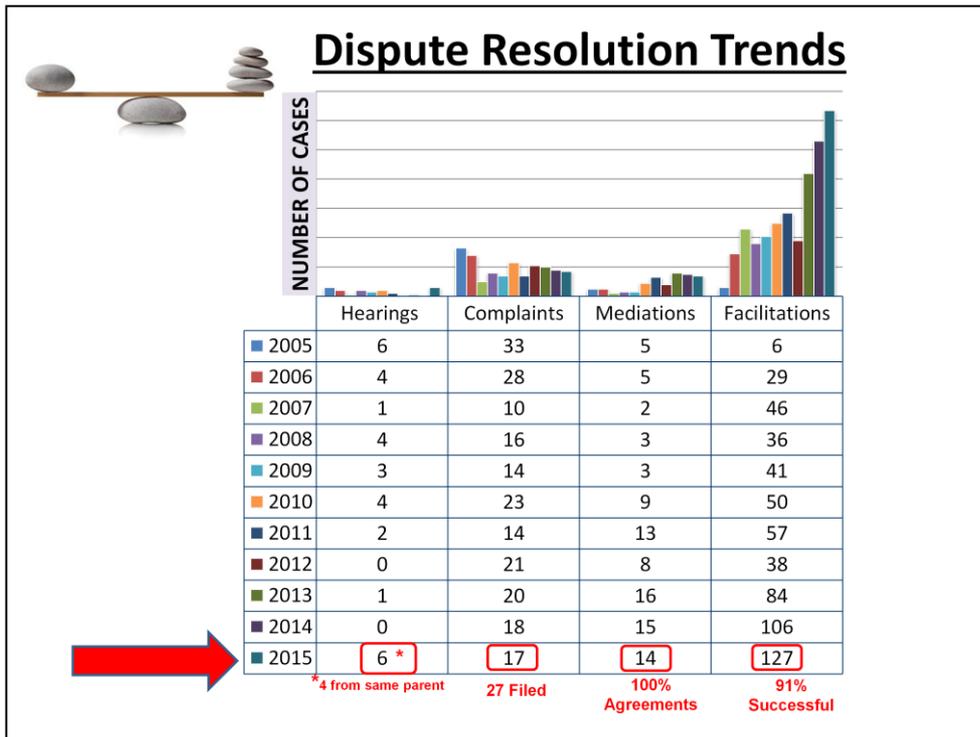
IN terms of our outreach, we provide information to those who contact us. We encourage asking questions and keep inquiries confidential. This is particularly important for school districts who are trying to stay compliant with the law and need to talk through trick situations. For those who remember the old GET SMART series, we often talk about the “cone of silence.”

We also are available to provide training on IDEA and how to improve communication in districts, schools, and teams.



Here is a chart showing the trends in our cases for the past 10 years.

10 years ago, our caseload was weighted toward the most adversarial processes, with 6 hearings and 33 complaints. It was this year that DR started the Facilitation program. Since that time, we’ve shifted the trend to be more collaboratively focused.

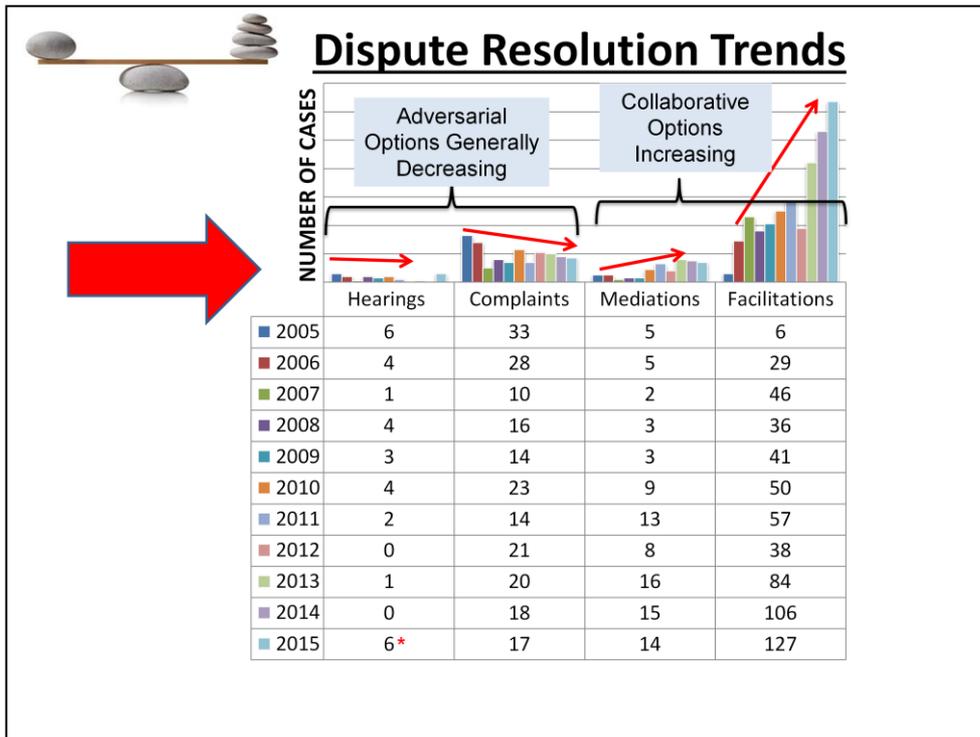


Here is a chart showing the trends in our cases for the past 10 years.

For this year (click) You'll see we had 6 hearings. The asterisk is because 4 were filed by the same parent.

Moving across, you see we had 17 Complaints fully investigated, out of 27 filed. That means 10 cases were handled outside of the complaint process, either through mediation or we worked with the district to resolve the issues that gave rise to the complaint collaboratively, pre-investigation.

Moving across we had 14 Mediations with all coming to agreements, and 127 Facilitations with 91% of the meetings ending successfully.



Here you can see the trends in our cases for the past 10 years. Generally our hearings are down (with the exception of this year where the same parent filed four cases) and are complaints statewide continue decreasing. These two processes, hearings and complaints, are the most costly, adversarial and invasive of the approaches we offer.

But as we go across and look at mediations and facilitations, we see we've increased mediations and seem to be plateauing around the 15 per year mark. But our Facilitations have taken off, increasing roughly 20% per year.

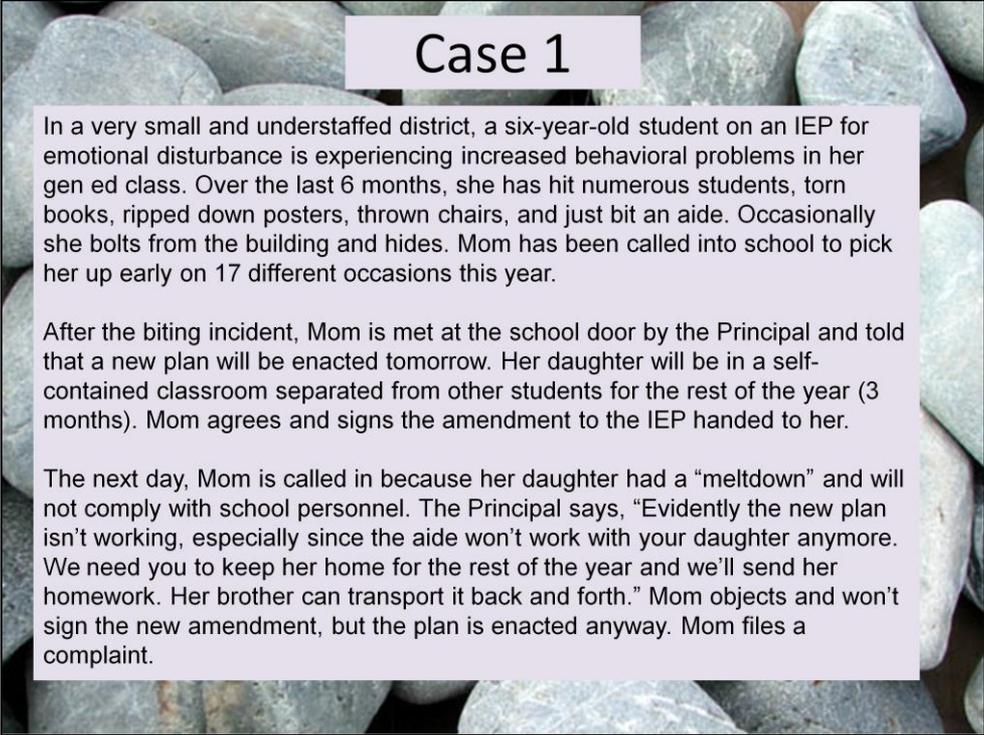
We see this compression of the adversarial processes and the increase of the collaborative processes as very positive for district



## Landslides: Recent Missteps



I've taken the liberty to combine some situations we've seen over the last year into the following case examples. While these are true situations from the Gem State, these cases represent a bit of an amalgam of several district missteps put together. For demonstration sake, however, we'll treat them like they're all the same district.



## Case 1

In a very small and understaffed district, a six-year-old student on an IEP for emotional disturbance is experiencing increased behavioral problems in her general class. Over the last 6 months, she has hit numerous students, torn books, ripped down posters, thrown chairs, and just bit an aide. Occasionally she bolts from the building and hides. Mom has been called into school to pick her up early on 17 different occasions this year.

After the biting incident, Mom is met at the school door by the Principal and told that a new plan will be enacted tomorrow. Her daughter will be in a self-contained classroom separated from other students for the rest of the year (3 months). Mom agrees and signs the amendment to the IEP handed to her.

The next day, Mom is called in because her daughter had a “meltdown” and will not comply with school personnel. The Principal says, “Evidently the new plan isn’t working, especially since the aide won’t work with your daughter anymore. We need you to keep her home for the rest of the year and we’ll send her homework. Her brother can transport it back and forth.” Mom objects and won’t sign the new amendment, but the plan is enacted anyway. Mom files a complaint.

1. Increased behavior problems should have been brought to the IEP team.
2. 17 absences probably constitute a change of placement for special education and without an IEP determining the placement, is a violation. District would likely owe some compensatory education.
3. Parent wasn’t informed of a meeting to discuss placement within a reasonable time to prepare.
4. While amendments do not require the entire team, they should be appropriate team members present.
5. Decisions must be data driven. How can that happen with less than one day in a placement?
6. Homebound is one of the most restrictive environments, and the IDEA requires districts to educate in the least restrictive appropriate for the child, and to have a continuum of placement options.

## Case 2

A 16-year-old, male student on an IEP for cognitive impairment rides the bus to and from school. Occasionally he reacts threateningly toward others when corrected, especially by adults. His IEP indicates that authority figures should avoid close-ended questions with him because he will always say "No," but will de-escalate when given more than one choice.

On the bus home one day, the student begins drumming on the back of the seat and is occasionally hitting a boy in front of him. A yelling match ensues between the kids, and the bus driver stops the bus. The bus driver walks back and stands over the student ordering him to stop his behavior. The student, who is 200 lbs. and 5'10, stands up, pushes bus driver away, and yells, "No!" The bus driver contacts the school, the police arrive, and have to forcibly remove the student from the bus.

The parents are informed that their son is banned from the bus and are given a mileage reimbursement form to pay for transporting their son. The Parents want an aide to ride the bus like they used when he was younger. The Principal says that is not an option. The Parents file a complaint.

1. Bus driver should have been aware of communication norms on the IEP.
2. The bus is probably a related service, and expulsion from the bus is a placement change – requiring the IEP team to meet and discuss placement.
3. While not part of the case, the student had a BIP that was not followed on the bus.
4. The parent's request of an aide required the IEP team's consideration and written notice of refusal to implement was necessary.
5. Principal made a unilateral decision.

## Case 3

IEP teams in this district always include the Principal as the District Representative. Anytime there is an increased expense related to a recommendation by an IEP team, the Principal must bring the recommendation to the Superintendent. The Superintendent can make some decisions, but if the decision involves personnel changes or an expense over \$1000, he must bring the recommendation to the School Board for approval. The Board only meets once per month.

The IEP team in the previous case agrees that an aide should be placed on the bus. As the Board meeting was last week, the service won't start for a minimum of three weeks, *if* the Superintendent approves of the IEP team's recommendation and takes it the Board meeting.

1. The District representative must have the authority to make decisions on district resources.
2. The delay of three weeks before approval, and another 3 weeks to hire is not reasonable.
3. The school board is not a member of a student's IEP team and have no authority to override.

## Case 4

In a public charter school with a long waiting list, a 15 year old student is flunking out. He is on an IEP for SLD (Specific Learning Disability), and his file includes that he's been diagnosed with ADHD and OD. He cuts classes, usually in the afternoon, and subsequently is failing 4 of 7 classes. Additionally he has missed more classes than school policy allows.

The school policy also states that classes can only be repeated one time, and the student is failing three required classes for a second time. The student is no longer on track to graduate. The Director recommends to the Board of Trustees that this student should be expelled.

The Board meets and the student is expelled. The Parents are given paperwork for possibly enrolling the student in a virtual charter school. The Parents file a complaint.

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1. The skipping school is a behavioral issue for the IEP team to address.
2. The presence of ADHD and ODD in the student's file, even though he's SLD, suggests the district was aware that the student's disabilities may be contributing to his violation of school rules.
3. Suspensions over 10 cumulative days are considered a change of placement, requiring a Manifestation Determination Meeting.
4. Even if the student is suspended from the building, the district is responsible to make it possible for the student to receive special education and progress toward the IEP goals.

## Some Lessons Learned

- 👉 Parents have a right to meaningful participation.
- 👉 IEP Teams must be involved in placement determinations (the decision to suspend/expel is not the same as where the placement will be).
- 👉 A student cannot be expelled from special education, even if suspended/expelled from school.
- 👉 A district must provide a decision-maker at the IEP team meeting.
- 👉 All staff involved with a student must be aware of their individual responsibilities on the IEP.
- 👉 A student with or *suspected of having* a disability is afforded rights under IDEA when it comes to disciplinary actions.
- 👉 Students on IEPs have procedural safeguards that override school policies and school board decisions.



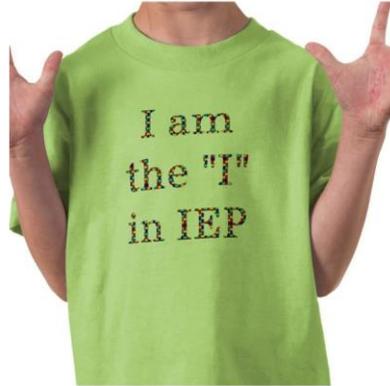
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## Balancing Tips



# 1. Focus on supporting the top rock.



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In this metaphor, the student is the top rock. That's the focus. There may be a rock in the lower layers named "The Dad" he may be difficult to work with. Still, it's about the top rock. We may have to prop up one side to keep the kiddo at the top.

Remember that an IEP is an INDIVIDUAL Educational Program, designed uniquely for that student by the IEP team. It's a red flag when we hear, "Well, all of our cognitively impaired students go to this program when they get to high school."

## 2. Encourage (don't just check off) participation.



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Parents are part of the team and teams will do well to bring them to the table and use their information. They know the child.

It is reasonable for parents to have access to information prior to meetings so they can come prepared to discuss and offer ideas. Sometimes a pre-meeting with the school psych to discuss testing would be a good use of time instead of having it all in the IEP team meeting.

### 3. Seek additional support.



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Districts and parents have our office to provide information and onsite support as needed. It's not a mark of a "bad" district.

Facilitation requests are made by districts nearly half of the time. We are here to help, so don't hesitate to call if needed.

## 4. Creativity is important, but don't ignore the laws of physics (or IDEA).



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We understand that everyone is doing more with less. The recent refocusing of the feds toward Results Driven Accountability is great and we're all working hard to improve results. That said, the feds haven't forgotten about compliance. The state still has to answer to Washington. But we're all in this together.. We're here to help you in your efforts to do improve results and be compliant with the IDEA.

Do call us. We really do have the cone of silence.

Questions?



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