A comparative study of the responses from OCR, SEA and LEA administrators on the effectiveness of mediation in resolving special education conflicts

Octavia W. Milton

ATLANTA UNIVERSITY

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A COMPARATIVE STUDY OF THE RESPONSES FROM OCR, SEA AND LEA ADMINISTRATORS ON THE EFFECTIVENESS OF MEDIATION IN RESOLVING SPECIAL EDUCATION CONFLICTS

A DISSERTATION
SUBMITTED TO THE FACULTY OF THE SCHOOL OF EDUCATION
ATLANTA UNIVERSITY IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF EDUCATION

BY
OCTAVIA W. MILTON

SCHOOL OF EDUCATION

ATLANTA UNIVERSITY
ATLANTA, GEORGIA
JULY, 1986
ABSTRACT

A COMPARATIVE STUDY OF THE RESPONSES FROM OCR, SEA AND LEA ADMINISTRATORS ON THE EFFECTIVENESS OF MEDIATION IN RESOLVING SPECIAL EDUCATION CONFLICTS

BY

OCTAVIA W. MILTON

Purpose

The purpose of the study was to determine the level of agreement between OCR regional directors, SEA directors and LEA directors on the effectiveness of mediation in resolving special education complaints. The specific problem was to determine the major factors contributing to the effectiveness of mediation as an approach to conflict resolution in special education.

Methods and Procedures

Two instruments were developed to collect data. Prior to administration to five OCR directors, 20 SEA directors and 65 LEA directors, the instruments were piloted on a group which included state consultants, LEA coordinators, LEA directors and a legal assistant. Four research questions were answered using descriptive and inferential statistics. A frequency distribution, along with percentages of data, was used to indicate the status of mediation as related to the mediator, reductions of hearings and hearing issues resolved. The chi-square test of significance was used to test the significance of data reported for large and small school systems.
Results

Mediation is used at the federal level and by a large percentage of local school systems. A small percentage of the SEA directors reported that mediation is a requirement of local school systems. There was disparity in responses of SEA and LEA directors on the length of time mediation has been required. Although both SEA and LEA directors reported a reduction in hearing, the LEA directors were more inclined to attribute the reduction to mediations. The issues of identification, evaluation, placement and related services can be resolved through mediation. The primary handicaps of learning disabilities, behavior disorders, and mentally handicapped appeared most frequently in mediations. A significant difference, in favor of large school systems, was indicated relative to the use of mediation. No significant difference was apparent between large and small school systems relative to the development of guidelines and the requirement of mediation.

Conclusions

The federal agency of OCR, state education agencies and school systems have made some efforts to include some form of mediation as part of their appeals process. The variables of issues and types of handicaps, while important for influencing the request for mediation, do not appear to be contributing factors for mediation effectiveness. Limited documentation was found at federal, state and local levels. Therefore, generalizations drawn from the study should be applied cautiously.
To the Committee on Graduate Study:

The attached dissertation: A Comparative Study of the Responses from OCR, SEA and LEA Administrators on the Effectiveness of Mediation in Resolving Special Education Conflicts has been approved by the School of Education in partial fulfillment of the requirements for the Doctor of Education degree and is recommended for acceptance.

(Signature)

Dean:

Date: July 17, 1986

FORM C-9C
DEDICATION

To Jimmy and Lynne
ACKNOWLEDGEMENTS

Many persons have contributed directly and indirectly to this study. Special gratitude is extended to the regional directors of the Office for Civil Rights and state and local educational agencies, without whose cooperation this effort could not have been undertaken. Appreciation is due, also, to Dr. Rollin Carter, Dissertation Chairman, who strengthened the investigation immeasurably from its initiation to completion with advice from his broad research experiences; Dr. Brenda Rogers and Dr. Charles Davis, Committee Members, for their guidance in the organization of the study; and Dr. Joyce F. Clarke and Mrs. Gail Jordan for their support throughout this project.

O. W. M.
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CHAPTER I

INTRODUCTION

Organizational conflict is experienced by educators more or less on a day-to-day basis as they perform their roles. Conflicts in organization come in great variety and surface at different levels. At the very basis of organizational conflict is the strategic choices administrators make in attempting to deal with conflicts.

Holding direct negotiations between members of a unit in conflict is one strategy in the literature for resolving disputes. Negotiations are conducted in the presence of third parties. "At least four categories of third parties can be identified: (1) allies, who seek the same ends as one party in the conflict and who will aid that party in its cause; (2) agents, who do not necessarily care about the cause, but who are willing to assist a party in exchange for a reward (such as lawyers, mercenaries, and brokers); (3) mediators, who, not wanting to aid either side, seek to effect an end to the conflict or at least certain manifestations of it; and (4) judges, who wish to settle the conflict according to their own criteria which may bear
little relationship to the ends sought by either party."¹ This research speaks to mediation as a strategy for resolving conflicts between parents and educators of the handicapped. Mediation at the federal, state and local education levels is examined in relation to P.L. 94-142 and Section 504.

P.L. 94-142

With the inception of P.L. 94-142, handicapped children and their parents were afforded the right to due process of law. P.L. 94-142 (The Education for All Handicapped Children Act) provides for an impartial hearing process to resolve conflicts regarding the evaluation, identification, placement and free appropriate public education of all handicapped or suspected handicapped children within the ages of 3 to 21 years. The hearing process and its legal ramifications are new to most educators.

A special education due process hearing is a mechanism used by parents or educators to challenge decisions related to the education of handicapped children. The hearing is conducted by an impartial officer. Depending on state regulations, the appointment of a hearing officer might be made at either the state or local level.

A due process hearing is a formal procedure that is expensive financially and expensive in terms of time. More

specifically, it has been found that a due process hearing:
"(1) requires a great financial and emotional cost of the participants; (2) is too abstract and does not provide the hearing officer with a complete picture of the child's needs or of the school system's ability to implement a plan; (3) tends to be overly legalistic and narrow in focus, obscuring the goal of an educational placement which is in the best interest of the child; and (4) tends to exclude poor and minority parents because of lack of prehearing outreach and communication and because of the intimidating nature of the formal hearing."²

In an effort to reduce the adversarial and costly nature of formal due process hearings, some states have attempted to initiate mediation as a means of resolving complaints from parents. This is in keeping with a comment to P.L. 94-142 which states 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 the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State Educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads

to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's right under this subpart. 3

Several authors advocate that educators at both the state and local levels should try to resolve conflicts and disagreements through mediation. According to Long and Silverstein, "OCR and OSE interpretation explained that: (1) mediation cannot be required; (2) mediation cannot be prolonged to delay resolution of the disagreement; and (3) mediation cannot extend the hearing decision beyond the 45 day statutory decision deadline unless a continuance is granted by the hearing examiner." 4

There are several advantages to using the mediation process as an adjunct to a due process hearing. Pullin suggests that "Attempts should always be made to resolve informally complaints against a local educational agency or a state department of education. . . . Attempts at informal resolution should begin as soon as a problem becomes evident


so that hostility and ill-will between the parties will not escalate."\(^5\)

Other advocates for mediation state that: "(1) it is slower and the fact finding is more complete; (2) the mediator, more easily than a hearing officer, can reduce anxiety and increase parent involvement; (3) the mediator can suggest new program ideas to schools, while the hearing officer is less able to do this because of the requirement of 'impartiality,' which, while important in the mediation process, is not as heavily stressed; (4) mediated agreements are 'better for the child' because they are more complete than hearing decisions which tend to be more 'skeletal' and abstract; (5) local school systems are more likely to implement a decision reached through mediation than one forced upon them by the hearing process; (6) the issues are clearer earlier than in the hearing process; and (7) mediators are more 'successful' in resolving disputes than hearing officers, and, therefore, have more job satisfaction than hearing officers."\(^6\)

While every state provides for the due process hearing, there is no documentation of the provision of mediation in every state. However, where mediation has been used, it has


been effective. According to the U.S. Department of Education: "States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. . . . In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress." States that have implemented mediation procedures refer to them as "mediation, negotiation, conciliation, problem solving, administrative review and prehearings."  

**Section 504**

Section 504, Nondiscrimination Under Federal Grants, prohibits discrimination against qualified handicapped individuals in federally assisted programs or activities solely on the basis of handicap. Section 504 is divided into seven subparts. Subpart D is concerned with preschool, elementary and secondary education. The provisions of Subpart D are closely coordinated with those of P.L. 94-142, the Education for All Handicapped Children Act. (See Appendix 1.) Both Section 504 and P.L. 94-142 require that recipients operating public education programs provide a free appropriate education.

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Specifically, Subpart D of Section 504 regulation requires that recipients of Department of Health, Education and Welfare financial assistance that operate public elementary and secondary education programs must provide a free appropriate public education to each qualified handicapped individual who is in the recipient's jurisdiction, regardless of the nature or severity of the individual's handicap. Section 504 represents the first Federal civil rights law protecting the rights of handicapped individuals. It not only establishes a mandate to end discrimination, but requires that handicapped individuals be brought into the mainstream of American society.  

The Office for Civil Rights (OCR) has the responsibility for implementing and enforcing Section 504. While the main office is in Washington, there are ten regional offices that work with designated states. These regions conduct complaint investigation and compliance reviews.

Early Complaint Resolution (ECR) is a procedure whereby the Office for Civil Rights acts as a mediator in an attempt to settle the differences between the complainant and the recipient prior to the start of a formal investigation. Participation in ECR is voluntary. If it is unsuccessful,

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the Office for Civil Rights conducts an investigation of the complaint under normal time frames.  

OCR began using mediation as a method of resolving complaints in 1981. The procedures were implemented after regional personnel were provided operating guidelines and mediation training. OCR distinguishes the procedures of mediation from its procedures of negotiation. Mediation is used to resolve complaints prior to the initiation of an investigation. Negotiation is used by OCR subsequent to an investigation. 

In P.L. 94-142 and Section 504, it appears that a third party in the management of a conflict situation is used. The mediator is not empowered to resolve the conflict. Rather, the mediator serves to clarify the positions of both parties and suggests compromises. 

Evolution of the study

The writer's interest in the subject of mediation developed from work in special education and from observations of cases and issues of conflict between parents and the school system. Even though P.L. 94-142 provides for mediation, research data on the efficacy of the approach are limited. It is hoped that this study will help to fill the

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10Frederick T. Cioffi, Personal Letter.

11Ibid.
gap in knowledge about mediations and due process hearings in special education.

**Purpose of the study**

The purpose of the study was to determine the level of agreement between OCR Regional Directors, SEA Directors and LEA Directors on the effectiveness of mediation in resolving special education complaints.

**Statement of the problem**

What are the major factors contributing to the effectiveness of mediation as an approach to conflict resolution in special education?

**Research questions**

The specific questions to be answered were:

1. How widespread nationally is mediation used within the hearing process?

2. What have been the major effects of mediation on the due process hearing procedure?

3. What kinds of disputes are resolved by mediation?

4. Does mediation work more effectively in large or small school systems?

**Significance of the study**

There is a paucity of research on the effectiveness of mediation even though the literature speaks to its effectiveness. Few researchers have examined the status and use. This study will contribute to the research on conflict resolutions in educational settings. It will provide a
description of the mediation process as described by administrators on the federal, state and local levels.

**Definition of terms**

The listed terms are considered significant and are defined as follows:

1. A due process hearing is a formal meeting conducted by an impartial hearing officer to resolve differences between parents and educators.

2. A primary handicap is the handicap that presents the greatest barrier to educational benefits.

3. LEA refers to the local education agency (school).

4. Mediation is an informal conference held with parents and school personnel for the purpose of settling any differences regarding handicapped children before a due process hearing.

5. OCR refers to the Office of Civil Rights.

6. P.L. 94-142 is the Education for All Handicapped Children Act which ensures a free appropriate education for handicapped children. The Act provides procedural due process protections in identification, evaluation and placement, rights to hearings and appeals, and confidentiality of records.

7. SEA refers to the state education agency (State Department of Education).

8. Section 504 (Subpart D) is concerned with preschool, elementary, and secondary education, and requires
that public education programs provide a free appropriate education to handicapped children. Subpart D sets forth due process procedures for resolving disputes over placement of students.

9. The mediator is the person who conducts the mediation.

10. The term "large school systems" refers to those school systems with student enrollments of 15,000 or more.

11. The term "small school systems" refers to school systems with student enrollment of 15,000 or less.

**Limitations of the study**

The study was restricted to Regional Directors of the Office of Civil Rights, at the federal level and Directors of special education programs at state and local levels. The time period consisted of four school years. Because the investigation was of national scope, the writer's ability to follow-up and corroborate the survey data was limited. Further, limited responses from the regions of OCR make interpretation very soft. Generalizations drawn from the study should be applied cautiously.

**Summary**

This chapter introduced and defined the problem of the study which states, "What are the major factors contributing to the effectiveness of mediation as an approach to conflict resolution in special education?" The research questions were indicated: (1) How widespread nationally is mediation
used within the hearing process? (2) What have been the major effects of mediation on the due process hearing procedure? (3) What kinds of disputes are resolved by mediation? (4) Does mediation work more effectively in large or small school systems? The significance of the study was discussed. The definitions of the terms used, and the limitations of the study were stated.
CHAPTER II
REVIEW OF RELATED LITERATURE

This study was designed to determine the level of agreement between OCR Regional Directors, SEA Directors and LEA Directors on the effectiveness of mediation in resolving special education complaints. The purpose of this chapter is to bring together existing knowledge of the status of mediation as a process of conflict resolution. The review will be organized in terms of the theoretical framework, national trends, effectiveness of mediations, kinds of issues and organizational size.

Theoretical framework

The research problem has its theoretical base within the framework of conflict theory. Psychologists, sociologists and educators alike have sought to define conflict. According to Allan C. Tilly, conflict is "a process which takes place between two or more parties." Tilly further defines parties as individuals, groups or organizations.12

While several authors have developed models of the conflict process, conflict resolution is often one vital step in the procedure. In conflict resolution there is an attempt to end the conflict. "A conflict is viewed as resolved when all opposing parties are satisfied with the outcome. A conflict remains unresolved as long as any party is dissatisfied with the outcome." More specifically, conflict resolution indicates "the termination of manifest conflict between individuals or groups." Boulding, Deutsch and Rummel have differentiated between the kinds of conflict. Boulding has defined conflict as "a situation of competition in which the parties are aware of the incompatibility of potential future positions and in which each party wishes to occupy a position which is incompatible with the wishes of the other." According to his theory, conflicts are spawned, exist for a time, and eventually cease because of their own inherent tendencies, without conflict resolution interventions such as mediation.

Dollard and Miller conceptualized three categories of conflicts: approach/approach, approach/avoidance, avoidance/avoidance. "Approach/approach refers to conflict in which

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14 Tilley, Ibid., p. 21.

both options for resolving a situation are equally attractive but mutually exclusive--the person can have only one but wants both. Approach/avoidance refers to conflicts in which the person desires an option but must not have it for equally strong reasons. . . . Avoidance/avoidance conflicts are caused by disliking both of two options yet having to select one of them. . . . 16

Deutsch analyzed the nature of conflict also. Describing overt or expressed conflict as "manifest" and implicit or hidden conflict as "underlying," Deutsch provided a conceptualization which has been useful to mediators who must sort out issues to resolve complaints.

Rummel has been credited with setting the conceptual stage for conflict resolution processes such as mediation. Rummel describes conflict as having five stages which are: (1) the latent conflict; (2) the initiation of conflict; (3) the balancing of power; (4) the balance of power; and (5) the disruption of equilibrium.18 Rummel and Deutsch have offered conceptualizations of conflict that can be useful in mediation. Their definitions of conflict and scheme of the conflict process have enhanced the study of conflict as it

16Ibid., pp. 23.

17Polberg and Taylor, Ibid., p. 22.

18Ibid.
relates to the mediation process.

Folbert and Taylor point out that there are five models used in conflict resolution and management (see Table 1). They are (1) adjudication and arbitration, (2) counseling, (3) negotiating, (4) problem solving and (5) mediation. Mediation is depicted as a seven-stage process which includes:

1. Introduction—creating trust and structure
2. Fact finding and isolation of issues
3. Creation of options and alternatives
4. Negotiation and decision making
5. Clarification and writing a plan
6. Legal review and processing
7. Implementation, review, and revision

In comparing the seven-stage mediation process with counseling/therapy and the process of adjudication, Folberg and Taylor looked at the basic assumptions, clients served, customary objectives and strategies. (see Table 2). They state, "Mediators can facilitate private ordering, or negotiated outcomes, between disputants by helping them get information on applicable legal norms and principles, as well as the probable outcome in court if the case is litigated. Mediation can also educate the participant's about each other's needs and provide a personalized model for dispute

\[19\text{Ibid.}, \text{p. 32.}\]
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<th>Process Sequence</th>
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<td>Adjudication and</td>
<td>Judge or arbitrator; higher authority</td>
<td>1. Listens to each side's presentation.</td>
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<td>arbitration</td>
<td></td>
<td>2. Decides option based on predetermined criteria (legislation, precedent, fairness, etc.).</td>
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<tr>
<td>Counseling</td>
<td>Counselor or therapist; manager</td>
<td>1. Gains rapport.</td>
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<td></td>
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<td>2. Assesses the real problems.</td>
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<td></td>
<td></td>
<td>3. Applies intervention strategy.</td>
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<td>Negotiation</td>
<td>Lawyer or agent; parties themselves</td>
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<td>2. Argumentation.</td>
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<td></td>
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<td>3. Crises.</td>
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<td></td>
<td>4. Agreement or final breakdown.</td>
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<td>Problem Solving</td>
<td>Individual or delegated official of an organization</td>
<td>1. Identifies the problem.</td>
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<td>2. Communicates with appropriate people.</td>
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<td></td>
<td></td>
<td>3. Develops alternatives.</td>
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<td></td>
<td></td>
<td>4. Decides on alternatives</td>
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<td></td>
<td></td>
<td>5. Carries out action.</td>
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<td></td>
<td></td>
<td>6. Monitors to ensure completion.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7. Evaluates effectiveness</td>
</tr>
<tr>
<td>Mediation</td>
<td>Mediator; selected third-party facilitator</td>
<td>1. Introduces, structures gains rapport.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Finds out facts, isolates issues.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Helps create alternatives.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Guides negotiation and decision making.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Clarifies/writes an agreement or plan.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6. Provides for legal review and processing.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7. Available for followup, review, revision.</td>
</tr>
</tbody>
</table>

Source: Jay Folberg and Alison Taylor, Ibid., p. 27.
# TABLE 2

COMPARISON OF THREE CONFLICT RESOLUTION SERVICES.

<table>
<thead>
<tr>
<th></th>
<th>Legal Services</th>
<th>Mediation</th>
<th>Counseling/Therapy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Assumption</td>
<td>Legal representaives negotiate or substantiate the validity of their client's interests before a judge or hearings officer with power to decide.</td>
<td>Cooperative techniques of conflict resolution and guided negotiation resulting in the maximum degree of individualization and self-determination.</td>
<td>Diagnosis and treatment by a therapeutic professional; variations of the medical model are used.</td>
</tr>
<tr>
<td>Clients served</td>
<td>Individual or group with no conflicting interests.</td>
<td>All parties in conflict.</td>
<td>Spouses, parents and children, extended family members, small groups.</td>
</tr>
<tr>
<td>Customary objectives</td>
<td>Maximizing and protection of client's interests.</td>
<td>Creation and selection of client options, continuing cooperation and independence from professional help.</td>
<td>Rehabilitation and conciliation of individuals and family or group relationships.</td>
</tr>
<tr>
<td>Strategies</td>
<td>Involve negotiation strategies, legal information, advice on certain areas of finance.</td>
<td>Interpersonal communication between clients; suggesting alternatives; developing a balance of power and assuring minimal losses to all parties.</td>
<td>Development of treatment modalities such as individual therapy, group therapy, family therapy.</td>
</tr>
</tbody>
</table>

Source: Folberg and Taylor, Ibid., 34.
resolution both now and in the future. In such situations, mediation can teach the participants to work together, isolate the crucial issues, and realize that cooperation can be to their mutual advantage."20

**National trends**

Only a few studies appear to have been conducted that are directly related to the mediation process in special education. Yoshida suggests the following variables for defining a research program to create more options for parent involvement:

First, four variables that can characterize mediation are (a) impartiality, the extent to which the mediator has no vested interests in either party that may affect his/her behavior; (b) formality, the extent to which the mediator must follow defined procedures; (c) accessibility, the extent to which the mediator is on call to settle disagreements; and (d) proximity, the extent to which the mediator is located near client school districts. . . . Second, the success of approaches may depend on whether appropriate training programs can be identified. . . . Third, the outcomes of mediation must be defined.21

Although Massachusetts is cited as being "the first state to incorporate mediation into its due process system in special education,"22 due process procedures for Idaho

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20Ibid., p. 36.

21Yoshida, Ibid.

provided for a mediator to preside at an informal hearing in 1975. The mediator assured that proper procedures were followed and that the rights of the parties were protected. The guidelines prohibited personnel from the LEA and SEA from serving as mediator.23

Kotin and Eager in researching historical development of due process in special education examined general trends developing within the states. Among the issues discussed was the mediational approach as a more informal alternative mode. A review of the charts in the analysis indicates that three of eight states reporting prehearing conferences use mediation in order to resolve conflicts.24

Budoff, Mitchell and Kotin studied the operation of the due process system in Massachusetts to determine if the procedural due process system worked as intended. While the lawyers interviewed agreed that due process was a way to make schools responsive to parents, they "uniformly agreed that... active negotiation process allows the outstanding issues to be clarified and most often resolved."25 Further,


24 Kotin, Ibid.

the attorneys felt that negotiations could effectively reduce the number of issues in unresolved cases and the number of cases that actually reach hearing.

Budoff, Orenstein and Abramson in examining the issues raised by parents in due process appeals in Massachusetts during the first three years following implementation of Chapter 766, found 13 of 49 cases indicated that there was room for negotiation. . . . "and that a better process of communication between parents and school personnel at an earlier point might have averted some of these appeals."  

Mediation in Georgia

The offering of mediation by the local school systems in Georgia has been mandated by the State Board of Education since 1980. Acceptance of mediation is totally voluntary by parents. The Annual Program Plan for FY'80 stipulated the following regulations regarding mediation as a part of the hearing process:

1. Local Mediation
   a. Purpose
      
      Each local school system shall provide opportunity within the local system for concerned parties to mediate their differences in regard to the identifica-

tion, evaluation, placement and provision of a free appropriate public education to handicapped children. The parent is not required to participate in mediation but may decide to bypass this process and the opportunity to meet informally to determine the needs of the handicapped child. Mediation shall be conducted at a time and place reasonably convenient to the parents and child involved.27

In addition to these guidelines, LEA personnel are trained by the staff of the Neighborhood Justice Center of Atlanta. The training includes a 20 hour workshop which focuses on helping participants become skillful in the process of mediation. Each participant receives a training manual and, if the 20 hours are successfully completed, a certificate. Because of the training and certification of mediation in addition to the mandated requirement, Georgia is looked upon as an exemplary State in resolving complaints between school systems and parents.

It appears that no one model exists for the resolution of conflicts before one proceeds to the due process hearing.

Moore and Gygi reported a variety of models used by seven states to encourage mediation conferences as early as 1978. The seven states are Utah, Massachusetts, Tennessee, New Jersey, Minnesota, Connecticut and Ohio.

In Utah, the SEA recommends that each district exhaust every avenue for reaching resolution at the lowest administrative level possible; i.e., between the parents and teacher, then between the parents and principal, etc. In Massachusetts, a prehearing conference is arranged by the regional office. Tennessee reported a "Right to an Education Officer" who initiates conferences for trying to reach a solution between the parties and circumvent a full hearing. Child Study Teams in New Jersey work with parents and involved LEA personnel to solve disputes. The team, which includes SEA and LEA personnel, may hold a mediation conference before or after a request for a hearing. Minnesota is reported to conduct conciliation conferences which are intended to encourage parents and district officials to attempt to resolve their differences without going to a hearing. Connecticut offers mediation to enable the parties to present their respective positions with the idea that mutual understanding and a solution may be reached to the differing viewpoints. Ohio has an Assistant Director for Procedural Safeguards and Due Process who holds a prehearing conference and tries to work out problems without resorting to a hearing. In addition, the State hires an ombudsman who takes complaints to the state education office and tries to resolve problems before they escalate into major issues.28

McCoy and Glazzard describe an interdisciplinary approach to mediating disputes. Team members from an outside agency represent the disciplines of psychology, special

education, social work, audiology, speech pathology, occupational therapy and pediatric neurology. This model appears unique in that it has assessment and program development components. Criteria for the acceptance of cases include the stipulation that "(a) input from at least three disciplines is necessary to adequately answer the referral problem, (b) the school has obviously exhausted its resources in attempting to educate the child, or (c) parents and school officials are in such strong disagreement that they cannot continue to work on behalf of the child."\(^{29}\)

In another mediation model, disputes are resolved by an ombudsman. Smith and Podemski state that "the due process hearing differs from role negotiation in that it has built in cycles which allows for parties to prepare for changes, and to explore alternatives."\(^{30}\)

Payne examined the concept of ombudsman for certain essential characteristics that might be considered for education. The following attributes were indicated for the special education teacher as ombudsman:

1. The ombudsman is external to the system.
2. The ombudsman is impartial in his investigation.


3. The ombudsman's only real power is his prestige and the related force of public opinion.

4. The ombudsman's responsibility does not include solving all the problems between citizens and state.

5. The ombudsman can and does make policy recommendations as well as case recommendations.\textsuperscript{31}

While the process of resolving conflicts often requires a third party, the other parties involved must be willing to try to work out a solution to the problem. Schmidt and Tannebaum advocate the use of third party interventions to help depersonalize interaction:

1. A third party can welcome the existence of differences and stress their value in suggesting a greater variety of possible solutions to the conflict.

2. A third party can listen with understanding rather than evaluation.

3. By listening carefully to the discussion, a third party can clarify the nature of the issue and make evident whether it is based on different perceptions of facts, methods, values or goals.

4. The third party can recognize and accept such

feelings as fear, jealousy, anger, or anxiety without judgment.

5. The third party can suggest procedures and ground rules for resolving the difference.

6. The third party can help maintain relationships between the disputing parties.\(^\text{32}\)

Whether the third party is called mediator, ombudsman or negotiator, all are viewed as effective tools to be used in conflict resolution.

**Effectiveness of mediation**

John Fred Ewold of Hofstra University who investigated how the Suffolk County Board of Cooperative Educational Services (BOCES) have complied with P.L. 94-142, found that issues that could not be mediated and settled at the BOCES level were referred to the local school district. Ewold noted that an effort was made to prevent misunderstandings from reaching an impartial hearing.\(^\text{33}\)

Bonnie Baron Strickland, in her dissertation observed that parents reported being treated more fairly after the hearing than before the hearing. Both parents and school representatives reported significantly less confidence in the

\(^{32}\text{Likert, Ibid., p. 168.}\)

due process hearing as a means of settling disputes.  

One of the recommendations made by Pamela Chow Dong in her investigation was that other aspects of the hearing process such as effectiveness of the informal and mediation conference should be examined. The writer's study was proposed to respond to Dong's recommendation.

Brady suggested in an analysis of New Jersey's special education hearing decisions that:

Although parents are usually the petitioners, when an LEA petitions it is likely to prevail. One probability is that the pursuit of a desired outcome is more emotionally loaded for parents and they therefore need a final hearing decision before accepting something they do not prefer. Conversely, the LEAs who are more conservative about committing the required time and money to a hearing, seem more amenable to settling at an earlier level of intervention. It is very important therefore that a vital mediation system be maintained.

Leaders are advised by Smith and Podemski that "if you work in a state that does not require mediation, but if you

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think it would help, a variety of individuals, such as school personnel from a neighboring district or university professors, might be available to mediate a disagreement at little or no cost.\textsuperscript{37} One question of the present study researched the variety of persons used by school systems as mediators.

These earlier investigations with the exception of Tom E. C. Smith confined their investigation to either a state or district and were primarily interested in the due process hearing. Even though the researchers were not studying the effects or status of mediation as a part of the hearing process, the researchers observed that mediation was either utilized, recommended or needed.

A comparison of opinions of State Directors of Special Education and leaders of statewide parent groups for the handicapped on state and local implementation of procedural safeguards revealed that "State Directors and Parent Leaders were very positive in their opinions about mediation as a preferred practice, believing that the process consumes less time and fiscal resources than due process hearings. Parent Leaders, however, were not sure if mediation would become more widely used in the future, and were divided in their

\textsuperscript{37}Smith and Podemski, p. 22.
opinions of the opportunities provided by LEAs for mediation."38 The present research should point up actual differences among states and LEAs in the opportunities for mediation.

Nebgen states that, "the use of a third party in the management of a conflict situation can be very effective, if both sides in the conflict feel that the third party is legitimate and if both sides have participated in his/her selection. . . . Conflict caused by communication problems are amenable to management by a third party, as the mediator or arbitrator can help to articulate each group's position."39

Sanger and Nace studied the question, "Can disputes between parents and school administrators over special education plans be mediated successfully?" In examining processes in two states, Massachusetts and California, the researchers answered, "yes." Further, Sanger and Nace attributed the success of mediation in Massachusetts and California to "features that may or may not be present


Kinds of issues

According to Richard Estrand, "any dispute concerning the education of a handicapped student can be a proper subject for mediation. . . . However, not all issues or disputes are proper subjects for mediation since mediation implies a willingness, although not an obligation, to accept a mediation decision."  

Gloria T. Symington, Mediation Consultant, Connecticut State Department of Education, suggests that some issues are more responsive to mediation techniques than others are. Programming within the district, dual enrollment, provision of related services, evaluation conflicts and placement within the district are problems that may be resolved by a mediator. On the other hand, Symington suggests that requests for out-of-district placement, disagreement between professional evaluators and interagency disputes are often issues that are less responsive to mediation.  

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40 Sanger and Nace, p. 15.  
Organizational size

According to Ronald G. Corwin, "Organizational arrangements are often the cause of a conflict situation. The size of the organization... correlates with the amount of conflict; the larger the school, the greater the number of conflict intensity."43

Tom E. C. Smith in investigating the status of due process hearings in fifty states and the District of Columbia observed that while his data appeared to support the conclusion that the more populous states conduct more hearings, the data did not indicate whether states used a mediation step between the request for hearing and the actual hearing. Smith concluded that, "It might be that states with low numbers of hearings use mediation to significantly reduce numbers of hearings."44 Smith's conclusion is related to the proposed study's question of the effects of mediation on the due process as related to large versus small school systems. Further, his conclusion supports the need for the proposed investigation.

Summary

The review of literature was organized in terms of the theoretical framework, national trends, effectiveness of

43 Nebgen, p. 25.

mediation, kinds of issues and organizational size. The review of literature indicates the need for continued research to determine the extent to which mediation is used nationally. It is evident from the literature that only a few investigations have examined the status of mediation as an educational process. Little documentation is available on the kinds of issues that are resolved in mediation. It can be concluded that while increasingly more states are beginning to use mediation as a strategy for resolving complaints, there is a need for research on procedures and other variables.
CHAPTER III
PROCEDURES AND METHODOLOGY

The purpose of this chapter is to set forth the steps followed in the data gathering procedures. The sections include Research Design, The Subjects, Instrumentation, Pre-investigative Procedures, and Summary.

**Research design**

The research is a descriptive study in which selected phenomena has been investigated. Descriptive research which involves the use of correlations, surveys and direct observation techniques, etc., is designed to describe existing conditions without their being influenced by the investigator. This investigation describes the status of mediation nationally, and, whenever possible, draws valid conclusions from the facts discovered.

The research is a survey. The survey is a type of descriptive research in which information is obtained from a sample of respondents in order to test hypotheses concerning the status of an educational problem. Survey respondents answer the same questions so that incidence and distribution of characteristics can be studied. The systematic data collected from each respondent allows the exploration of
relationships among the measured variables.44

The survey research has an ex post facto design. Kerlinger defines ex post facto as "that research in which the researcher starts with the observation of a dependent variable or variables." He then studies the independent variables in retrospect for their possible relations to, and effects on, the dependent variable or variables.45 Ex post facto research is sometimes referred to as the causal-comparative method.46

In this study, the researcher observed the dependent variables, which were the status and effectiveness of mediations. The researcher then looked for possible causes for the independent variables that were related to or contributed to the effectiveness of mediations. The independent variables in the study were the federal, state and local standards, the issues of the mediation, the types of handicaps involved, and the size of the school district.


The Subjects

The population consisted of three different types of subjects. The first group was ten Regional Directors of the Office for Civil Rights. The Office for Civil Rights is responsible for protecting individuals from discriminatory practices in employment and educational opportunities and in accessibility to federally supported programs. In reference to Section 504, the Directors ensure that testing, evaluation and placement procedures required by the regulation are carried out, and that school systems provide an adequate opportunity for parents to challenge and seek review of these critical decisions.

The second group of subjects was twenty State Education Agency (SEA) Directors of Special Education. The twenty SEA directors were randomly selected to represent two states from each of the ten regions of the Office for Civil Rights. SEA directors are responsible for the planning and development of standards, policies and regulations in State Departments of Education.

The third group consisted of eighty Local Education Agency (LEA) Directors of Special Education. This group included two large and two small school systems from each of the twenty states. LEA directors are responsible for the planning, development and implementation of special education programs for local school systems. The three groups were surveyed to determine their level of agreement on factors that might contribute to the effectiveness of mediation.
**Instrumentation**

The instruments used in collecting data for the study were two questionnaires developed by the researcher in 1985. The questionnaires (appended) represented the third revision of the instrument. Instrument I was the MSSOS and instrument II was the MSSL.

The Mediation Status Survey for Office for Civil Rights and State Education Agencies (MSSOS) was sent to regional directors of the Office for Civil Rights and directors of special education in State Departments of Education. The Mediation Status Survey for Local Education Agencies (MSSL) was sent to directors of special education in local school systems. All of the items were the same on the two questionnaires except two which dealt with school size and handicapped enrollment. The two instruments were necessary because of the manner in which each agency functions. The Office for Civil Rights and the State Department are regulatory organizations which develop standards and guidelines. Local education agencies follow the standards and implement the guidelines.

During the initial stage of the proposal development, a short questionnaire consisting of four questions was sent to ten school systems to see if records were kept on mediation procedures. Eight school systems responded, indicating that mediation is used in the school system and some documentation is kept. The ten school systems were randomly selected from the membership of the Council of Great City Schools.
The Council of the Great City Schools is a non-profit educational organization representing thirty-five of the largest urban school systems in the country. Membership is limited to urban public school systems which have enrollments of over 70,000 or are located in cities with populations of over 300,000 and urban characteristics. The Council's purpose is to promote the improvement of education in the Great City Schools through research, legislative advocacy and other appropriate activities. For over two decades, the Council has been in the vanguard of urban education advocating the cause of urban school systems.

Eight of the ten school systems responded to the questionnaire. They were Boston, Cleveland, Tulsa, Nashville, Minneapolis, Chicago, Detroit, and Memphis. These school systems indicated that mediation is used and some documentation is kept. Dallas and Dade County did not respond although a second contact was made.

The questionnaire was revised, expanded and disseminated to twelve administrators of special education in the metro Atlanta area for their critical reactions. The group included state consultants, LEA coordinators, LEA directors, and a legal assistant from a school attorney's office. This group with the exception of the legal assistant is a part of the Metro Director's Consortium which includes special education administrators from county and city school systems in the metro Atlanta area. The group meets once a
month with a consultant from the State Department to discuss and resolve common problems and to receive directions and clarification from the State Department.

Persons included in the initial survey were from the Fulton, Atlanta, Buford, Cobb, Clayton, Decatur, DeKalb, Douglas, Gwinnett, Marietta and Rockdale school systems.

A letter (appended) was written to accompany the questionnaire and both were hand delivered to the State Department. The questionnaire and letter were mailed to the other participants with a stamped, self-addressed return envelope. The respondents were asked to review the questionnaire (1) to see if questions are clear, (2) to suggest questions which should be deleted, added or modified, and (3) to comment on the format and/or sequence. Of twelve questionnaires disseminated, nine (87%) were returned. The questionnaire was then revised based on input deemed appropriate.

After revising the instrument again, four coordinators who had gone through mediation training and had knowledge of the mediation process were asked to complete it. This procedure enabled the writer to catch some unforeseen problems and make necessary changes that are incorporated into the present form. The questionnaire was constructed to achieve content validity. Content validity is defined as the extent to which the instrument measures the content and
changes under consideration. More specifically, content validity is concerned with the extent to which the text (or questionnaire) items actually do function with maximum effectiveness. A matrix of the questionnaire in terms of the independent variables and dependent variables is appended.

A pre-survey letter was written to State Directors of Special Education to determine the participation of the group. Due to the nature of the study, only the State Directors were surveyed. The questionnaire was accompanied by a brief letter of transmittal and explanation requesting the respondents aid in the study and outlining the purpose and scope of the research. A self-addressed, stamped return envelope was enclosed. Positive responses were received from Alabama, Alaska, Arizona, California, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New York, Ohio, Rhode Island, South Dakota, Virginia, and West Virginia. A follow-up of the pre-survey letter was made.

The MSSOS questionnaire was mailed to directors of special education at the state level and to regional directors of OCR. This was followed by the mailing of the MSSL to directors of special education in LEA's. A

follow-up of the mailings was made at a six week interval two times. Responses were recorded as questionnaires were returned.

**Analysis of the data**

The returns for the questionnaires were as follows: 33% for OCR Directors, 100% for SEA Directors and 81% for LEA Directors. Although only three regional directors returned the questionnaire, the responses included data for several states, and represented a wide geographical region. The regions and the represented states are Region II which includes New York, New Jersey, Puerto Rico, Virgin Islands; Region VII which includes Iowa, Nebraska, Missouri, Kansas; and Region VIII which includes Montana, Colorado, Wyoming, South Dakota, North Dakota, and Utah.

Descriptive and nonparametric statistics were used to analyze the data. A frequency distribution, along with percentages of data, was used to indicate the status of mediation as related to the mediator, reductions of hearings and hearing issues resolved. The chi-square test of significance was used to test the significance of data reported for large school systems and small school systems on the status of mediation.

**Summary**

The descriptive survey method was used in this research. The data was collected from returns of questionnaires developed by the researcher. The
questionnaires were the Mediation Status Survey for Office for Civil Rights and State Education Agencies (MSSOS) and the Mediation Status Survey for Local Education Agencies (MSSL). The subjects were three Regional Directors of the Office for Civil Rights, twenty State Education Agency Directors of Special Education and sixty-five Local Education Agency Directors of Special Education. The dependent variables in the study were the status and effectiveness of mediations. The independent variables were the federal, state and local standards, the issues of the mediations, the types of handicaps involved and the size of the school district. Descriptive and nonparametric statistics were used to analyze the data.
CHAPTER IV
PRESENTATION AND ANALYSIS OF DATA

The purpose of this chapter is to present the findings and analyses for the study's four research questions: (1) How widespread nationally is mediation used? (2) What have been the effects of mediation on the hearing process? (3) What kinds of disputes are resolved by mediation? and, (4) Does mediation work more effectively in large or small school systems?

There were a total of 88 subjects in the study. The subjects were 3 regional directors of OCR, 20 state directors of special education and 65 local education directors of special education. Responses were received from subjects relative to the status of mediation in resolving special education conflicts. Additionally, independent variables related to the size of the school district, issues of mediations, and types of handicaps associated with mediation issues were evaluated as possible factors of mediation effectiveness.

Mediation is used by the Office of Civil Rights at the federal level to settle the differences between parents or advocates and education agencies prior to the start of a formal investigation of discrimination. The parties, with
OCR's help, attempt to mediate their differences. At the state level, mediation may be encouraged through policy or regulation for local schools to implement. At local levels, mediation is used as an intervening step before proceeding to a due process hearing.

Two questionnaires were used in the study: The Mediation Status Survey for OCR/SEA (MSSOS) and The Mediation Status Survey for LEA (MSSL). Items 1-11 were the same on both questionnaires. Additional items, 12 and 13, were on The Mediation Status Survey for LEA. The role of the participating agencies in terms of regulatory functions and implementation made the item differential necessary.

The questionnaire items which relate to each of the research questions are as follows:

1. How widespread nationally is mediation used? (MSSOS and MSSL - Items 1, 2, 3, 4, 5, 7)

2. What have been the major effects of mediation on the hearing process? (MSSOS and MSSL - Item 6)

3. What kinds of disputes are resolved by mediation? (MSSOS and MSSL - Items 8, 9, 10, 11)

4. Does mediation work more effectively in large or small school systems? (MSSL - Items 12, 13)

Descriptive statistics were used to describe and summarize the responses from the subjects. Frequency
distributions were used to indicate the number of times each response occurred. The proportion of subjects who responded in each group were compared by using percentages. Descriptive statistics were used to analyze data for research questions 1-3.

Nonparametric statistics were used to compare the responses of the large school systems and the small school systems. Chi-square was employed to indicate the test for differences between the school systems in terms of size. Nonparametric statistics along with descriptive statistics, were used to analyze data for research question 4.

The use of mediation

Research question 1 asked, "How widespread nationally is mediation used?" Items 1, 2, 3, and 5 of the MSSOC and MSSL addressed the use and requirement of mediation.

TABLE 3

THE USE AND REQUIREMENT OF MEDIATION
BY OCR'S, SEA'S AND LEA'S

<table>
<thead>
<tr>
<th>Mediation</th>
<th>OCR</th>
<th>SEA</th>
<th>LEA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Use</td>
<td>3(100%)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Requirement</td>
<td>1(33%)</td>
<td>2(66%)</td>
<td>4(20%)</td>
</tr>
<tr>
<td>Option</td>
<td>3(100%)</td>
<td>0</td>
<td>18(90%)</td>
</tr>
<tr>
<td>Guidelines</td>
<td>3(100%)</td>
<td>0</td>
<td>4(20%)</td>
</tr>
</tbody>
</table>
The data in Table 3 relate to question items 1, 2, 3, 5 on the MSSOS and MSSL. Of the OCR directors responding, all indicated that mediation was used as a process of resolving special education conflicts before proceeding to a hearing. State Departments of Education, by nature of their regulatory function, do not use the mediation process to resolve conflicts. Rather, this agency develops policies, regulations and guidelines relative to the use of mediation. In some states, personnel are trained at the state level as mediators to be assigned, as need dictates, to local schools. Eighty-three percent (83%) of the LEA Directors responding reported that mediation is used before proceeding to a hearing. Eighty-three percent (83%) represents a large percentage of the group and speaks to the widespread use of mediation. Only nine percent (9%) of the school systems indicated that mediation is not used.

The data in Table 3 suggest that there is disagreement in the responses of OCR, SEA and LEA Directors on the status of mediation. At the federal level, one respondent (33%) stated that OCR requires mediation. Twenty percent (20%) of the state respondents reported that mediation is a requirement of the State Department of Education, while eighteen percent (18%) of the local education agencies reported "yes" to the question. There was closer agreement between the SEA and LEA directors on the matter of mediation as an option. This concurrence may be attributed to the
statement in the comment to the EAHC Regulations that states:

... Although the process of mediation is not required by the statute on these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation and educational placement of handicapped children and the provision of a free appropriate public education to those children. ...

In terms of guidelines for mediations provided by the State Departments, again there was wide disparity between the respondents. Twenty percent (20%) of the SEA Directors stated that guidelines were provided as compared with fifty-five (55%) of the LEA Directors. Some LEA Directors indicated through comments that training had been provided by the Neighborhood Justice Center of Atlanta. This agency provides a manual of procedures with the training which could have been interpreted by some LEA Directors as "guidelines" from the State Department.

Table 4 indicates how long OCR, SEA and LEA Directors state mediation has been employed.

48 The Education for All Handicapped Children, Ibid.
Table 4 relates to questionnaires item 2 on the MSSOS and MSSL. Three OCR Directors responded to the question dealing with how long mediation has been required. Mediation has been used by OCR since 1981, five years. Nineteen LEA Directors responded to the question. Only one indicated that mediation has been used as long as nine years or more. Two of nineteen LEA respondents indicated that mediation has been required for nine or more years. One can observe a gap in responses for years four through eight from the SEA.

<table>
<thead>
<tr>
<th>Years</th>
<th>OCR</th>
<th>SEA</th>
<th>LEA</th>
</tr>
</thead>
<tbody>
<tr>
<td>9+</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>2</td>
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</tr>
<tr>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Total Responses</td>
<td>3</td>
<td>4</td>
<td>19</td>
</tr>
<tr>
<td>No Response</td>
<td>2</td>
<td>16</td>
<td>46</td>
</tr>
</tbody>
</table>
### TABLE 5
**WHO SERVES AS MEDIATOR IN LOCAL EDUCATION AGENCIES**

<table>
<thead>
<tr>
<th>MEDIATOR</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Director of Special Education</td>
<td>18</td>
<td>28</td>
</tr>
<tr>
<td>Assistant Director</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Coordinator/Consultant</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Principal</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>State Department Personnel</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Trained Mediator/Ombudsmen</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Outside Agency</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>University Professor</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Supervisor</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Attorney</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>16</td>
</tr>
<tr>
<td>Total Responses</td>
<td>58</td>
<td>98</td>
</tr>
<tr>
<td>No Response</td>
<td>9</td>
<td>13</td>
</tr>
</tbody>
</table>

In Table 5, LEA respondents indicated that the Director of Special Education is used most frequently as mediator. The next largest frequency reported was that of Coordinator/Consultant. The fact that Superintendent, Director of Special Education and Coordinator/Consultant comprise forty-three percent (43%) supports the contention by Ekstrand and Edmister that "The person selected as the
mediator may be a school system employee; it is not necessary that the mediator be someone outside the school system."49

Seven percent (7%) of the respondents reported mediators were from State Departments of Education. The next largest category (49%) included "trained mediators." The "university professor" and "outside agency" were used by three percent (3%) of the respondents. According to Symington, a formal educational background is not a requirement for the selection of mediators. "A parent, parent advocate, social worker or an attorney trained in conflict resolution techniques may become a mediator."50

Although Schwartz identified mediation as a social work activity early in the 1960's51, the profession was not identified in this study as a mediator.

**Effects of mediation**

The second research question examined the major effects of mediation on the hearing process. Item 6 addressed this research question. Response data in this section is restricted to LEA and SEA subjects, because due process hearings are not a part of OCR's complaint resolution

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process. Data were analyzed in this section by use of
descriptive statistics. There are summations, frequencies,
and percentages. Respondents first gave their opinion on the
effectiveness of mediation. Table 6 shows the responses.

**TABLE 6**

<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>YES</th>
<th>PERCENT</th>
<th>NO</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEA</td>
<td>12</td>
<td>60</td>
<td>8</td>
<td>40</td>
</tr>
<tr>
<td>LEA</td>
<td>30</td>
<td>46</td>
<td>24</td>
<td>36</td>
</tr>
</tbody>
</table>

Table 6 reveals that sixty percent (60%) of the State
Directors reported a reduction in due process hearings since
1980. Because mediations and hearings are not generally held
on the state level, this data suggest that State Directors
are presenting reductions as reported from local school
districts statewide. Forty-six percent (46%) of the LEA
Directors reported a reduction in hearings since 1980. The
percentages of respondents at the state and local levels
contradict the projection by Tom E. C. Smith who suggested,
"The number of due process hearings will continue to rise as
more parents become aware of their legal rights and as
competition for scarce school funds escalate."

---

52 Smith, Ibid.
to Smith, who has investigated the status of due process hearings. "You can diminish the likelihood of due process hearings by appointing an ombudsman to clarify issues and to suggest solutions before school officials or parents develop fixed positions or feelings of hostility." 

Table 7 presents data that speak to the reduction of hearings as attributed to the process of mediation.

**TABLE 7**

<table>
<thead>
<tr>
<th>HEARING REDUCTIONS ATTRIBUTED TO MEDIATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>RESPONDENTS</td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td>SEA</td>
</tr>
<tr>
<td>LEA</td>
</tr>
</tbody>
</table>

The data in Table 7 indicate that of the 12 SEA's observing a reduction in hearings since 1980, only two attributed the reductions to mediations. A comment from one of the respondents stated, "Mediation has not only reduced the number of due process hearings, but has increased the dynamics of informal negotiation. ..." However, the majority of the SEA respondents did not attribute the reduction in hearings to mediation. This supports the information in a report submitted by the Secretary of Education which states, 

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53Smith, Ibid.
"The use of mediation as a process to bring about a reconciliation between schools and parents before going to a due process hearing is evident in a large percentage of States. However, the extent to which mediation serves to deter the need to go on to the hearing state is unclear." 54 Additionally, two researchers reported that Massachusetts found that "while the mediation process does not eliminate the need for formal hearings, it clearly serves to screen out the majority of complaints that can be resolved at a lower, less costly level." 55

In Table 7 a larger number of LEA respondents attributed the hearing reductions to mediations. Interestingly, both groups added the comments, "partially" and "not necessarily" to the questionnaire which asked for "yes" or "no" responses. The larger number of LEA responses may be an indication of record-keeping or lack thereof at the state level. Several SEA respondents commented that they did not keep records of LEA mediation cases. LEA's may be in a better position to speak on the effectiveness of mediation.


55 Gerald P. Peterson and Sue F. Ayer, "The Cost of Special Education Due Process Fair Hearings and Appeals in California" (Walnut Creek, Calif.: Decision Development Corporation, September 26, 1980), p. 42.
In respect to the previously stated research question, "What have been major effects of mediation on the hearing process," data revealed that the majority of SEA Directors and LEA Directors report a reduction in due process hearings. However, there is disagreement between SEA Directors and LEA Directors on whether the reductions can be attributed to mediation.

**Kinds of disputes resolved by mediation**

The third research question addressed the kinds of disputes resolved by mediation. Tables 8 and 9 address the kinds of disputes filed and resolved by mediation. Table 8 shows the number of complaints filed against school systems in Region VIII of the Office of Civil Rights. The complaints were filed on behalf of parents and focused on violations of Section 504. Tables 8 and 9 relate to items 8 and 10 on the MSSOC and MSSL.
### TABLE 8
**COMPLAINTS FILED IN REGION VIII (OCR)**  
**1981-1984**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identification</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2. Evaluation</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>3. Placement Public School</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>4. Placement Private School</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5. Related Services</td>
<td>7</td>
<td>7</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>6. Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL COMPLAINTS</strong></td>
<td>11</td>
<td>12</td>
<td>3</td>
<td>13</td>
</tr>
</tbody>
</table>

*Many complaints dealt with more than one issue; therefore, this total is not a summation of the above columns.

The data in Table 8 relate to item 8 in MSSOS. The data specifies the number of complaints filed in Region VIII of the Office for Civil Rights. The complaints were filed on issues related to Section 504.

In Table 8, the largest number of complaints were filed relative to "Related Services" for each of the reporting years except 1982-83. In this year, 1982-83, the largest number of complaints were filed relative to "Placement, Public School." There was an absence of complaints filed on behalf of "Placement, Private School" from 1980-81 to 1983-84.
**TABLE 9**

**COMPLAINTS RESOLVED IN REGION VIII (OCR) THROUGH MEDIATION**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identification</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>2. Evaluation</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>3. Placement</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Public School</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Placement</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Private School</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Related Services</td>
<td>7</td>
<td>7</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>6. Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><em>TOTAL COMPLAINTS</em></td>
<td>9</td>
<td>9</td>
<td>3</td>
<td>11</td>
</tr>
</tbody>
</table>

*Many complaints dealt with more than one issue; therefore, this total is not a summation of the above columns.*

Table 9 illustrates that cases involving every issue were resolved through mediation. Because the complaints dealt with more than one issue, a direct relationship (1:1) cannot be determined. However, there is a direct 1:1 relationship for 1982-83 because every case was resolved. The issues involved in "other" were ability grouping, tracking, due process procedures, educational setting, program accessibility and costs related to the provision of adequate services.

Table 10 illustrates the number of complaints filed as reported by State Departments of Education.


**TABLE 10**

**COMPLAINTS FILED WITH SCHOOL SYSTEMS AS REPORTED BY SEA**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identification</td>
<td>27</td>
<td>34</td>
<td>68</td>
<td>71</td>
<td>200</td>
</tr>
<tr>
<td>2. Evaluation</td>
<td>62</td>
<td>46</td>
<td>54</td>
<td>44</td>
<td>206</td>
</tr>
<tr>
<td>3. Placement Public School</td>
<td>115</td>
<td>105</td>
<td>99</td>
<td>80</td>
<td>399</td>
</tr>
<tr>
<td>4. Placement Private School</td>
<td>138</td>
<td>115</td>
<td>92</td>
<td>83</td>
<td>428</td>
</tr>
<tr>
<td>5. Related Services</td>
<td>35</td>
<td>30</td>
<td>34</td>
<td>46</td>
<td>145</td>
</tr>
<tr>
<td>6. Other</td>
<td>322</td>
<td>243</td>
<td>205</td>
<td>462</td>
<td>1232</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>700</strong></td>
<td><strong>573</strong></td>
<td><strong>548</strong></td>
<td><strong>786</strong></td>
<td><strong>2607</strong></td>
</tr>
</tbody>
</table>

**SUM** = Sum of scores

In Table 10 there is a decrease in the number of complaints filed in 1983-84 from 1980-81 on issues related to evaluation, placement-public school, placement-private school. Although only a few states responded to the question, the data suggest that parents and school systems are following due process procedures. The issues that appeared most frequently for each year were placement and "other" issues. The frequency of these issues supports the frequency of one of the cases investigated by Budoff,
Orenstein and Abramson. These researchers reported that related services, educational services and placement issues were the most frequent issues filed in due process hearings in Massachusetts.

Smith noted in 1981 in a survey of fifty states that the majority of issues involved in hearings were placement, other issues and evaluation. In his study, data were not collected indicating whether states used a mediation step between the request for hearing and the actual hearing. However, the issues involved in the Smith study support those in this investigation.

TABLE 11

COMPLAINTS RESOLVED THROUGH MEDIATION IN SCHOOL SYSTEMS AS REPORTED BY SEA

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SUM</td>
<td>SUM</td>
<td>SUM</td>
<td>SUM</td>
</tr>
<tr>
<td>1. Identification</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2. Evaluation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>3. Placement</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Public School</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Placement</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Private School</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Related Services</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>6. Other</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3</td>
<td>4</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

56 Budoff, Ibid.

57 Smith, Ibid.
Table 11 indicates that even fewer States responded to the question of how many complaints were resolved through mediation. When Table 11 is compared to Table 10, it appears that only a few complaints were resolved through mediation. However, comments indicated that records of mediation are not kept at the State level as completely as records of requests and resolution of due process hearings. Further, one respondent observed that when a request for mediation is made, the other side will frequently make considerable movement towards resolving the disagreement informally without going into mediation. Mediation (i.e., the request to mediate) may actually set in motion the informal negotiation process. Therefore, the information in Table 11 may not be complete.

Tables 12 and 13 illustrate the major issues brought to mediation by rank order SEA and LEA.

**TABLE 12**

**MAJOR ISSUES BROUGHT TO MEDIATION BY RANK ORDER (SEA)**

<table>
<thead>
<tr>
<th>ISSUES</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
<th>6th</th>
<th>NR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>2. Evaluation</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>3. Placement Public School</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>4. Placement Private School</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>5. Related Services</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>6. Other</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
</tbody>
</table>
TABLE 13

MAJOR ISSUES BROUGHT TO MEDIATION
BY RANK ORDER (LEA)

<table>
<thead>
<tr>
<th>ISSUES</th>
<th>1st N</th>
<th>2nd N</th>
<th>3rd N</th>
<th>4th N</th>
<th>5th N</th>
<th>6th N</th>
<th>NR N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Placement</td>
<td>12</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>Public School</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Related Services</td>
<td>5</td>
<td>13</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>3. Evaluation</td>
<td>1</td>
<td>4</td>
<td>12</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>40</td>
</tr>
<tr>
<td>4. Identification</td>
<td>8</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td>5. Placement</td>
<td>8</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>Private School</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Other</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td>56</td>
</tr>
</tbody>
</table>

NR = No Response

In observing Tables 12 and 13, the low responses at the State level make comparison impossible. This is attributed to the fact that complete records of mediation are not kept at the State level. Table 13 does reveal that the major issues brought to mediation in the LEA are: placement in public schools (1), related services (2) and evaluation (3) in rank order.
In Table 14, learning disabilities was ranked highest by SEA's, followed by behavior disorders. The LEA's ranked behavior disorders highest, followed by learning disorders as the second highest rank. The mentally handicapped ranked third in cases brought to mediation by LEA's. Smith reported in his investigation that the largest number of children involved in hearings were those classified as mentally handicapped. Learning disabilities and emotional disturbance were the next largest categories, although they appeared to be based on prevalence. The emotionally disturbed are

58Smith, Ibid.
are included with behavior disorders, the deaf with hearing impaired, and the blind with visually impaired. The data in this study supports Smith's investigation in which learning disabilities, behavior disorders and the mentally handicapped are the three most frequent primary handicaps in disputes.

Table 14 indicates that the hearing impaired and orthopedically handicapped ranked in first place on the frequency of occurrence in mediations in Region VIII, OCR. Mentally handicapped ranked second and learning disabilities and behavior disorders tied in the third ranking.

In respect to research question 3, "What kinds of disputes are resolved by mediation," issues of identification, evaluation, placement and related services are resolved through mediation. Information at the state level was not as complete as that for Region VIII, OCR. Both LEA and SEA reported that placement in public schools ranked first in terms of the major issue brought to mediation. Learning disabilities and behavior disorders ranked highest in terms of the primary handicaps of children in mediation.

**Size of school district**

The fourth research question examined whether mediation works more effectively in large or small school systems. Data pertaining to this research question was analyzed statistically by use of a chi-square. The critical value of .05 was set by the researcher to determine if a statistically significant difference was obtained. Table 15 illustrates the distribution of student enrollment for the responding systems.
**Table 15**  
**DISTRIBUTION OF STUDENT ENROLLMENT FOR RESPONDING SCHOOL SYSTEMS**

<table>
<thead>
<tr>
<th>STUDENT ENROLLMENT</th>
<th>N</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>100,000 +</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>50,000 - 99,999</td>
<td>14</td>
<td>21</td>
</tr>
<tr>
<td>20,000 - 49,999</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>10,000 - 19,999</td>
<td>24</td>
<td>36</td>
</tr>
<tr>
<td>5,000 - 9,999</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>3,000 - 4,999</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>1,000 - 2,999</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>0 - 999</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>65</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 15 indicates that the largest group of school systems participating in the study, thirty-six percent (36%), were in the range of 10,000 - 19,999. The second largest group of school systems, twenty-one percent (21%), was in the 50,000 - 99,999 range. Ten percent (10%) of the school systems, the third largest group, reported an enrollment of 999 or less.

**Table 16**  
**DISTRIBUTION OF ENROLLMENT IN SPECIAL EDUCATION FOR RESPONDING SCHOOL SYSTEMS**

<table>
<thead>
<tr>
<th>HANDICAPPED STUDENT ENROLLMENT</th>
<th>N</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000 +</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>5,000 - 9,999</td>
<td>14</td>
<td>21</td>
</tr>
<tr>
<td>2,000 - 4,999</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>1,000 - 1,999</td>
<td>22</td>
<td>33</td>
</tr>
<tr>
<td>500 - 999</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>300 - 499</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>100 - 299</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>0 - 99</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>65</strong></td>
<td></td>
</tr>
</tbody>
</table>
Data in Table 16 address the distribution of handicaps of students in the responding school systems. The percentages of handicapped students are not very different from the percentages of total school enrollments in the study.

TABLE 17

<table>
<thead>
<tr>
<th>LEA</th>
<th>YES</th>
<th>NO</th>
<th>CHI-SQUARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large School Systems</td>
<td>33 (73%)</td>
<td>1 (14%)</td>
<td>9.33</td>
</tr>
<tr>
<td>Small School Systems</td>
<td>12 (27%)</td>
<td>6 (86%)</td>
<td></td>
</tr>
</tbody>
</table>

Table 17 indicates that seventy-three percent (73%) of the large school systems reported the use of mediation, while twenty-seven percent (27%) of the small school systems reported yes. A chi-square analysis was used to test whether the use of mediation is significantly different in large school systems and small school systems. The chi-square value of 9.33 indicates that there was a significant difference at the .01 level of significance.
In Table 18, a chi-square analysis was applied to test whether the development of guidelines in large school systems and small school systems is significantly different. The chi-square value of .425 indicates that there was no significant difference in the development of guidelines between large and small school systems.

### TABLE 18
DEVELOPMENT OF GUIDELINES IN SCHOOL SYSTEMS

<table>
<thead>
<tr>
<th>LEA</th>
<th>YES</th>
<th>NO</th>
<th>CHI-SQUARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large School Systems</td>
<td>25 (74%)</td>
<td>11 (14%)</td>
<td>.425</td>
</tr>
<tr>
<td>Small School Systems</td>
<td>9 (26%)</td>
<td>6 (35%)</td>
<td></td>
</tr>
</tbody>
</table>

### TABLE 19
THE REQUIREMENT OF MEDIATION IN SCHOOL SYSTEMS

<table>
<thead>
<tr>
<th>LEA</th>
<th>MEDIATION REQUIRED</th>
<th>MEDIATION NOT REQUIRED</th>
<th>CHI-SQUARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large School Systems</td>
<td>9 (64%)</td>
<td>27 (69%)</td>
<td>.12</td>
</tr>
<tr>
<td>Small School Systems</td>
<td>5 (36%)</td>
<td>12 (31%)</td>
<td></td>
</tr>
</tbody>
</table>
Inspection of Table 19 reveals that few school systems reported that mediation is required. A chi-square analysis indicates that the requirement of mediation is not significantly different between large and small school systems.

In respect to research question 4, "Does mediation work more effectively in large or small school systems?", a significant difference in favor of large school systems was observed in the use of mediation. There was no significant difference in the development of guidelines between large and small school systems. Further, it was found that the requirement of mediation is not significantly different between large and small school systems.

**Summary**

This chapter presented the findings and analysis related to the study's four research questions: (1) How widespread nationally is mediation used? (2) What have been the effects of mediation on the hearing process? (3) What kinds of disputes are resolved by mediation? (4) Does mediation work more effectively in large or small school systems?

Eighty-eight (88) subjects in the study included three (3) regional directors of OCR, twenty (20) state directors of special education and sixty-five (65) local education directors of special education. Subjects responded to The Mediation Status Survey for OCR/SEA or to The Mediation Status Survey for LEA.
Descriptive statistics were used to describe and summarize the data. This included frequencies and percentages. Nonparametric statistics were used to compare the responses of two groups of subjects, with chi-square employed to determine the level of the significance of difference.
Since P.L. 94-142 was instituted in 1975, school systems have been required to provide parents with procedural due process protection. While State or local education agencies must assure that all handicapped children have available to them a free appropriate public education, parents can bring a complaint about any matter relating to the child's identification, evaluation and placement.

P.L. 94-142 does not mention mediation as a means of resolving parental disputes. Rather, a "comment" to the regulation suggests that mediation may be used. Neither the regulation nor the comments provide any substantive or procedural guidelines for mediations.

The present study investigated dependent and independent variables related to the status and effectiveness of mediation. The dependent variables were the status and effectiveness of mediations. The independent variables were the federal, state and local standards, the issues of the mediations, the types of handicaps, and the size of the school district. Three regional directors of the Office for Civil Rights (OCR), twenty State Education Agency Directors,
and sixty-five Local Education Agency Directors were the subjects. Two questionnaires were developed to answer four Research Questions.

In this study, the number of responses indicated that there is widespread interest in the use of mediation. The federal agency of OCR, state education agencies and school systems have made some efforts to include some form of mediation as part of their appeals process.

Specifically, a summary of the finding are as follows:

**Research question #1**

How widespread nationally is mediation used?

1. Mediation is used as a process for resolving disputes at the federal level in the Office for Civil Rights (OCR). Of the States surveyed in the study, twenty percent (20%) indicated that mediation is a requirement of schools. Eighty-three percent (83%) of the local education agencies reported that mediation is used.

2. The Director of Special Education served most frequently as mediator. This supported the position by Ekstrand and Edmister that the mediator may be a school system employee. The State Department personnel represented the second largest category.

3. There was disparity in responses of SEA and LEA on the length of time mediation has been required, and on the use of mediation as an option.

---

59Ekstrand and Edmister, Ibid.
Research question #2

What have been the major effects of mediation on the hearing process?

Although both SEA and LEA Directors reported a reduction in hearings, the LEA Directors were more inclined to attribute the hearing reductions to mediations.

Research question #3

What kinds of disputes are resolved by mediation?

The issues of identification, evaluation, placement and related services can be resolved through mediation. The primary handicaps of learning disabilities, behavior disorders, and mentally handicapped appeared most frequently in mediations. This supports Smith's research in which learning disabilities, behavior disorders and the mentally handicapped were the most frequent handicaps in disputes.60

Research question #4

Does mediation work more effectively in large or small school systems?

A significant difference, in favor of large school systems, was indicated relative to the use of mediations. No significant difference was apparent between large and small school systems relative to the development of guidelines and the requirement of mediation.

60Smith, Ibid.
Conclusions

The findings of this study warranted the following conclusions:

1. The federal agency of OCR, state education agencies and school systems have made some efforts to include some form of mediation as part of their appeals process.

2. The variables of issues and types of handicaps, while important for influencing the request for mediation, do not appear to be contributing factors for mediation effectiveness.

3. Even though the literature speaks to the success of mediation, the success is not well documented at the federal, state or local levels.

Implications

The findings of this study warranted the following implications:

1. Federal, state and local education administrators are interested in mediation as a process of conflict resolution. The fact that the process is new to education appears to have caused some State and local education agencies to hesitate to require or implement it.

2. Guidelines and training programs for mediation should be developed at the state level. This would encourage greater use by local education agencies.

3. Persons within the local education agency can be used as mediator.
4. This investigation found that research on mediation is limited. This lack of documentation at the federal level may be attributed to varying policies within the ten regional offices. At the State and local levels, the limited documentation may be attributed to the fact that the results of mediation conferences are treated as confidential information, and offers of settlement, which are inadmissible as evidence, are not used in due process hearings or court.

**Recommendations**

Based on the findings and implications of the study, the following recommendations are made:

1. Local school officials, other than the Director of Special Education, should be given the opportunity for mediation training so that disputes may be settled at the point of conflict.

2. The use of the teacher as mediator should be explored. The teacher is in a position to resolve disagreements informally and before a due process hearing is even considered.

3. All agencies, federal, state and local, should develop a procedure to document the use and results of mediation. Documentation will assist administrators in assessing the effectiveness of mediation and guide them in making beneficial procedural changes.
APPENDIX 1

P.L. 94-142 AND SECTION 504
COMPARISON AND CONTRAST
## APPENDIX 1

### P.L. 94-142 and Section 504

Comparison and Contrast

<table>
<thead>
<tr>
<th>Section 504</th>
<th>P.L. 94-142</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Provisions:</strong></td>
<td></td>
</tr>
<tr>
<td>- An extension of civil rights provision of Title VI of the Civil Rights Act of 1974 and Title IX of the Education Amendment.</td>
<td>- Applies only to those states which receives financial assistance under Part B of the Education of the Handicapped Act</td>
</tr>
<tr>
<td>- Applicable to all 50 states without exception, and, consequentlly, to all local, intermediate, and State educational agencies.</td>
<td>- Delineates the specific substantive and procedural requirements to effectively implement the intent of Section 504</td>
</tr>
<tr>
<td>- Delineates the broad civil rights provisions necessary for all state and local educational agencies.</td>
<td>- Enforcement is responsibility for individual states and local educational agencies to provide sufficient funds</td>
</tr>
<tr>
<td>- Enforcement is responsibility of the Office for Civil Rights</td>
<td>- The federal government and local educational agencies jointly share responsibility</td>
</tr>
<tr>
<td>- Does not provide for any federal financial assistance to implement its civil rights provisions</td>
<td>- &quot;Handicapped child&quot; covers a more specific range of educational or medical conditions, appropriately identified and evaluated</td>
</tr>
<tr>
<td>- &quot;Handicapped person&quot; covers a very broad range of actual or perceived handicapping conditions</td>
<td></td>
</tr>
</tbody>
</table>

| **Location and Notification:**                                            |                                                                             |
| - Must annually undertake to locate, identify and notify qualified handicapped individuals and their parents of recipient's duty to provide a free appropriate public education | - Must ensure that all handicapped children, residing within jurisdiction of LEA, regardless of severity of handicap and who are in need of special education and related services are identified, located and evaluated |
Free Appropriate Public Education:

- Requires LEA provide a free appropriate public education to each qualified handicapped individual who is in LEA's jurisdiction, regardless of severity of handicap
- Recognizes the IEP as one means of meeting individual needs
- Stipulate that if residential placement is necessary, the program must be at no cost to parent(s)

Educational Setting:

- Stipulates that LEA must educate each qualified handicapped individual in its jurisdiction with non-handicapped to the maximum extent appropriate
- Each LEA must ensure that the handicapped participates with nonhandicapped in nonacademic and extracurricula activities to the maximum extent appropriate to needs of child
- Facilities, services, and activities identified for handicapped individuals are comparable to other facilities, services, and activities of school district

Evaluation and Placement:

- Requires LEA conduct an evaluation of child before taking action with respect to initial placement of child in special education
- Requires that each state and local educational agency has in effect a policy which ensures that all handicapped children have the right to a free appropriate public education
- Define free appropriate public education
- Stipulates that if residential placement is necessary, the program must be at no cost to parent(s)
- Delineates the concept of least restrictive environment
- Includes the same provision
- Includes the same provision
- Includes the same provision
- Stipulates comprehensive assessment by a multidisciplinary team
### Evaluation and Placement (Cont'd):

- Requires specific components for interpreting evaluation data and in making placement decisions.
- Includes the same provision.

### Procedural Safeguards:

- Requires a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the individual to examine relevant records, an impartial hearing, and a review procedure.
- Encompasses all of these requirements while providing for more specificity for each.

### Nonacademic Services:

- Stipulate that LEA must provide nonacademic and extra-curricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.
- Encompasses all of these requirements.
APPENDIX 2

MEDIATION STATUS SURVEY QUESTIONNAIRES
MEDIATION STATUS SURVEY FOR OFFICE FOR CIVIL RIGHTS AND STATE EDUCATION AGENCIES (MSSOS)

1. Is mediation used as a method of settling complaints in special education before proceeding to a hearing?
   ____ Yes  ____ No

2. How long has mediation been required?

3. Is mediation optional?  ____ Yes  ____ No

4. If mediation is optional, what proportion of school systems/states use mediation?
   ____ 25%  ____ 50%  ____ 75%  ____ Other

5. Have guidelines been established by your agency for conducting mediation?  ____ Yes  ____ No

6. Have you seen a reduction in hearings since 1980?
   ____ Yes  ____ No
   If yes, do you attribute this to mediation?  ____ Yes  ____ No

7. Who serves as mediator?
   ____ Coordinator/Consultant  ____ Director of Special Education
   ____ Superintendent  ____ Other (Please specify)

8. How many complaints regarding the handicapped were filed against school systems from 1981 through 1984?

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1. Identification</td>
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<td></td>
</tr>
<tr>
<td>2. Evaluation</td>
<td></td>
<td></td>
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<tr>
<td>3. Placement Public School</td>
<td></td>
<td></td>
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<tr>
<td>4. Placement Private School</td>
<td></td>
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<tr>
<td>5. Related Services</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>6. Other (Specify)</td>
<td></td>
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</tr>
</tbody>
</table>
(MSSOS) Survey
Page 2

9. Please rank in the order of frequency the major issues in cases brought to mediation.

1. __ identification
2. __ evaluation
3. __ placement in public school
4. __ placement in private school
5. __ related services
6. __ other (specify)

10. How many issues were resolved through mediation?

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1. Identification</td>
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<td>5. Related Services</td>
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<td></td>
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<tr>
<td>6. Other (Specify)</td>
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</tr>
</tbody>
</table>

11. Please rank as to frequency of occurrence the primary handicap of children in mediations.

1. __ Learning Disabilities
2. __ Behavior Disorders/Emotionally Disturbed
3. __ Mentally Handicapped
4. __ Hearing Impaired/Deaf
5. __ Visually Impaired/Blind
6. __ Speech/Language
7. __ Orthopedically Handicapped
8. __ Health Impaired

12. What is the total enrollment of your school system?_____

13. Please state the title of the person completing this survey. ____________________________

Thank you for your assistance, cooperation and participation.
### MEDIATION STATUS SURVEY FOR LOCAL EDUCATION AGENCIES (MSSL)

1. Is mediation used as a method of settling complaints in special education before preceding to a hearing?  
   ____ Yes ____ No

2. How long has mediation been required?_____________________________________

3. Is mediation optional? ____ Yes ____ No

4. If mediation is optional, what proportion of school systems/states use mediation?  
   ____ 25% ____ 50% ____ 75% ____ Other

5. Have guidelines been established by your agency for conducting mediation? ____ Yes ____ No

6. Have you seen a reduction in hearings since 1980?  
   ____ Yes ____ No  
   If yes, do you attribute this to mediation? ____ Yes ____ No

7. Who serves as mediator?  
   ____ Coordinator/Consultant ____ Director of Special Education  
   ____ Superintendent ____ Other (Please specify ______________________)

8. How many complaints regarding the handicapped were filed against school systems from 1981 through 1984?

<table>
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<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
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<tr>
<td>2. Evaluation</td>
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<td></td>
<td></td>
<td></td>
</tr>
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<td>3. Placement Public School</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Placement Private School</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>5. Related Services</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>6. Other (Specify)</td>
<td></td>
<td></td>
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</table>
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3. ___ placement in public school
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5. ___ related services
6. ___ other (specify)

10. How many issues were resolved through mediation?

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<tbody>
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1. ___ Learning Disabilities
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3. ___ Mentally Handicapped
4. ___ Hearing Impaired/Deaf
5. ___ Visually Impaired/Blind
6. ___ Speech/Language
7. ___ Orthopedically Handicapped
8. ___ Health Impaired

12. What is the total enrollment of your school system?___
13. What is the handicapped student enrollment of your special education programs?

14. Would you like an abstract of the results of this study?
   - Yes   - No

15. Please state the title of the person completing this survey?

Thank you for your assistance, cooperation and participation.
APPENDIX 3

MATRIX OF INDEPENDENT VARIABLES, DEPENDENT VARIABLES AND TREATMENT
## APPENDIX 3

### Matrix of Independent Variables, Dependent Variables and Treatment

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Treatment</th>
<th>Dependent Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>State and local standards</td>
<td>Is mediation a requirement?</td>
<td>Status of Mediation</td>
</tr>
<tr>
<td></td>
<td>How long has mediation been required?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is mediation an option?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Have guidelines been developed by the State Department of Education for conducting mediations?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Who serves as mediator?</td>
<td></td>
</tr>
<tr>
<td>Size of school district</td>
<td>What is total enrollment of school system?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What is the handicapped student enrollment of special education programs?</td>
<td></td>
</tr>
<tr>
<td>Issues of mediations</td>
<td>How many requests for due process hearings have you had from 1981 through 1984?</td>
<td>Effectiveness of Mediation</td>
</tr>
<tr>
<td></td>
<td>Please rank in the order of frequency the major issues in cases brought to mediation:</td>
<td></td>
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<tr>
<td></td>
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<tr>
<td></td>
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<td></td>
<td>-placement in public school</td>
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<td></td>
<td>-placement in private school</td>
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<td></td>
<td>-related services</td>
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<tr>
<td></td>
<td>-other (specify)</td>
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</tr>
<tr>
<td>Independent Variable</td>
<td>Treatment</td>
<td>Dependent Variable</td>
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<td>----------------------</td>
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<td>--------------------</td>
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<tr>
<td>Types of handicaps</td>
<td>How many issues were resolved through mediation?</td>
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<td></td>
<td>Please rank as to frequency of occurrence the primary handicap of children in mediations.</td>
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<td></td>
<td>- Learning Disabilities</td>
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<td></td>
<td>- Health Impaired</td>
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</tbody>
</table>
APPENDIX 4

CORRESPONDENCE TO AGENCIES
Dear Colleague:

Our State is one which requires mediation as an intervening step before a due process hearing. Having served as mediator for three years, I am looking for ways that might improve this approach.

To achieve this, my doctoral committee, chaired by Dr. Rollin Carter at Atlanta University, has approved a research proposal which will permit me to investigate the effectiveness of mediations in resolving complaints in special education. The information will be useful in making policy decisions at state and local levels and will possibly suggest approaches that can be implemented at the local education level.

I would appreciate your assistance with this research. Please complete the attached questionnaire and return it in the enclosed stamped, self-addressed envelope. Also, if you would like a copy of the results, please indicate this in the appropriate space on the questionnaire.

Please return the questionnaire by 1985. I anticipate the value of your response. Thank you for your cooperation.

Sincerely,

(Mrs.) Octavia W. Milton

OWM: gj

Enclosures
Mr. Harry M. Singleton  
Assistant Secretary for Civil Rights  
U. S. Department of Education  
330 C Street, S.W.  
Room 5000  
Washington, D.C. 20202

Dear Mr. Singleton:

I am conducting a study through Atlanta University as a part of my requirements for the Doctoral Degree on the use of mediations as an approach to resolving complaints between parents and school systems. I am collecting data from school systems and state departments.

Because it is my understanding that mediations are also used at the federal level, I had written regional directors of OCR to ask for their participation in my study. Several directors indicated that the information I am seeking might be obtained through your office. Accordingly, I am writing to you. I would appreciate your participation in the study.

Please complete the enclosed questionnaire and return it in the stamped, self-addressed envelope. I thank you in advance for your time and cooperation.

Sincerely,

(Mrs.) Octavia W. Milton

Enclosure
APPENDIX 5

REGIONAL OCR AND SEA DIRECTORS
### Region I
**Department of Education**  
**Office for Civil Rights**  
Richard V.E. McCann  
Room 222, J.W. McCormack Post Office and Courthouse  
Boston, MA 02109  
FTS 8-223-1154  
Comm (617) 223-1154  
TTY (617) 223-1111

### Region II
**Department of Education**  
**Office for Civil Rights**  
Charles J. Tejada  
26 Federal Plaza - 33rd Floor  
New York, NY 10278  
FTS 8-264-5180  
Comm (212) 264-5180  
TTY (212) 264-9464

### Region III
**Department of Education**  
**Office for Civil Rights**  
Dewey E. Dodds  
Gateway Building, 6th Floor  
3535 Market Street, Post Office Box 13716  
Philadelphia, PA 19104  
FTS 8-596-6787  
Comm (215) 596-6772  
TTY (215) 596-6794

### Region IV
**Department of Education**  
**Office for Civil Rights**  
William H. Thomas  
101 Marietta Street, N.W. 27th Floor  
Atlanta, GA 30323  
FTS 8-242-2954  
Comm (404) 221-2954  
TTY (404) 221-2010

### Region V
**Department of Education**  
**Office for Civil Rights**  
Linda Cornelius (Acting)  
300 South Wacker Drive, 8th Floor  
Chicago, IL 60606  
FTS 8-886-3456  
Comm (312) 886-3456  
TTY (312) 353-2540

### Region VI
**Department of Education**  
**Office for Civil Rights**  
Taylor D. August  
1200 Main Tower Building, Room 1935  
Dallas, TX 75202  
FTS 8-729-3951  
Comm (214) 767-3951  
TTY (214) 767-3983

### Region VII
**Department of Education**  
**Office for Civil Rights**  
Jesse L. High  
324 East 11th Street, 24th Floor  
Kansas City, MO 64106  
FTS 8-758-2223  
Comm (816) 374-2223  
TTY (816) 374-7264

### Region VIII
**Department of Education**  
**Office for Civil Rights**  
Gilbert D. Roman  
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