

Council for Parents, Attorneys and Advocates (COPAA) response to the AASA Paper "Rethinking Special Education Due Process"

It is extremely troubling that the nation's school administrators have once again, with the release of "Rethinking the Special Education Due Process System," issued an irresponsible, sweepingly generalized and unsubstantiated document that undermines and attacks the civil rights of students with disabilities and their parents. For over 35 years Congress has maintained the important role that parents play in their child's education. In 2004, Congress wisely added new language to the purposes of the Individuals with Disabilities Education Act (IDEA) strengthening the role and responsibility of parents to ensure that families of such children have meaningful opportunities to participate in the education of their children. 20 U.S.C. §1400(c)(5)(B).

For more than a decade, the Council of Parent Attorneys and Advocates, Inc. (COPAA) and its members have protected the rights of students with disabilities and their families and demonstrated a commitment to ensuring that students with disabilities receive the same high-quality education as all children.

COPAA has voiced concern over the imbalance of power in due process proceedings. We have worked tirelessly to reverse the Supreme Court's decisions in *Arlington CSD v. Murphy* (prohibiting parents from recovering expert witness fees), and *Schaffer v. Weast* (placing the burden of proof on parents). We have advocated for sweeping reform to the failed IDEA monitoring and compliance system and we have joined many of our colleagues in voicing substantial concern about the recent waivers to accountability requirements of No Child Left Behind.

The United State Supreme Court's decision in *Winkelman v. Parma City School District*, 550 U.S. 516 (2007), concluded that "IDEA grants parents independent, enforceable rights. These rights are not limited to certain procedural and reimbursement-related matters; they encompass the entitlement to a free appropriate public education (FAPE) for the parents' child." Similarly, the Court found that educational agencies are required to establish procedures "to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of [FAPE]. The Court referenced these provisions to support its finding that parents have "a particular and personal interest" in the goals of IDEA."

The fact that AASA asked superintendents whether they "consider acquiescing to parental requests" to resolve differences shows utter disregard for the primary purpose of IDEA and demonstrates the inherently unequal balance of power that should be the focus of any systemic reform. We know that when the IDEA is implemented as intended, and the IEP team works collaboratively, the team becomes a synergetic force for a student with a disability, so that he/she may have a shot at life enrichment as the result of receiving a meaningful education.

AASA contends the due process system is inequitable and unpopular. The fix to inequality is not to do away with due process of law. The goals of IDEA have never been intended to win a popularity contest and indeed the goal of families is not and never has been for greater numbers to access Due Process.

In fact, the goal of the IDEA is to support each eligible student, through the spirit and the letter of the law, to be as independent, as self-sufficient, as self-advocating as possible, and to enforce their right to a successful education. Families need to have access to the full spectrum of tools and processes available under the law to assure their child those rights.

In its press release announcing its suggestion to "revise" the IDEA Due Process System, the AASA notes that it gathered information from "discussions with superintendents, special education administrators, special education lawyers, professors and researchers in special education litigation matters, hearing officers, state officials, and other education policy experts." Given the tone of the rest of the release and the AASA report, it is disappointing at best that neither parents of students with disabilities, nor students themselves, appear to have been worthy of consultation in this process. Nor, apparently, were teachers or related service personnel who work with these children. Had AASA consulted with this constituency they would have learned that many families, with the assistance of advocates and attorneys, do settle issues at the IEP table or through alternate dispute resolution options. Due Process is a last resort for families who have often spent years trying, unsuccessfully, to work cooperatively with their school districts on their child's behalf.

AASA needs to understand that hard-working teachers and school therapists often tell parents that they should pursue Due Process, because the educators themselves see that these students need support, but the administration is standing in the way of approving additional services. AASA's proposals are irresponsible, uninformed, in violation of the IDEA, and clearly designed to meet an agenda of denying the Civil Rights and educational needs of students with disabilities.

COPAA Board President and Attorney Jennifer Laviano advises that "AASA would do well to heed the words of Justice Sandra Day O'Connor, who wisely noted in *Florence County School District v. Carter*, 510 U.S. 7 (1993), that

a student with disabilities' entitlement to a Free and Appropriate Public Education is 'IDEA's mandate, and school officials who conform to it need not worry about reimbursement cases.' ”

The IDEA already provides for many of the solutions proposed in AASA's document, including facilitated IEP's, complaints to federal and state agencies, mediation, third party consultation, and resolution sessions. It's clear that in a tiny minority of cases, however, real controversy exists between parents and school officials that the parties cannot resolve without access to an impartial Due Process Hearing.

Parents have every reason to advocate vigorously on behalf of their children. We know that school districts sometimes have budgetary and personnel reasons to offer an individual child an inappropriate education program. This tension is resolved through the special education hearing procedures. To strip parents of their right of private enforcement leaves them at the mercy of the school district. Many dedicated professionals, who truly want to help the child with a disability, are frustrated by how the system prevents them from providing the service the child needs. Without the parent's right to compel the school district to meet their child's needs, many children with disabilities will receive inadequate educations and we can predict a swift return to the days of segregation and exclusion. There is simply no other effective way to guarantee that individual children with special education needs get the specialized instruction they require. Eliminating parents' ability to advocate for their own and their children's civil rights is not the way forward.

The United States must continue to uphold and renew its commitment to providing a free appropriate public education to students with disabilities. Failure to do so will result in an increasing cadre of Americans with disabilities unable to participate in its economy, unable to add their creativity and perspective to the American enterprise, unable to pay taxes and dependent on government to meet their needs. Ultimately, the proposal to do away with due process protection will mean higher costs to the taxpayers and reduced dignity to millions of Americans.