Restorative Practice in Special Education Dispute Resolution

A briefing paper by
THE CENTER FOR APPROPRIATE DISPUTE RESOLUTION IN SPECIAL EDUCATION (CADRE)

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INTRODUCTION

For nearly 20 years, CADRE has had the unique opportunity to mine the field for promising practices in special education dispute resolution with the ultimate goal to improve outcomes for students with disabilities. Pathways to system improvement have varied significantly as promising practices in dispute resolution moved from the fringe to common place. Whether the goal was increasing the efficacy and use of mediation, or encouraging the development of Individualized Education Program (IEP) facilitation programs, CADRE has been at the center of the national conversation about improving the experience for both parents and educators involved in a dispute. One emerging practice for exploration comes from the practice of restorative justice.

This publication provides readers with information about the history and origins of Restorative Justice, before discussing the current application of Restorative Practice in educational settings. Next, we highlight the unique challenges parents and educators face while engaging in the planning process for students with disabilities, identifying the specific factors that lead to conflicts and disputes. Finally, we explore the options for incorporating Restorative Practice into existing dispute resolution systems, detailing the potential benefits and areas for continued exploration.
Section 1: Overview and Historical Context of Restorative Practice (RP)

Restorative Justice, or more broadly, Restorative Practice (RP), is a philosophy and a set of principles that responds to wrongdoing and harm by focusing on how the harm might be repaired in place of how the wrongdoer should be punished. Restorative practices, common in many indigenous traditions, first emerged institutionally in the United States within the criminal and juvenile justice systems in the late 1970s.

RP offers both a set of values—including relationality, inclusion, humility, respect, accessibility, responsiveness, collaboration, equity, self-determination—and a collection of methodologies or processes designed to enact and cultivate those values. RP strategies include relational processes that may include restorative questioning, restorative chats or dialogue, victim-offender mediation, restorative circles, and community conferencing (Morrison and Vaandering, 2012; see also Zehr, 2015). All RP processes address harm and the underlying human needs; ensure equity and accessibility to a collaborative process; and provide opportunities to “put things right.” Ron Claassen notes three conditions necessary to put things right: (1) the harm or injustice must be acknowledged; (2) equity must be restored or developed; and (3) future intentions must be addressed (Claassen, cited in Zehr, 2002, p. 45).

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Section 2: Applications of Restorative Practice in Education

Within the educational setting, RP emerged in the late 1990s as a response to the effects of exclusionary discipline and zero-tolerance policies that followed in the wake of tragedies like the school shooting at Columbine (Fronius, Persson, Guckenbug, Hurley & Petrosino, 2016). Currently, RP is gaining momentum as a promising approach for addressing concerns with school safety, bullying, discipline, student engagement, building healthy relationships, cultural responsivity and cross-cultural connection, and equity (Evans & Vaanderling, 2016; Fronius et al., 2016).

Evans and Vaanderling (2016) defined RP in education as “facilitating learning communities that nurture the capacity of people to engage with one another and their environment in a manner that supports and respects the inherent dignity and worth of all” (p. 8). At its core, they note, RP holds all human beings as worthy of belonging and acknowledges an innate desire to be connected with others. This belief is supported by key values, including respect, dignity, and mutual concern.

Many schools have adopted RP when addressing student discipline and issues surrounding bullying, often as part of schoolwide positive behavioral intervention and supports (PBIS) systems. As RP gains momentum, ensuring students with disabilities have meaningful access to these practices is essential. Based on individualized need, a student with a disability may require accommodations, modifications, or pre-teaching to participate meaningfully in the process. (For further information, see Restorative Practice and Special Needs: A Practical Guide to Working Restoratively with Young People by Nick Burnett and Margaret Thorsborne who offer practical guidance and illustration on strategies to include students with disabilities in restorative processes.)
Section 3: Restorative Practice within the Dispute Resolution Continuum

CADRE’s Continuum of Dispute Resolution Processes & Practices identifies the Individuals with Disabilities Education Act (IDEA) mandated dispute resolution options as well as the alternative options offered throughout the country. Exemplary dispute resolution systems have highly functional mechanisms in place across each stage of the Continuum where parents and educators have effective options for the early resolution of disputes, and also have informed access to IDEA’s dispute resolution options: mediation, state complaint, and due process complaint. While IDEA’s dispute resolution options play a vital role in a functional dispute resolution system by protecting critical procedural and civil rights, their use, particularly in stages IV and V of the Continuum, can further strain the relationship between families and educators. Recognizing that parents and educators of students with disabilities are engaged in lasting relationships, effective dispute resolution systems offer ways to support and strengthen relationships across the continuum of dispute resolution options.
Understanding Special Education Disputes

To explore the application of RP in preventing and resolving special education disputes, let’s consider the components of a typical special education dispute. At the center of every dispute in special education is a student with a disability (Layer 1). According to Lake and Billingsley (2000), the majority of special education disputes arise from “discrepant views of a child or a child’s needs” (p. 244). For students eligible for special education and related services, an interdependent team comprised of the student’s parents, educators, related service providers, and specialists, work together to design an IEP. By design, the IEP team includes members who view the child through different lenses and in different settings.

Consequently, different views of what a child needs are inevitable. IEP team members are asked to navigate their discrepant views during the planning process and are expected to agree upon the services and supports needed for the child to make educational progress. Disagreements can arise over the student’s eligibility, identification, placement, as well as over the frequency and duration of services provided (Layer 2). Unresolved disagreements may lead to difficult communication and increased feelings of mistrust resulting in a strained relationship (Layer 3).

What started as a disagreement can escalate to an entrenched dispute.
Once a dispute reaches the level where the IEP team cannot move forward on their own, they may choose to resolve the dispute through one of IDEA’s dispute resolution options. Although these options are designed to resolve the procedural and substantive issues that make up the dispute, they are not designed to address the factors that escalate the conflict, specifically those issues of respect, relationship, communication, and trust. For example, following a due process hearing, an IEP team is expected to come together and develop a student’s educational program with unresolved and intense feelings of hurt, anger, betrayal, and broken trust. Unresolved conflict in this layer can leave a team struggling to work collaboratively to meet the needs of the child.

**The Continuum of Restorative Practices**

The continuum of RP available for use in a dispute resolution system can align with CADRE’s *Continuum of Dispute Resolution Processes & Practices*. The most universal application is within the prevention stage of the Continuum, where parent engagement is accentuated. An affective statement, also known as an “I statement,” is a foundational skill that allows individuals an opportunity to make an emotional connection with others, without judgment or blame, in the moment. Restorative questions provide opportunity to reflect on harmful behavior and the impact it has had on others. Educators can use restorative dialogue, including affective statements and restorative questioning as a means to build up a bank of goodwill to draw upon should conflict occur.
Engaging in restorative dialogue builds positive and lasting relationships that can withstand the occasional disagreement and prevent escalation into conflict. Should conflict occur, restorative chats and informal conferences or circles can be used to understand what went wrong, and find a way to move forward together.

Finally, as a more formalized dispute resolution option, systems can offer a restorative conference or circle facilitated by a trained RP facilitator to address more difficult and entrenched disputes. The purpose of offering a conference or circle is to help everyone involved recognize their role in the dispute, and determine the best way to repair the harm. A restorative circle held after a team uses an IDEA dispute resolution option offers participants an opportunity to repair the strained relationship so the team can continue to function together, while engaging in the ongoing process of planning for the needs of the student.
Supplementing Dispute Resolution Processes with Restorative Practice

Application of RP within a special education dispute resolution system holds promise for improving IEP team communication and relationships, and warrants further exploration. The tools offered by RP can be implemented apart from a full system adoption of RP. For example, systems could:

- Provide training opportunities to educators and families to learn more about RP, and how RP can benefit educational systems;
- Practice using affective statements;
- Encourage restorative questioning when communicating with stakeholders; and
- Model the basic restorative principles of respect, responsibility, and relationship in all areas.

Section 4: Benefits of Restorative Practice in a Dispute Resolution System

The underlying principles of restorative justice when employed within an organization highlight mutual respect, and create a culture in which social engagement is a priority. An organization that builds its shared values and norms on the foundation of restorative principles focuses on supporting needs, building relationships, and honoring the inherent value of the individual. As Evans and Vaandering (2016) explain, these principles lead us to “focus on the worth, well-being, and relational essence of being human [creating] a deliberate shift away from individualism toward interconnectedness, treating one another with justice and equity” (p. 58). RP provides a team the opportunity to build (or re-build) trust and create a safe environment for a productive and positive conflict interaction that emphasizes the equity of its members.
Trust

Trust is vital within any organization but even more so within an education system. All stakeholders in the system (parents, educators, administrators and support staff), work interdependently and collaboratively to accomplish the central task of educating students. RP fosters mutually supportive and respectful relationships, emphasizing individual responsibilities within the community. This focus is aimed to foster accountability and inclusion of all members in the circle.

Accountability leads to trusting relationships, with both internal and external stakeholders, bringing about greater trust in the organization as a whole. With a solid relationship between parents and educators built on a foundation of trust, the educational planning process may become more efficient and limit the amount of conflict.

Positive Conflict Engagement

Many people hold negative views of conflict that influences their ability to engage in productive dialogue and problem solving. RP can help transform negative perceptions of conflict. Viewing disagreement as a natural occurrence in human interaction allows one to engage with conflict as a constructive process that leads to improved relationships, structures, and systems. Building a conflict-positive approach within an organization requires the belief that conflict is a natural part of the problem solving process and provides an opportunity for growth of the organization.

Equity

A core principle of IDEA procedural safeguards is the important role of meaningful parent participation. A variety of factors impact a family’s ability to participate as an equal member of an
IEP team. Many families, specifically those from marginalized communities, face barriers that inhibit their ability to access the educational system such as, limited English proficiency, transportation challenges, and inflexible work schedules, to name a few. Beyond the challenges posed by cultural and socio-economic differences, many families find the power imbalance that exists between educators and parents limits their ability to participate in the planning process.

An RP-centric organizational framework creates space for everyone to be heard and is “designed to facilitate relationships in which everyone is treated with worth and dignity, regardless of their race, ethnicity, religion, nationality, ability, economic class, language, body type, gender, or sexual orientation” (Evans and Vaandering, 2016, pg. 50).

Educational Systems must be prepared to challenge a number of common policies and practices that negatively impact marginalized communities. Some strategies for creating an equitable environment where positive conflict can be engaged include:

- When presented with conflict, focus on the unmet need by prioritizing restoration rather than retribution.
- Provide accountability and support. Make things right while acknowledging the self-determination of all parties.
- Frame conflict as educative and focus on connection and inclusion.
- Build healthy learning communities by ensuring proactive applications of restorative principles.
- Restore relationships by ensuring equity and accessibility to a collaborative process.
- Address power imbalances by responding to both individual and institutional harms.

(Evans and Lester, 2013, p. 58-60)

Addressing systemic bias and ensuring equity of all stakeholders is essential to repairing both individual and systemic harms, as well as preventing future harms. Systems require ongoing monitoring to ensure safety at all levels.
Section 5: Areas for Continued Exploration

The use of RP within a dispute resolution system to reduce conflict and address harm offers great promise. While this is an exciting area to explore, acknowledging that there are barriers to address is crucial. A primary barrier to implementation concerns gaining access to RP facilitators who have both knowledge of IDEA and expertise in facilitating formal circles. Most trained RP facilitators are practiced in the area of juvenile justice; however, given the unique demands of IDEA related disputes, RP facilitators may need intensive development in the area of special education and the IDEA-mandated dispute resolution options.

Another challenge for those wanting to institute RP is finding trainers and consultants who are able to provide professional development on this specific application of RP. Again, given the historical roots of RP in the justice system, finding trainers who have the background to speak to the educational context, and more specifically to the special education world, presents a unique challenge.

Finally, employing these RP within an existing educational system requires a shift in culture. Recognizing the barriers that must be overcome to create a truly open and trusting system cannot be brushed away lightly. For example, participation in a restorative circle requires one to take responsibility for harms they have caused. This degree of accountability requires a high level of vulnerability. Given the realities of a litigious society, this vulnerability may not be possible. However, efforts to garner support, attaining buy-in from all involved, and finding places where the risk of vulnerability is tolerable can be a difficult, yet worthwhile endeavor.
References


Additional Resources

Websites:

- CADRE: www.cadreworks.org
- International Institute for Restorative Practices: https://www.iirp.edu/
- Restorative DC: http://www.restorativedc.org/
- Zehr Institute for Restorative Justice: http://zehr-institute.org/

Books:

The Center for Appropriate Dispute Resolution in Special Education (CADRE) works to increase the nation’s capacity to resolve special education disputes effectively.

CADRE works with state and local education and early intervention systems, parent centers, families and educators to improve programs and results for children with disabilities.

CADRE is funded by the Office of Special Education Programs at the U.S. Department of Education to serve as the National Center on Dispute Resolution in Special Education.

The impact of CADRE’s technical assistance activities and services are intended to result in:

- Improved state dispute resolution system performance and compliance
- Increased use of early, collaborative resolution processes
- Constructive relationships between parents, schools and service providers
- Increased stakeholder and parent engagement
- Less use of expensive, adversarial dispute resolution procedures