



**Family Center on
Technology
and Disability**

**FCTD Conference Series:
Assistive Technology Mediation**

Assistive Technology Mediation

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EXPERT'S CORNER

Introduction

In a perfect world, there would be plenty of resources for education and health, we would assess children early and routinely to determine their evolving needs for assistive technology, and schools, families, and insurance companies would reach easy agreement on how to fund AT devices and services. In the real world, however, education and health dollars are stretched tightly, professionals qualified to assess a child's AT needs can be difficult to find, and schools, families, and insurance companies can find themselves at odds concerning the provision of AT devices and services.

Throughout the month of February, we'll study and discuss successful means of mediating the sometimes opposing positions taken by schools, school systems and families, as they each struggle to provide a high-quality, free and appropriate public education to children with disabilities. Led by three national experts in the field, we'll look at ways to prevent problems from arising and discuss tools for resolving problems when they do arise. We'll share best practices that have been identified and discuss the implications of the new IDEA on mediation of AT issues.

We'd like to hear from you. Please share your experiences, both good and bad, from your vantage point as an educator, parent, counselor, advocate, administrator, SLP, OT or other professional. What techniques have you seen work and which have produced only further discord? What trends do you see developing? What questions do you have for our experts and for each other? We invite you to explore the resources identified in the discussion "links" section. Welcome to the Family Center's February discussion of "Assistive Technology Mediation."

Expert Perspective

Jeanne Bowman

When parents and school staff have disagreements, we need to think big about who we call on to hear our stories from many points of view and help us keep a perspective that puts the needs of the child first. Alternative or appropriate dispute resolution programs include formal and informal mediation and IEP facilitation and recognize the need for a process to bring families and schools

together and for structures that honor passion yet keep us on task with our students. We all get it wrong, make mistakes and misunderstand at the IEP table now and again. Assistive Technology issues can dramatically increase the complexity and intensity of these conflicts: one lost equipment order and the team is in big trouble.

Conversation at our schools is the first step in preventing and resolving conflict. If things are tense at school, as a parent we may want a support person with us, be that a friend, a trained parent volunteer, an advisor from the community (in person or by consultation), or a friendly administrator. Often problems can be resolved by talking with a dispute resolution specialist trained in mediation skills from within the district. A good mediator/facilitator may act informally: this could be a teacher, administrator, community mediator or parent training and information center staff. The goal is to bring everyone to the table, reflect on the requirements of law, affirm concerns and look at unmet needs that feed a conflict.

Early dispute resolution can give us a way to keep talking while we work it out. Pointing fingers over lost purchase orders may not be effective. Trust will need to be re-established. Supports for negotiation efforts may range from conciliation meetings, to solutions panels, to informal mediation, to formal mediation and resolution sessions. A mediator can also be invited to act as an ombudsperson.

A disagreement on at an IEP about assistive technology assessment, equipment, resources, training for staff or parents, follow up and follow through may mean friction and high emotion for team relationships. A well trained meeting facilitator can act as a neutral person who provides structure by creating an agenda with the team, establishes ground rules and keeps time. A facilitator also looks for and nurtures positive relationships by checking for understanding, clarifying issues, building measurable agreements and recognizing everyone's efforts. The team creates the ideas to make the new plan and is supported in working together constructively. This bigger picture of bringing in facilitation as a means to mediate could create new paperwork accountability with an explanation of the ordering system. Team trust can grow.

We work in a system with two strikes against it – lack of adequate funding and the expectation that teacher training can cover all the categories of disability in depth. Good teaching is good teaching, but supports to teachers are not always available or known, particularly within the rapidly changing assistive technology arena. As parents– whether we are natural, foster, adoptive, grand, surrogate or court appointed special advocate – we have valuable information about our child. An argument that is solely about claiming a right may set up a win/lose resolution. By asserting a right we may miss a creative solution: one that meets a need, honors the law and creates new possibilities. As we think big, we can creatively use the skills of mediation to keep the IEP process and team focused on meeting the needs of our students who use assistive technology.

Jan Serak & Nissan B. Bar-Lev

Disputes between parents and school districts related to assistive technology can be resolved in a variety of ways. We are committed to helping parents and school personnel understand the various options available to them under federal and state laws. We believe that a thorough understanding of various dispute resolution options will help parents and schools use options that provide the most self-determination (the ability to be able to control the outcome) rather than using more coercive, and often more costly, options with less opportunity for parties to have self-determination regarding the outcome. We also believe that using dispute resolution early in a conflict is important step in achieving a better working parent-school relationship for the future.

We have worked together for 10 years as a team to bring information to Wisconsin stakeholders about dispute resolution – to help them know what options are available, and to help them

understand how to be more effective participants in various dispute resolution options. We believe it is critical to model parent-school partnership– so we are providing this joint overview.

Prior to 1997, options available to parents and schools for resolving disputes related to the educational programs of children with disabilities were to request a due process hearing or to file a formal complaint with the state education agency. Both options involved a third-party neutral in control of the outcome – for complaints (generally the state education department complaint department) and for due process hearings (hearing officer). Thirty-nine states included an option for mediation as part of their state law prior to passage of the Individuals with Disabilities Education Act 1997 (IDEA 97), recognizing the value of the increased self-determination available through mediation.

IDEA 97 shifted previous language of federal special education law from an emphasis on claiming “a right” to something - which often found parents and schools adopting positional, entrenched negotiating stances related to issues – to an emphasis on a “partnership” and more collaborative negotiating...by including a requirement for all states to provide families and schools with the option to use **mediation** for resolving their disputes. Mediation is facilitated negotiation. In mediation, a neutral person, a mediator, facilitates the discussion and helps parties reach their own agreement. Federal law provides that mediation can be used for issues that deal with evaluation, disability identification, placement, Individual Education Program (IEP) or the provision of free, appropriate public education (FAPE). These categories are really very broad and can fit most any issue that comes up related to special education. Certainly, many issues related to assistive technology will qualify for mediation.

Congress expressed its’ intent for requiring the mediation option ...“where mediation is being used, litigation has been reduced and parents and schools have resolved their differences amicably” and “It is...the committee’s strong preference that mediation becomes the norm for resolving disputes. (in Senate and House records).

Mediation is now available in all states. However, state laws vary related to how each state system operates. Perhaps the most significant impact of mediation is the establishment of a collaborative partnership that not only assists in resolving the present dispute, but provides parents and schools with a framework to resolve future disputes.

IDEA 2004 has gone a step further, in an effort to encourage families and schools to resolve their disputes at the earliest stage possible, and has added a new dispute resolution option – the resolution session. The **resolution session** is required to be held between parents and school district representatives when a due process hearing has been requested, unless both parties agree to waive the session and either go to mediation or proceed directly to the due process hearing.

States also vary in the types of early dispute resolutions they offer under their state law or practices. Wisconsin, for example, piloted a **facilitated IEP** option in 2004 in which families and schools could agree to request a neutral external “facilitator” to assist with their IEP process. The pilot was so successful in resolving disputes early that the Wisconsin Department of Public Instruction has continued to fund facilitated IEPs with federal discretionary grant dollars. A number of states also use varying forms of facilitated IEPs, including with internal facilitators (school staff) and external facilitators (not school employees).

Nissan Bar-Lev and I represent two of the three partner agencies have been involved since 1996 with the Wisconsin Special Education Mediation System (WSEMS) in the design, on-going administration and statewide stakeholder training, as part of a state discretionary grant for the Wisconsin Department of Public Instruction. WSEMS is located at Marquette University Center for Dispute Resolution Education.

The three agencies and staff involved in WSEMS are: Marquette University Center for Dispute Resolution Education (Professor Eva Soeka, J.D., Center Director & Private Practice Mediator; Jane Burns, WSEMS Intake Coordinator); Cooperative Educational Service Agency #7 (CESA 7 – Nissan Bar-Lev, Special Education Director); Wisconsin FACETS, – Jan Serak, Executive Co-Director; Nelsinia Ramos, Outreach Coordinator; Charlotte Price, Trainer, all parents of children with disabilities).

WSEMS administers a well-coordinated system of dispute resolution which includes case intake, screening and referral for three types of early dispute resolution options for special education disputes: **mediation, facilitated IEPs and facilitated resolution sessions**. Each of these three processes allows for: neutral intake; use of a trained, neutral third party; and voluntariness. WSEMS currently has a roster of 33 neutrals – who may serve as mediators for mediation cases and as facilitators for facilitated IEP meetings and resolution sessions. A key component of any successful mediation system is the perceived neutrality of its mediators. By federal law, a mediator can not be an employee of a school district or the state department of education. Having a neutral case intake center, at Marquette University Center for Dispute Resolution Education, has been critical to the success of our system. No one outside the Center, including Wisconsin Department of Public Instruction, knows which parents or which schools request mediation. For more information about WSEMS, please visit our website: <http://www.marquette.edu/wsems/>

The tremendous value of using a parent/special educator/mediator team to establish and jointly oversee a state system of dispute resolution cannot be overlooked. The WSEMS team has worked closely for 10 years to establish a nationally-recognized state system of dispute resolution for special education. The WSEMS system of mediation has been very successful, as most recent data shows: 89% satisfied with agreement (N=390); 88% satisfied with process (N=519); 89% would use mediation again (N=515).

An important feature, which has proven to be a cornerstone of success of the WSEMS system, has been our use of an ongoing **stakeholder group** to inform and advise our system. The stakeholder group worked initially to draft language for Wisconsin's state law related to mediation. The group continues to meet annually to review data collected from the WSEMS cases and makes recommendations for improvements in the system. The first stakeholder group included disability organizations, parent groups, parent attorneys, school organizations, school attorneys, legislators and a representative from the Governor's office. The current stakeholder group has added related services representatives, teachers, and others. The stakeholder group continues to endorse ongoing statewide training for stakeholders done jointly by our parent/special educator team. To expand outreach training, thirteen parent/educator teams were trained in 2005 to bring WSEMS training to their regional areas.

We would like to highlight the best resource that we know of related to dispute resolution in special education – the Consortium for Appropriate Dispute Resolution in Special Education (CADRE). CADRE is the national center on dispute resolution, funded by the U.S. Department of Education Office of Special Education Programs. Please visit their tremendously useful website of resources: <http://www.directionservice.org/cadre/> . A comprehensive literature database, extensive resource list, information about state systems of dispute resolution, and upcoming attractions related to dispute resolution. CADRE offers fabulous national conferences on dispute resolution for special education stakeholders, with an upcoming one in early December 2006.

Mediation.

Mediation is best used when: help is needed to settle a specific dispute; impasse has been reached; or when there is a history of dispute between the parents and school. What is great about mediation is that every step of the process is voluntary. You only participate if you want to. You can stop anytime you want to. If a parent requests mediation, the school does not have to agree. Likewise, if the school requests mediation, the parent does not have to agree to participate in mediation.

The mediator is not a decision-maker like a judge or a due process hearing officer. The mediator helps facilitate and structure discussion between the parties during mediation and does not actually impose a decision or interpret law. The setting for the mediation session is usually one of "structured informality." The mediator helps parties understand how the mediation process works; helps parties decide who will participate in the mediation session. While various mediators use different approaches, a typical session starts with the mediator confirming the agreement of parties to mediate (such as by parties signing an Agreement to Mediate form). The mediator describes mediation process and confidentiality provisions of mediation. The mediator usually does an opening to introduce himself/herself and asks the participants to each explain their viewpoints about the issues. Federal law provides for mediation to be private and confidential so that parties feel comfortable openly discussing any issues. The mediator encourages the parties to work on generating options, helps them assess the various options.

Some mediators use "caucus" – which is an opportunity to meet privately, either with the mediator or with colleagues. The mediator should not share information from the caucus in an open mediation session without permission. Caucus is often used to move the process forward, to let parties vent, to prevent premature agreement, to educate a party with poor skills, to explore settlement options, etc.

If there is an agreement, both the parents and the school sign it. The agreement should outline what the parties feel they will be able to do to resolve the situation. People tend to follow the terms of mediated agreements because they participated in developing them. The mediator can be the "scrivener" – that is, he/she can record agreement points as directed and phrased by the parties, but should not be writing the agreement for parties. This would get the mediator into the realm of "practicing law without a license." In WI, agreement is legally binding, enforceable under WI contract law. WSEMS does not have any responsibility for enforcement of agreements.

While there are no guarantees that mediation will lead to an agreement, often even in process of mediation, the parties may be able to work together to better identify their issues or reach a partial agreement on some of issues, or going through the process may result in their improved communication for a better long-term relationship.

Facilitated IEPs

While not required under state or federal law, the use of facilitated IEPs is encouraged in the *President's Commission Report* – but, was not included as part of IDEA 2004. The Report had an emphasis on early conflict prevention and management - for IDEA to support early processes for conflict avoidance for schools & parents.

In Wisconsin, for example, a facilitated IEP is an option for early conflict resolution that is available to parents and schools. A facilitated IEP uses a neutral trained professional (a facilitator) to help the IEP team with the process of deciding what will be included in the IEP. This facilitation may take place at any IEP team meeting. The facilitated option in Wisconsin is voluntary. If either the parents or school do not want to use a facilitator, a facilitated IEP will not be arranged. The process is free. WSEMS does the neutral intake and screening of the cases and pays the facilitators with their federal discretionary grant from the WI Department of Public Instruction. In some cases, when parties have become very positioned on a certain issue, the intake coordinator may suggest that mediation may be a more appropriate way to try to resolve the issue. In the WSEMS system, results have shown: 96% of participants agree the process will improve future meetings; 86% would use the process again;

A facilitated IEP is often used to help when the school and parents think an IEP meeting will be difficult to manage, as when there has been a lack of trust, if problems are expected with communication. A facilitated IEP is most effective when requested in the early stages of the IEP process. The facilitated IEP meeting is held at a time and place that is acceptable to all IEP team members and the facilitator. The facilitator helps IEP team focus on developing an effective IEP -

but is not an IEP team member. The facilitator offers ways to address and resolve conflicts in the development of the IEP; models and helps maintain open, respectful communication among team members; helps team members develop and ask clarifying questions about issues that may have come up in past IEP meetings; maintains impartiality and does not take sides, place blame or determine if a particular decision is right or wrong.

Resolution Session

IDEA 2004 requires that the local education agency (LEA) meet with parents within 15 days of a due process hearing request. The resolution session may be mutually waived; or, the parent and school may decide to request mediation instead. The LEA may not bring an attorney to the resolution session unless the parents bring their attorney. The participants to a resolution session include the LEA, parents, and any IEP team members who have information about the issue that is the subject of the hearing request. Any resolution arrived at must be put in a written agreement and signed. Either the parents or school may void the agreement within 3 business days. The agreement is enforceable in court. If an agreement is reached, the parent can not recoup (recover) their attorney fees. Some states, such as Wisconsin, offer to provide a neutral person to help facilitate the meeting if requested.

Expert Bios

Jeanne Bowman



Jeanne Bowman's journey in special education began with the diagnosis of her son as 'significantly learning disabled' in 1989. She began searching for information on learning disabilities, joined a support group, took classes at the junior college and began to attend the Community Advisory Committee to the SELPA. Jeanne's participation in an LD parents support group led her to Matrix parent network and resource center services, a position on the state CSPDAC work group and to become a parent representative to the CAC. In 1996 she joined Matrix collaborative teaching project with Sonoma State University teacher credentialing program, the Parent Professional Partnership Project (funded by a federal office of special education program grant under IDEA) and team taught from the parent perspective with Sonoma State staff the special education for regular educators clear credential class. Jeanne worked in a half time position as a special education parent facilitator for the Cotati-Rohnert

Park Unified School district during the 1997-98 school year. She began working for Matrix ³/₄ time in 1998 as the early intervention (0-3) program director (supervising 4 staff in 3 counties). In addition to early intervention support Jeanne attended IEP's with parents, conducted IEP clinics, support groups and parent to parent trainings. She continued volunteering on the CAC, became chair and a voting member of the finance committee as the plan for implementing the New Funding Model for SELPA was developed. In her CAC role, Jeanne also helped plan the SELPA's alternative dispute resolution program, and then managed a Matrix collaborative grant with the SELPA to recruit, train and supervise 15 Alternative Dispute Resolution Special Education Resource Parent Volunteers from 2000 – 2003. In 2003 Jeanne accepted a role with a national perspective at Matrix (in the western region), to provide technical assistance to 23 parent training and information and community parent resource centers funded under IDEA. They are located in Alaska, Hawaii, Washington, Idaho, Nevada, Oregon, California and American Samoa, Jeanne must visit them all. Jeanne looks forward to sharing with you the differences between the paths her first child with learning disabilities took and that of her second (diagnosed in 1994).

Jan Serak

Jan is the Executive Co-Director of Wisconsin Family Assistance Center for Education, Training & Support (WI FACETS), the parent of a twenty-seven year old son with autism and an experienced parent advocate. She has been a partner for 10 years in the Wisconsin Special Education Mediation System. She received her graduate degree in Educational Psychology and Dispute resolution from Marquette University. She is a practicing mediator, consultant and strategic planning facilitator for nonprofit organizations. She is a member of the WI Association of Mediators and national Association for Conflict Resolution. She is a Past-President and current Education Co-Chair of the Autism Society of Wisconsin, Legislative Chair of the Autism Society of SE Wisconsin and a member of the WI Dept. of Public Instruction Continuous Improvement Focused Monitoring Advisory Committee.



Nissan B. Bar-Lev

Nissan Bar-Lev is the Director of Special Education for Cooperative Educational Service Agency # 7, a consortium of 37 Wisconsin school districts, and a partner in the Wisconsin Special Education Mediation System. He serves as President of the Wisconsin Council of Administrators of Special Services, and Chairs the Wisconsin School Administrative Alliance. He is a member of national Council of Directors of Special Education (CASE) Board of Directors, and Chairs the Wisconsin Blind and Visual Impairment Council. He served on the Wisconsin State Superintendent's Council on Exceptional Education, Wisconsin Governor's Council on Youth Apprenticeship and Assessment. He is a co-author of *Special Education in Plain Language*.



Transcript: Assistive Technology Mediation

- **Welcome, and wow** by **Jeanne Bowman** on Feb 01, 2006
This is exciting, so much going on and this is our first day.
I'm struck by the depth of issues right off the bat, and pleased that we have voices from many perspectives, all focused on student needs.
Especially when our responsibilities include many students.
There is something so hopeful and inspiring for students who need assistive technology in the concept, and implementation, of universal design.

Staff training on technology is key, as is access to the kind of evaluation that is focused on the need first, then the device.

I pushed for an assistive tech evaluation for my son with significant learning disabilities, including fine motor delays. We had an hour and a half appointment with a county AT staff member (on a fast track, I was quite assertive about having that expertise). During the appointment it looked a lot like Nick was hanging out in the back room playing with a computer and talking to a really nice nerd. They played with a lot of super neat stuff, had a

chance to talk together about what Nick thought would work for him, and more time to play with toys, er, equipment and software.

The beauty of the evaluation was in the conversation where Nick would describe what he thought he needed, and Mark would show him a program or tool that might fit. Nick would try it, have another idea, and they'd talk more. It was clear to me, as parent, that my student didn't agree with me about the need for assistive technology. He pointed out all the problems with various options, and let us all know that if he could read his handwriting, that is what counted.

It wasn't the outcome that I expected from the evaluation: it was quite authentic. In our IEP we agreed that Nick would benefit by using a computer on a daily basis, but it was clear he would not, independent thinking fourth grader that he was, use anything that wasn't universally available to the entire class. I was convinced that he needed something that I could read, and that he could keep assignments in without losing discs or small stuff in his magic homework-eating back pack. The team agreed that an Alphasmart could do that and staff were familiar with it, so additional training wasn't necessary. We gave it a try with a loaner. Nick liked it, sort of. But not enough that I wanted to hold a team accountable for his success in using it. It really was my need being addressed, so I bought one for him, and the school agreed to monitor his use. He loved it for about three weeks, but really preferred the classroom computer (with the handy dandy spell check).

The process taught me that raising a student to be his own independent advocate meant that we as a team didn't always go after the solution that I or his teachers might have envisioned.

I still can't read his handwriting, but he can, and so can his teachers.
Picture me shaking my head.

- **When's the right time for mediation?** by **guest** on Feb 01, 2006

I apologize if the answer to my question is in your long intro material. I haven't read it all yet. I'm wondering when and how you should mention mediation to the school team. I'm thinking that if I mention it right away, they'll assume I'm expecting a fight. But if I wait until we have a problem, with lines drawn in the sand, it might be too late. What do "best practices" say?

- **Re: When's the right time for mediation?** by **Nissan Bar-Lev** on Feb 01, 2006

This is an excellent question. On one hand, you would like to provide your school district with every opportunity to resolve a dispute early in the process, while insuring that you follow "the chain of command" in the school district. On the other hand, a dispute that does not get resolved is like a bad toothache: it does not get better with time... and will require a dreaded visit to the dentist...

If you are involved in an IEP team meeting and it appears that, for example the school placement issue is being disputed, ask to meet with the special education director and or the district administrator to attempt and resolve the issue. If still not resolved, propose the use of mediation as soon as possible.

One particular training that Jan Serak (parent advocate)_and I (special education administrator) conduct for parents and educators in Wisconsin is "how to be an effective participant" in these type of situations. It is part of our commitment to provide parents and educators with early conflict resolution training. Perhaps your state has similar trainings?

Nissan Bar-Lev

- **Re: When's the right time for mediation?** by **guest** on Feb 01, 2006
If I understand your answer, it seems you wait until after the IEP meeting. When you say "meet with the special education director or the district administrator," do you mean a special ed director at school? Can any parent just request a meeting with a "district administrator"? I'm in a large county and I can't imagine the head of special ed for the whole county meeting with me just because I wasn't satisfied after an IEP meeting. Does this routinely happen in big school districts? Again, if I understand you right, I shouldn't mention mediation until after a meeting at the district level.
- **Re: When's the right time for mediation?** by **Nissan Bar-Lev** on Feb 01, 2006
You should first attempt to resolve the issue at the school district level. Generally speaking, the district's special education resources are controlled by the district administrator and or by the director of special education. You need to discuss your issues with them and give them the opportunity to resolve the dispute. They would be very appreciative that have you included them in this process. If this does not work, then suggest mediation.

Nissan Bar-Lev

- **Re: When's the right time for mediation?** by **Colleen** on Feb 02, 2006
Yes, you go right up the chain of command. First talk with the principal or whoever was the LEA (Local Education Representative) that attended the meeting and express that you disagree, why and what you want to happen. Then let him or her know that you are going to go to the director of special education (sometimes director of pupil services) and if things don't get resolved there you let that person know you are meeting with the superintendent. When you call the superintendent, you just say that you are a parent and that you have exhausted all other channels and that you would like to have a meeting with him to discuss how the district is meeting the needs of students with disabilities. That there are issues that you feel he should be aware because you want to work them and not go through due process.

I started meeting regularly with out district superintendent when things weren't going right. Your tax dollars pay his salary, and it is certainly less costly to resolve issues by talking them out then having expensive lawyers at due process. I recommend doing this process (although other advocates jump right to due process) but, this way you can repeatedly make it clear that all you want to do is work with the district as a team, and your only goal is to get your child appropriate supports and services. I've worked with lots of families and the majority of the time the conflict is based on miscommunication. Everyone must get everything out and open, and share all the information and then it is more likely that you will actually be able to work together.

If all else fails you can always sign that you are requesting mediation or due process. You can always recall an IEP meeting at any time too.

- **Re: When's the right time for mediation?** by **KM** on Feb 02, 2006
Thanks. I really like the positive tone of your message. I'm going to try calling the Director of Special Education and, since this is a month-long discussion, I'll let you know what happens: -)
- **Re: When's the right time for mediation?** by **Joan** on Feb 02, 2006
Hi, all. What an interesting conversation! I am posting a link to information on the mediation process in MN. This is sponsored by our department of education (I work in the state special education policy area there). I have had the good fortune to meet with the mediators to help them learn about assistive technology, to help them understand what was being talked about in some of those meetings. <http://education.state.mn.us/mde/static/002140.pdf>
It is interesting that (at least when I last looked at data) no mediations occurred that dealt solely with assistive technology, but I hope the meeting I had with them helped in understanding this field.
- **Re: When's the right time for mediation?** by **Jan Serak** on Feb 02, 2006
Too often we perceive mediation as a "threat", when in fact, I think we should be reframing it as a "great option" available to all states first through IDEA 97 and again in IDEA 2005 to help parties work together to reach an agreement about a difficult issue.

Perhaps people's experience with mediation in settings other than special education or with a system that may not be optimally operating within a state may be creating the feeling amongst parents and/or school personnel that a suggestion of mediation is a "threat."

One would hope that the more people know about the great potential benefits of mediation, that suggesting mediation won't automatically have you perceived as "expecting a fight" when you suggest mediation, but rather be looked upon as a person that is "open to continuing to work to find a solution" to the situation even if the IEP meeting doesn't go well.

Here is what our Wisconsin Special Education Mediation System brochure has to say about "When is Mediation Right for You?"

Mediation is a process that is right when there is:

- * an ongoing relationship between family and school representatives
(my comments - which, of course, with kids being in school 3-21 or longer in some states, we do have an ongoing relationship that lasts for years)
- * a need for privacy
(my comments - kind of like Las Vegas... what is said in mediation, stays in mediation... due to the confidentiality provision of the federal law)
- * a need for creative and flexible solutions
(my comments - we sure need those when trying to resolve issues)

Under special education law, mediation may be used for disputes involving:

- *identification
- *evaluation
- *IEP
- *FAPE

AND, most importantly, mediation is most effective when used early in a dispute.

Nissan and others who have commented in this discussion about bringing awareness of existence of the problem to others in the school district (such as who may be able to help and possibly may have more ability to "expand the pie" of options in the situation is certainly good guidance for most situations.

"Best practices" really say - request mediation early before parties become very positioned.

So, you have to look at your individual situation and try to decide if whatever action you take, whether it be going to an IEP meeting, not going to an IEP meeting, etc. will further position the people about the problem. If you think it will not, you could wait and try to continue to work it out. If you think it will, then request mediation.

Jan Serak

- **Neutral intake process by Jackie Hess [SI Faculty] on Feb 01, 2006**

Jan and Nissan, in your "expert perspective" material you mention a "neutral intake process." Could you describe the key elements of that process please? Thanks.

- **Re: Neutral intake process by Jan Serak on Feb 02, 2006**

States vary in the way that they implement the federal requirement to offer the option of mediation to families & schools. Correspondingly, case intake method also varies from state to state.

Systems design is a critical component in maximizing the use of a mediation system. Setting up a neutral intake point is really an important consideration in systems design. If parents or schools feel that a system is not neutral, they won't want to use it.

When we designed our system of mediation for Wisconsin and wrote our state law related to mediation, we used a broad stakeholder group to make recommendations. The stakeholders strongly felt that there should be a "neutral intake process". They did not feel that the case intake should be done by the SEA, by the IDEA-funded parent centers, or by the school districts or CESAs (regional cooperatives in the state amongst which our 428 school districts are distributed). They strongly felt that a site must be identified that would be perceived by all parties as totally neutral for case intake.

So, the WI Special Education Mediation System (WSEMS) case intake site is the Marquette University Center for Dispute Resolution Education. The WI stakeholders all agreed this was an acceptable neutral intake site. The Center has a graduate program in dispute resolution. The Center hired a full-time WSEMS Intake Coordinator, who is paid through the WSEMS discretionary grant that funds our system of mediation in WI. The Center manages the cases and maintains the confidentiality of the cases (does not share names of parents or schools with the

SEA). The Intake Coordinator communicates with the parties and with attorneys, provides case intake, assists parties with selection of mediators, communicates with the mediators, and coordinates payment of the mediators.

More information about the fundamental questions that were addressed in the design of our special education system...including by our stakeholder group can be found at:

<http://www.directionservice.org/cadre/indexsystem.cfm>

"Developing A Special Education Mediation System Through Stakeholder Involvement: The Wisconsin Model"

and also on our website: <http://www.marquette.edu/wsems/>

All states have their own intake process. However, regarding the neutral intake process itself in Wisconsin by WSEMS...

A form is available from WSEMS by calling 888-298-3857 or online at the above website. The form is simple to complete. The person describes the issues & signs the form. The WSEMS Intake Coordinator is able to provide assistance in completing the form if needed.

In WI, the request form may be filled out:

1. Together: after discussing the issues, the parents (or guardian and adult student) and the school representatives may decide they need a neutral person to help them resolve issues. This is a Joint Request.

OR

2. individually: a parent, adult student, or school representative may request mediation.

If mediation is requested individually, WSEMS notifies the other person identified on the form. The intake coordinator explains the mediation process & finds out if the non-requester would like to try mediation. The non-requester is not required by law to participate in mediation. The mediation process is voluntary. In WI, the non-requester has 5 business days to decide whether or not to participate.

WSEMS has an excellent Case Intake Form, refined over the past 10 years, that the Intake Coordinator uses to get information about the case from both parties. The Intake Coordinator reviews the Case Intake Form to first determine if it is a case that qualifies for mediation under the law - that is, does it fit with one of the categories for which mediation can be done under federal law (as, identification, evaluation, IEP, placement or FAPE). Information on the Case Intake Form provides information to make other decisions related to the appropriateness of the case for mediation, or to match mediator assignment with the individual case issues.

The WSEMS Intake Coordinator appoints a mediator. If either (or both) party objects to the mediator, WSEMS appoints a different mediator. Either party may request a specific mediator. When the parties agree on a mediator, the case moves forward. Mediations take place within 21 business days after the mediator is agreed upon by the participants.

Hope this helps.

Jan Serak

- **Welcome by Jackie Hess [SI Faculty]** on Feb 01, 2006

There's scarcely a playground in the country on which you won't hear, on any given day, an adult saying to an enraged child, "Use your words." Generally the child wants nothing more than to haul off and whack another child up side the head, in response to a real or imagined injury. We watch the angry child wrestle with his or her emotions, as we reinforce the message that reasoned negotiation trumps force. There are only so many swings, so many toy trucks, so much time during recess, we tell the child. You can't always have what you want. Yet, there are times when we adults, as parents, feel pushed to the brink in defense of our children's right to an assistive technology device or service. Of course, much more is at stake than access to a toy or swing. Our child's very right to a "free and appropriate public education" may seem to us to be at stake. Still, we may be told that resources are limited and we can't always have what we want. At that point we want to "hit the school system up side the head." Instead, though, we are told to negotiate, to rely on mediation in lieu of law suits. In that situation, how do we "use our words" to get what our child needs? How do we enter into a productive negotiation with school officials with whom we may have to deal for several years?

Throughout the month of February we'll discuss with school officials, parents, administrators, researchers, and others, the issue of assistive technology mediation. When does mediation enter into the picture? What have we learned about effective mediation procedures? What models exist and under what circumstances are they appropriate and successful? What do we do if mediation fails? How is the re-authorized IDEA likely to affect your child's access to AT devices and services? We hope you'll share your experiences and questions with our experts and participants. Welcome to the discussion.

- **Re: Welcome by Mary Drew** on Feb 01, 2006

I guess I am the one on the other side of the table from you. I have to daily look at what is out there and what we really can afford and what the student actually needs and can use. The school system does have limited funds. We also have many students. I know that is not the concern of individual parents during a "hot" meeting but it really does have to be our concern.

I think, at least in our district, the parent stops listening when they hear there may be some question if the specific device they want will really be the "one" that will make the difference. Often a parent has talked with a sales rep and been told that their device is the one that is the easiest, best, etc. It may be a great device but if the staff using it is totally unfamiliar, etc. there is a learning curve that may make a similar device a better choice.

My role in a "hot" meeting is usually to frankly discuss pros and cons with everyone there. Often Medicaid will buy only one device and the parent wants the biggest available. We use "evaluation" to get us over those points. We have numerous communication devices in our district. We evaluate a child's use on what we deem appropriate for a period of time. Often the child outgrows the device and we step it up. We won't recommend purchase until we are "fairly" sure that the child has maxed or will continue to grow into the device. That is a hard concept for many parents to grasp. I work with the parents between meetings to help them understand the devices and programming, use, etc.

It is hard for either side to sit in a meeting and be accused of not caring, asking too much, etc. I think it is critical for everyone there to realize they are fighting for the same thing, the child. I have worked in special education for 25 years and I have met very few teachers that really don't have the child's best interest at heart. I have met many that don't express that very well.

- **Re: Welcome by Jackie Hess [SI Faculty]** on Feb 01, 2006
Hello Mary. I certainly hope I didn't sound as if your approach would be the opposite of mine, because your perspective seems entirely appropriate to me. We often stress to parents that they should not become wed to a specific piece of equipment or a specific model, but instead, to focus on the function that needs to be accomplished. There are, as you indicate, so many factors to consider, including the child's willingness to use a particular device in front of his/her peers. No one wants to invest in an expensive piece of equipment, only to have it languish in the closet because the child refuses to use it. Relying on sound, comprehensive evaluations seems like an excellent approach. Unfortunately, in many parts of the country, that remains a challenge.

- **Re: Welcome by Jan Serak** on Feb 01, 2006
Hi Mary -

I certainly understand your perspective. I am assuming that when you are talking about a "hot" meeting, you are referring to an IEP meeting (ie, rather than a mediation session)?

What is interesting about using mediation - is that the dynamics of the situation when a neutral person, a mediator, is brought in, often change. The mediator may help people move forward by looking at the situation in a different way - one which neither the parents or school staff envisioned.

You describe your perception that, with good information about the pros & cons of various devices and the normal procedure that the district follows for purchase of devices, the parents could be persuaded to your point of view. The parents may perceive your provision of this information in a different way. When you feel that you are not making headway in the discussion, despite your efforts, you may find that mediation may give the whole situation new light.

Mediators usually help parties listen to each other in a different way, may help parties understand what each other's interests are, help each other better understand what may be underlying their respective requests. They will help parties stretch to brainstorm options and then craft agreements that may work for everyone.

Have you used mediation related to AT? Just curious.

Jan

- **Re: Welcome by mary drew** on Feb 01, 2006
Our district has used mediation but not specifically to AT. The situation has been much broader before mediation was attempted.

- **Re: Welcome by Nissan Bar-Lev** on Feb 01, 2006
I am delighted and honored to co-facilitate this discussion on AT and mediation. As the schools representative on the Wisconsin Special Education Mediation System (WSEMS), as well as having a soft spot in my heart for technology, I am very sensitive to the issues of schools compliance with AT needs. Wisconsin schools are grouped into 12 regions (called Cooperative Educational Service Agencies, CESAs). Each region employs an AT consultant. This consultant is heavily utilized by the local school district in an effort to provide a professional AT perspective on any dispute regarding students' AT needs. This expertise has helped elevate the discussion between parents and administrators from a "battle of wills" to an actual informed discussion...

Nissan Bar-Lev

- **Re: Welcome by Jimmy Weber** on Feb 01, 2006
I had a son in Special Education, who actually "tested up to a 504" in his Junior year of high school. He is now out of school.

In hindsight, and now with several years of experience working on disability issues in general, and with some very specific training I can see ways our IEP meetings should have been different, and ways I should have been more aggressive.

I do believe that most special ed teachers do care. However, I am not so sure that administration always cares about individual students. I have seen too frequently students even refused testing so they could avoid the costs of moving toward special ed. But when they are, special ed teachers and special ed administrators often have their hands tied by higher up the food chain.

Maybe I haven't seen it, and it has been there, but I haven't seen yet any reference to "evaluations" done by parents and the student at home under normal home conditions. The most appropriate expert to make a recommendation may well be the student and/or his parent who live with the particular student's disability on a daily basis year in and year out.

Sometime and even frequently, the experts know what the books say, but anyone who works with people very long understands that the books--at best--are generalities and can not take every incident into consideration.

Let me share one small example in closing. I am in a wheelchair because of Multiple Sclerosis. I started in a manual chair and now am in a power chair. When I had been in the manual chair for a few months I realized that the wheels were tearing up my thumbs--to the point of bleeding. So I wanted padded (in the palm) wheelchair gloves with the thumb covered but the other fingers I didn't care one way or the other. I couldn't find anything here in Iowa where I live so I talked with my mother in Texas. She talked with people in medical supply stores there. One of the "experts" told her that "no ma'am, they don't make that type of glove because people in wheelchairs don't want their thumbs covered." My mom told him, my son in Iowa is in a wheelchair and he does want to cover his thumbs. I ended up finding what I wanted--

they are available from many providers. But, me, the expert on me had to find what worked for me because the experts couldn't find what worked for me.

- **Re: Welcome by Jan Serak** on Feb 02, 2006
Hi Jimmy -

First of all, congratulations having a son who is now out of school and out on his own!

Secondly, you have made several good points:

1. We all could benefit from additional information and/or specific training on how to be more effective communicators and negotiators - so that we can be more effective participants in IEP meetings, facilitated IEP meetings, mediation sessions, resolution sessions, etc.
2. There are often varying perspectives to an issue and many options to be researched when seeking to resolve an issue, such as you drew on for your glove example. Sometimes it takes a neutral person, such as a mediator, to help us reach beyond our "positions" and normal resources or practices to search for more options than we may have not previously been aware of or willing to investigate further.

Several resources for targeted training on effective communication and more effective negotiation, etc. that I have found very beneficial include:

1. CADRE - has held some fabulous multi-day symposiums on dispute resolution! The next one scheduled for Dec. 7-9, 2006 in Washington, D.C. This conference is attended by parents, school professionals, attorneys, and neutrals (ie, mediators, arbitrators, facilitators).
<http://www.directionservice.org/cadre/>

2. Association for Conflict Resolution - has a great annual conference. The 2006 ACR Annual Conference, will be held October 25-28, 2006 in Philadelphia. I have been an member of ACR since 1995. I've attended 5 of these conferences & have found the information, materials, etc. extremely valuable. <http://www.acrnet.org/>

3. ACR has many state chapters who also hold conferences during the year: <http://www.acrnet.org/chapters/index.htm> .

I would love to encourage everyone to go to the CADRE website - read just one article a week... you will learn so very much that will help you be a more effective communicator and more effective participant related to early conflict resolution processes.

Jan Serak

- **Re: Welcome by Colleen** on Feb 02, 2006
I started another thread to address this, (Being proactive as a "team") but I keep coming back to how insulting this post made "me" feel. Do you honestly think that parents don't want their children to have what "they need" and "what they can use"? If everyone looks at the same child "objectively" evaluating what the student needs, where the student needs support, and what features would meet that student's needs, no one should be that far off. There are "some" parents who want the first piece of technology they see, mainly because they were never told about it, and when they see what the possibilities are, they get angry that their child was never provided the opportunity and has missed out on so much.

Of course "other" students are not the concern of the parents sitting in a meeting for their child. When you do your budgeting and planning, that's the appropriate time for you to plan for "all" students, but when you are in "a" student's meeting, your focus must be solely on that student. Granted you have limited funds, but there are many other funding resources and creative means to get funding, but if you deny acknowledging that student what they actually need, then it is YOU that are the greatest barrier.

Often the parents do talk to sales rep, and if that is their first encounter with what the possibilities are, then that means you and your staff are not doing their job.

My "opinion" of what your role in a "hot" meeting should be, is to "cool" the tone of the meeting down. Open up communication and be honest about what the student needs are. Your job isn't to shut the parents up and convince them that something cheaper is better because there are other students. The pros and cons have to be pros and cons from everyone's perspective including the parents and the student, and they should be based on real objective data.

Parents don't innately want the "biggest" item available, they want what their child needs. They are not typically informed about everything that is out there, and when they see something that has features they know their child needs, then of course that is something they want. Your job would be to help them identify what those features are to support looking at a variety of other items, not just cheaper but all kinds, to really see what the features are that the child needs. If the parents say - okay x, y z, are the features that would really help my child, but he doesn't necessarily need a, b and c, so maybe this other device that has only x, y, z would fit.

When you say "we" won't recommend a purchase until we are fairly sure, I certainly hope that part of the "we" is the parents and the students. That's a hard concept for many educators to grasp. You need to be sharing ALL the information, ALL the devices, and ALL your methods of reasoning so that the parents can logically come to a similar conclusion using their own processing because it is really reasonable and about the child first, not because it fits your budget or knowledge or other resources you have on hand.

- **Re: Welcome by Jan Serak** on Feb 01, 2006
Hello to you all -

I am excited and honored to co-facilitate this online discussion related to mediation and other forms of early conflict resolution.

As a Co-Director of WI FACETS, long-time parent advocate, and a parent of a

nonverbal young adult son with autism, I have first hand experience with conflicts between parents and schools when assistive technology (AT) support is a consideration.

As a partner on the WI Special Education Mediation System for the past 10 years, I have co-trained many stakeholders about mediation and the other forms of dispute resolution. With the focus on the future, rather than what happened in the past, mediation, in my opinion, is the optimal choice when there is a conflict that seems to be going no where.

As this discussion starts, I am very interested to hear what experiences parents, educators and others participating in this discussion have had with mediation, and especially related to AT. I am happy to try to answer questions you may have.

I look forward to the interaction.

Jan Serak

- o **Re: Welcome by christine kilpatrick** on Feb 01, 2006

Hi all,

I am very interested in this topic and excited to see it being discussed through FCTD. The point made regarding AT evaluations being difficult to come by in some areas particularly hit home for me. I am in Vermont and in our state we have three Assistive Technology professionals available to serve birth through the elderly through the state Tech Act program. As you can imagine, three folks serving the entire state, much of it very rural, makes getting an AT evaluation extremely challenging. There are some professionals within the state, a few SLP's and OT's who work in the AT arena, but they are few and far between.

The backbone of determining good services typically goes back to the evaluation process and the information gathered there. When it is such a challenge just to get an AT eval, this information is often lacking leading to misunderstandings and, more often, a real lack of information to school teams and parents alike about what AT is and what an important bridge it can be. Often it is the parents that seek out this information for their children, not the schools, and this can lead to over reliance on one vendor or another to provide a product, whether that be software or hardware.

I guess the challenge I see in our state is how to raise awareness within the school community about AT so that parents and schools can make informed decisions together about what products/approaches would best serve their students.

Looking at Universal Design, it makes sense for schools to begin to invest in AT that can enhance learning access for a broader spectrum of students. Things like text-to-speech programs for the LD population can be networked and digital libraries founded to begin to address these needs and increase student success.

We all want the same thing, positive outcomes for our kids.

- **Re: Welcome by Cheryl B.** on Feb 01, 2006

I'm not sure if my response should be to your message or one of the earlier ones, but getting a timely AT evaluation is a big problem in my state (South Carolina) as well, particularly, as you say, in rural areas. I sometimes serve as a parent advocate, not because of any formal training, but simply because my husband and I have spent years reading about and going to conferences on AT, and the word gets out and people tend to ask for our help. What we

sometimes see is the flip side of the situation Mary described, where parents come in wanting a specific piece of hardware or software (although we see that too). Sometimes a school district has purchased a particular type of AT device or gotten a site license for specific software and they're determined to use those devices or that software. Even if the parents pay for an independent evaluation (which doesn't happen very often), the school may say, "this is what we have available and we think it's adequate." Then the argument starts, because the parents want an approach that's customized to their child. In most cases I've been involved in, the school has "won" and the parents left feeling very negative. I have no training as a mediator, but I wonder what I could have done to help the situation end better.

- **Re: Welcome by Nissan Bar-Lev** on Feb 01, 2006
Dear Cheryl,

One option available to parents who disagree with an evaluation by school staff is to seek an independent education evaluation (IEE). This applies to AT as well as it is part of the student's free appropriate public education (FAPE). School districts' IEP teams would then need to incorporate these new evaluation results into their decision on meeting the student's needs.

Nissan Bar-Lev

- **Re: Welcome by Jan Serak** on Feb 02, 2006
Hi Cheryl -

You just described a typical "positioned" situation... the school is saying "this is the 1 thing we have available & that's it," and parents are saying, "we want 'x' device customized to our child."

The challenge we all have is how to move schools and parents away from the situation where they box themselves into a corner by stating their "position" where there is often no face-saving way to retreat. We have to help schools and parents be become better at not "positioning" themselves from the start - so that they have some wiggle room to be able to work together to craft a solution that will work for everyone. We hope that the result is a win/win situation rather than what you have described as "win/lose."

When our staff or volunteer Parent Leaders at WI FACETS prepare parents to participate in an IEP meeting, facilitated IEP meeting, mediation, etc., we help parents approach the situation by helping them understand the value of "expanding the pie". That is, to create many more options for consideration than just one.

We would sooner see the parents we support come to a meeting with 10 possible options for resolution rather than just one. If there are 10 on "the table" to at least be addressed, there is a much greater likelihood that several of their ideas might be incorporated into a final IEP document or mediation agreement. If only option is offered, when that one appears not to be a viable option from the school perspective, there are none on the table to discuss. Also, if you get the parents to whom you provide assistance to start thinking in broader terms, it

really puts them on a track to be more open to ideas that the school may also suggest.

This "expand the pie" tool is one which some mediators may use to help parties in a mediation session move towards an agreement.

Help the people that you are working stretch for ideas to "expand the pie."

Jan Serak

- **AT evaluation and resources for schools** by **Di** on Feb 01, 2006

We requested an IEE for an AT evaluation during an IEP meeting. The evaluator suggested several different mediums and we were able to borrow those devices from our local CESA for several months to determine what devices would work. Then the school, child, parents, teachers, etc. were able to try the devices and knock off some of the learning curve for the devices that would work for the child in question. This also cut down on some of the costs because we were not purchasing something that was unusable was not going to work with the child. In the long run the school found that there were other student that could also benefit from using the devices.

- **Re: AT evaluation and resources for schools** by **Nissan Bar-Lev** on Feb 01, 2006

Glad to see that the discussion centered around "what the child needs and can use"! This is one of the advantages in engaging AT specialists in these discussions.

Nissan Bar-Lev

- **Resolution Sessions** by **Terry** on Feb 02, 2006

Thank you for laying out clearly the changes made by IDEA 2004 with respect to mediation. (I recently attended a session on that topic at a conference and left thoroughly confused.) So now I understand about these new "resolution sessions." Do you think they're really going to be different from due process hearings? Where are states going to get all these mediators from? Are states required to keep records of how many mediation sessions take place? Will parents still be able, as a practical matter, to request due process? I don't really understand why there was a change in the law. Did they really think parents were going to due process frivolously?

- **Re: Resolution Sessions** by **nissan Bar-Lev** on Feb 02, 2006

Great questions! I think that Congress established the resolution session option in IDEA 2004 in order to allow parents and districts one final opportunity to resolve their disputes in a face-to-face meeting that is not governed by the litigious rules of the due process hearing. This is especially true for cases in which the local special education director was unaware of the dispute between the parents and staff.

We are fortunate that the Department of Public Instruction in Wisconsin allows the special education mediators in our system to facilitate a resolution session. We think that such participation will increase the likelihood of a successful outcome.

The addition of this new option in IDEA 2004 to resolve disputes between parents

and schools is a positive development. From a professional dispute resolution perspective - the more options to resolve a dispute - the better.

Nissan Bar-Lev

- **Who is available to help when questions or problems come up?** by **Suzanne Ripley**

on Feb 02, 2006

Great discussion. I wanted to add my "two cents".

I think many parents, teachers and others may want information or need assistance. There are questions about access to AT, laws and policies, IEPs, specialists, and mediators.

Knowing where to find this information, learning a bit more about the specifics, and knowing whom to contact when medication is indicated can be a problem.

NICHCY is available to assist. The National Dissemination Center for Children with Disabilities, NICHCY, is funded by the Office of Special Education Programs at the U.S. Dept. of Education, to provide a centralized source of free information on disability and education, in both English and Spanish. NICHCY maintains a web site, www.nichcy.org, which, among many other things, offers disability and special education information and state resource sheets for every state and territory. You can use the state sheets to identify resources in your state specific to assistive technology, mediation, disability specific organizations, and general assistance for parents. Check us out at www.nichcy.org. On the home page, click on state sheets and then look up your state. For this discussion, resources of interest are under:

- Technology-Related Assistance
- State Mediation System
- Disability-Specific Organizations
- Parent Training and Information Center (PTI)

Each can offer direction to find resources in your locality.

And if you don't find what you're looking for you can email one of our information specialists at nichcy@aed.org.

- **Being proactive as a "team"** by **Colleen** on Feb 02, 2006

I think if a school approaches any child's needs "first" by limiting the solutions to their budget, or to only what they know about, or to subjective presumptions about what a student may need, or be able to use, then they are not acting in the child's best interest. If they start out this way they should certainly expect and not be surprised at all if parents (even with the least amount of knowledge) become defensive.

If everyone (schools and parents) begin with a clean slate and focus on the child and the child's needs and builds the plan from the child out, that's the only way to avoid conflict and work as a team. You don't make a child fit something, you objectively determine what the child needs and then find what best fits those needs.

When a school dismisses technology due to budgets, then the child's actual needs are never documented. This only serves to perpetuate the problem, as (1) the features on more costly items are considered not needed by the student and not sought after even on less costly items (2) there is no plan to increase the budgets to meet technology needs of students because on paper it appears that students are getting the technology they need (3) the child's functioning remains unnecessarily limited. (4) the focus is no longer on supporting the student. You wouldn't deny students without disabilities paper, pencils and books, and if

the budget were so limited that these things couldn't be paid for, then there would certainly be a major plan to raise the dollars or approach the state and federal government, or the community to raise taxes or whatever possible to make sure that the money were there.

If there were clear discussions and everyone was provided ample information to make objective informed decisions, then it is more likely that based on the same information more team members would come to the same conclusions. Parents that are not informed and are then exposed to one piece of technology are probably going to stick with fighting for that because no one is educating them on the process of how to determine their child's needs and find the technology that matches.

I happen to be a trained parent advocate, so we never describe a brand name of technology, we describe what my child needs, and clearly outline why, along with stories of what occurs without the technology, and then provide a view of what he could look like using the technology or service. I also research what other students with similar needs use or receive, so it can not be argued that we are being unreasonable, but even if it were beyond what anyone else has received, I will also get other professionals that know my son to further document what he needs.

I have a problem with any school that does not look at the whole child, and places dollars first, that is just not acceptable. First you must look at what the child needs, and try out a variety of items and as a team look at what worked and didn't work and why, in all of the child's environments. Then given a choice of needed features you can then choose the less costly items that still provide the features the student needs. Once again, in my opinion anything else is not in the child's best interest.

In my experience as a parent the schools, administration, teachers, special education teachers, intermediate units and therapists including speech therapists are far less knowledgeable than they care to admit. The majority don't know the laws, they don't know the technology and certainly don't know the techniques and strategies to teach a student who uses technology. They often act like they do, get offended if questioned, and really are not putting the child's needs first. That is not cooperating and working with families, that's called drawing the battle lines.

- **The team approach** by **A. Merkles** on Feb 03, 2006
Everything I read talks about the need for a team approach, who should make up the team, making sure their roles are clear, etc. Here's a question for the experts (or anyone else really): When you move to mediation after an IEP meeting, should the entire team be present? I've found it difficult to convince some people that we need what they consider 'too extensive a group'. I would think it would be even more difficult to schedule everyone for mediation meetings. How does/should that work? For that matter, does anyone have ideas about how to "incentivize" the players to remain part of a team, short of paying each person's salary and travel time to each meeting? Thanks!

- **Re: The team approach** by **Jan Serak** on Feb 04, 2006
Your questions regarding "Who should be present during a mediation" is an important one; and "How do you 'incentivize' them.

I will let it up to Nissan and perhaps some others participating in this discussion who are school staff to answer the question about "incentivizing" staff to participate.

Now regarding your question about Who should be present....

First of all - check your state law to find out who "CAN" be present. Each state varies in their requirements for participants allowed.

WI law, for example, provides that those who may participate are:
1. the parent(s) (or adult student or guardian) and 2. two school district representatives.

Others may participate - but only with agreement of both the parents and school representatives. These "other participants" may include, for example: advocate, attorney, relative, other school staff, family friend, doctor/medical provider/psychologist/psychiatrist, minister/rabbi/priest, etc. (Discussion of attorneys & advocates participating can be a whole other thread...our experience in WI has been positive with them present.)

If either the parents or school do not agree on a participant suggested by the other party, the mediator may suggest starting the meeting with the person there to see if it works. But, if that party still says no, then the person is not there. If one party feels the requested participant is critical to the process, they can always choose not to have mediation. Mediation is a voluntary process all along the way.

Participants may request a break at any time during the mediation session to privately talk with someone not present in the session by phone or in person.

If your state law allows flexibility for the parties to identify who may participate, as WI does, then it would seem that you certainly have the opportunity to ask to have the entire IEP team participate in the mediation - IF that is what you and the other party deem useful.

You should consider that mediation may be a good opportunity to change things around a bit - to look at the situation in a different way - to possibly work with a smaller group or to add new people not previously involved in the situation in order to include some fresh perspectives.

While the mediator is not the one who chooses the participants, he/she may be very helpful in helping the parties identify who should be present.

Some considerations include inviting participants who:

- * Have the power or authority to make a decision.
- * Have the ability, if they are not involved, to undermine an agreement if reached
- * Know and understand the issues in the dispute
- * Are interesting in negotiating in good faith

Jan Serak

- **Re: The team approach** by **Nissan Bar-Lev** on Feb 04, 2006
If you decide to move from an IEP team meeting to a mediation session, obviously you have identified a dispute or several disputes. The stakeholders in these particular disputes would be the key participants in the mediation session. For example, if the dispute deals with the frequency of Physical Therapy services per week - participants in the mediation session might be the parents, the physical therapist and the special education director. A well-

trained mediator will be able to gauge if additional individuals may be needed. As Jan Serak noted, Wisconsin law allows for additional people to participate in the mediation session - with the consent of both parties.

Based on my experience and feedback from my colleagues who participated in mediation sessions, it is a very positive and rewarding experience. In fact, school staff that participate in mediation sessions report that they tend to use the mediation strategies of listening to the other party's perspective and building consensus in subsequent disagreements with parents. Equivalent to a "ripple effect..." Participation in the mediation session carries it's own incentives. When Jan Serak and I provide outreach training to Wisconsin's blended audiences of parents and educators, we address these "extra benefits" to school staff as we encourage their participation in the mediation session.

Nissan Bar-Lev

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- **Human nature** by **PW** on Feb 03, 2006
There's a lot of great information in the discussion resources, but my problem with best practices is always the same. What do you do when one or more of the people around the table hasn't read the best practice literature and is being well, a jerk. How do you stay positive when a key player insists on being negative?
 - **Re: Human nature** by **Sarah** on Feb 03, 2006
I agree with Colleen. I run a parent support group for parents of children with autism and we're always looking for articles, research, etc. for our "library." (Thank you Family Center on Tech and Disability, we use your AT Resources and newsletters.) We make copies of things for parents to take to IEP meetings or any other meeting. At one of our meetings, we role played a meeting where we made the principal the "heavy." That was one of our best meetings and we'll probably do it again. If I can learn enough about mediation, I'm thinking we should role play that too.
 - **Re: Human nature** by **jeanne bowman** on Feb 03, 2006
Practice.
Exercise caution as you notice a set of negative behaviors or statements, and think like a diplomat in a foreign country.
Ask open ended questions that bring forth the experience (and not the lack of it) that lead to an opinion expressed.
"What kind of progress towards specific goals have you seen with the program you suggest? How was it measured?"
We all have had less than stellar moments in IEP sessions. It helps me to remember that the team was designed to be a problem solving group, differences in opinion can be productive (like fertilizer). What are the strengths that a difficult character brings to the table?
If you are having talks that focus on 'this is the way we do things around here', that don't seem focused on outcomes for the student, mediating the discussion can help. I mean 'mediation' of the most expansive sort including having a private discussion with the negative person. Let me come back with information on "Crucial Conversations", a book with a wealth of strategies for addressing this important

issue.

- **Re: Human nature** by **DT** on Feb 06, 2006
Is it ever possible to request that a particular person be replaced on the IEP "team"? I've got to say that my IEP meetings never feel like a team. None of the players is all that impressive, maybe because we're in a big city and they have too many cases to get through. One person, though, seems to think it's his job to "put his foot down" on "requests for expensive equipment." He's an Assistant Principal, so the other people from the school (Special Ed teacher, Speech Therapist, Media Center rep) defer to him. I have the feeling that if we could just get rid of him that the meetings would end differently. Is there some way to do that?
- **Re: Human nature** by **Jeanne Bowman** on Feb 08, 2006
"Crucial Conversations: Tools for talking when stakes are high" by Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler
and
"Crucial Confrontations: Tools for resolving broken promises, violated expectations and bad behavior" by Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler
both published by McGraw-Hill

The titles say it all.

- **Re: Human nature** by **Colleen** on Feb 03, 2006
You hand them copies of best practice literature, highlighted and color coded, and reference it constantly in your discussion.

When they say something like, 1/2 hour is sufficient speech time, or children don't need this equipment, that strategy, etc. or whatever other ignorant comment they come up with you can then say, "according to what I have researched on page so and so, in orange (green, purple), the recommended, typical, legally required, approach etc. is ..."

I will not debate hypothetical opinions. And anything anyone comes up with should expect to clearly explain all the what's, whys and then-what's and be ready to explain their reasoning or back it up with legitimate resources.

- **Re: Human nature** by **Edonnanter name here** on Feb 06, 2006
I agree that many parents are more educated about the world of assistive technology than many of our teachers. I am a teacher and have just started to become more aware through a graduate class of available devices and services for individuals with disabilities. That is why it is so important for all the people involved with the child to work collaboratively. We can learn so much from each other.
Donna
- **Re: Human nature** by **Mary T** on Feb 16, 2006
What a great attitude you have Donna! I wish every teacher were like you. I went to an AT conference recently and brought back literature and demo discs for my son's teacher. She refused to take them, saying she knew she wouldn't get around to reading it, and certainly wouldn't look at the discs (I think she's technology-phobic). She told me that she has 26 other students to deal with and that they weren't

paying her enough to stay up all night reading material about each one's individual needs. I pointed out that the literature and programs could probably help more than just my son (who has learning disabilities) but she wasn't interested. I don't mean to come down on teachers, we've had some great ones in the past. But when you get a bad one for an entire year, it's a real set-back. You, on the other hand, are setting a great example for the teachers around you.

- **Time Constraints** by **Jan Serak** on Feb 03, 2006

Does your state set a time limit for the length of a mediation session?

Have you participated in a mediation with an externally-imposed "time constraint" on the session? If yes, what effect do you think the time limit had on the mediator? What effect do you think the time limit had on the parties? If no, was it helpful not to have a time limit?

- **Re: Time Constraints** by **Jeanne Bowman** on Feb 08, 2006

Interesting point Jan.

In my experience time is limited more by the schedules of the parties, than by an external source.

In planning a facilitated IEP my rule of thumb became two hours is about right. Good ground work before the meeting helps keep it focused. If the facilitator identifies issues with each party before hand, the agenda can be constructed to ensue time is spent addressing them. Crafting and exchanging draft goals can be done ahead of time. Much longer than two hours and we grow weary and any shorter we may not get to all the issues. But, if the meeting is productive, generating fresh ideas, having the ability to extend time could solidify emerging consensus.

I'd wonder if mediation contracts come in blocks smaller than half a day.

- **Educational Autism Diagnosis?** by **guest** on Feb 03, 2006

When will the State of WI or the Fed. Government finally realize that our public school system must have the correct and educated manpower, and the facilities to test, diagnose and treat autism within a system only most can afford (meaning the Public School Systems). If they have been waiting for an epidemic well "hello!" it is here! Most parents do not have children tested for Autism because they can not afford the cost of the test to get the diagnosis. I know how hard teachers work with children in special education and the Public School systems have their own wording for Autism criteria but that diagnosis does not give the parent the resources for funding to receive the correct type of Autism therapy. This is definitely my quest. I believe someone's eyes are closed and this needs to be re-evaluated. Any comments?

- **Re: Educational Autism Diagnosis?** by **Colleen** on Feb 03, 2006

The world does not revolve around labels. "Autism" is a label that defines a group of common characteristics, there is no blood test etc. other than looking at a person's traits. The total percentage of children/students with disabilities over the years has not changed much, what has changed is the categories or labels they are given. What matters is that each child is treated as a unique individual, respected and accepted for who he or she is, while receiving the individualized supports and services needed to reach their individual potential. The resources should be provided based on need, not labels. If a child has behavior or sensory issues, it shouldn't matter if the issues are caused by autism, cerebral palsy, brain injury, abuse, drug exposure or whatever, every child should have the appropriate intervention, therapy

and support. Yes, the systems need greater resources, but not because of labels, but because of each individual child that needs the resources.

- **Re: Educational Autism Diagnosis?** by **Nissan Bar-Lev** on Feb 04, 2006
You are very perceptive and accurate in stating the huge challenges that face the public schools in providing services to children with autism. I know that many states have embarked on massive training efforts to provide their teachers with state-of-the-art techniques in working with children with autism. For example, Wisconsin initiated a statewide training in autism for school staff and parents about 10 years ago. It is still ongoing. The training contains multiple levels and is provided at different times of the year, and in different cities around Wisconsin. However, even with this intense amount of training, the number of mediation disputes dealing with autism is disproportionate to the prevalence rate of children with autism within the state of Wisconsin.

As I travel to different districts I do see school staff becoming more and more familiar and comfortable in working with children with autism. For example, check out this web site of a particular school agency in Wisconsin :

<http://www.cesa7.k12.wi.us/sped/autism/index1.htm>

Nissan Bar-Lev

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- **What about advocates/attorneys participating in mediation?** by **Jan Serak** on Feb 04, 2006

Federal law does not restrict the participation of attorneys or advocates as participants in mediation. However, some states do.

WI state law allows the participation of attorneys or advocates, as long parties (parents/school) agree that they may be present.

Data from our WI Special Education Mediation System (WSEMS) indicates that attorneys have been present in about 1/3 of our mediations and advocates in about 1/3 of our mediations (some in the same meeting. The percentage that reached agreement with them present is very close to agreements reached without them present.

WSEMS has mediation session participants complete questionnaires after their session. The following information is from questionnaires completed by attorneys (we don't have this year's most current data yet):

1. 100% of attorneys would encourage their clients to use mediation again
2. 89% of attorneys believe the outcome of mediation was better than the probable outcome of a Due Process Hearing
3. 92.5% of attorneys believe that the agreement will solve the problem

CADRE, the National Center on Dispute Resolution, has some great resources related to attorneys & advocates as participants-

<http://www.directionservice.org/cadre/srchresults.cfm> - such as:

The Role of Attorneys in Special Education Mediation
by Edward Feinberg, Ph.D. and Jonathan Beyer, J.D.

This paper examines the role of attorneys and to a lesser extent, advocates in special education mediation. It examines the positions held by both proponents and opponents of permitting attorneys and advocates to participate in special education mediation. It then considers the interests and concerns shared by advocates of the two opposing views. The paper concludes with practical recommendations that attempt to satisfy these common interests.

- o **Re: hat about advocates/attorneys participating in mediation?** by **Nissan Bar-Lev** on Feb 04, 2006

The topic of attorneys' participation in the mediation session is near and dear to my heart. As Wisconsin special education stakeholders, we're in the process of considering the system design for mediation, my initial position was to exclude attorneys from participation. My view, shared by other school representatives, was simply that attorneys would tend to polarize the two parties, and if we attempt to search for a mediated solution, better keep those "mean" attorneys out of the process... I was wrong, wrong, wrong... That was 10 years ago, and I have not made too many mistakes since then. (Don't believe that...).

I became convinced to change my view and support attorneys' participation in the mediation process if both parties would agree to it. The data that Jan Serak reported tends to support the Wisconsin mediation system's view that attorneys' participation in the mediation system is very positive.

First, the high rate of agreement is similar in cases where attorneys participate to cases where they do not participate. In other words, they are not an obstacle to reaching an agreement.

Secondly, many parents report that they would not have felt comfortable to engage in mediation without the security of having an attorney with them. Since the mediation process is voluntary, it is critical that parties feel comfortable enough to go to mediation.

Obviously, our experience with attorneys in Wisconsin is very positive. Partly because we have a cadre of well trained and skilled mediators who know how to control the mediation process.

I am very curious to other folks' experiences with attorneys' participation in mediation.

Nissan Bar-Lev

- **Re: hat about advocates/attorneys participating in mediation?** by **Colleen** on Feb 04, 2006

Although I can see your point, that overall there is probably greater "agreement" with attorneys present, and parents probably feel better having their attorneys there, but... aside from just coming to an agreement, are the students getting appropriate supports and services in the end?

What I find troublesome is that attorneys are not typically all that familiar with disability rights and issues, or quality of life outcomes for people with disabilities. The schools tend to have a monopoly on attorneys that understand education law, because they pay them the big bucks. Parents are typically uninformed and of course feel better with someone that can speak out for them. But what I see happening is that parents can't find good

attorneys, they are far and few. And, if the parents bring attorneys and therefore the school has the right to bring their high power attorneys, the scales are tipped before the process even starts. I'd also have to wonder how much any attorneys really know the students, the families, the home environments and the school environments?

I think that mediation shouldn't just be about compromising in and of itself, it needs to be focused on the student and the student's outcomes, and getting everything out on the table so there is not any miscommunication. It should be about explaining what a student needs and why, documenting the needs and the possibilities and bringing the parties together based on mutual understanding and desired goals for the student. I think that schools are a big powerhouse and if they are far off because they are basing their decision on factors other than the student and you expect families to compromise for the sake of compromising, then it is perpetuating the problem and further harming the students.

I personally have not gone through mediation, but from some families I have heard from, it has seemed to be a parade of proving which side could document they were right.

- **Re: hat about advocates/attorneys participating in mediation?**
by **Jan Serak** on Feb 04, 2006
Hi Colleen -

Our Parent Training and Information Center, WI FACETS, has had similar experiences with parents either not being able to afford an attorney, our federally-funded Protection & Advocacy not always being able to take all the special education cases referred to them, and more school attorneys available to schools. We have developed a growing referral list of attorneys who are willing to be available to families for reduced fees or pro bono.

However, when you raise the attorney issue you relate back to mediation, I think parents can certainly participate in mediation with or without an attorney. As I said in my post, about 2/3 of our WI mediations occur without an attorney present. So, either way, mediation is a great option.

The important thing to remember is, that in mediation, there is an external (ie, not part of the school district) neutral guiding the discussion - the mediator. The mediator helps keep the discussion moving, makes sure everyone gets thoroughly heard, and helps parties address such issues as "what is appropriate"

If the parties differ on what they each perceive is "appropriate", for example, related to assistive technology needs of the student... then the mediator may help them work out some of the questions and barriers that both parties may have in the situation. The mediator will ask clarifying questions to help them understand what they each consider "appropriate", for example; or how what information they would need to determine what AT is appropriate for the child, where they could get the information, etc.

The mediator is all about process of guiding the parties' discussion to

address the issues, to understand the issues from each others' perspective, etc.. The mediator doesn't generally know all there is to know about the substantive part of the issue - that is, special ed law in detail, or detailed information about AT. The mediator will help the parties clarify for each other which those things are and how will they know it when they see it.

A mediation agreement might include, for example, details about getting a solid AT assessment - when it will be done, by whom, who will pay for it, what will be covered in the assessment, etc. It may include agreement on using AT in an extended school year program.

Since the mediator does not make a "decision" about the case, but rather helps the parties discuss their issues with each other, the parties don't always have to dig up documentation about being right. I have observed mediations where parties come armed with stacks of documentation and never pull one paper out of the pile. Oftentimes, mediation gives parents an opportunity to be thoroughly heard, it gives parents an opportunity to really listen to what school people are saying and schools to really listen to what parents are saying. They don't always take the time or spend the energy to do that during an IEP meeting.

Some of our mediation sessions in WI have taken multiple sessions and some have been completed in 3 hours. They take whatever length of time is needed for parties to really be heard, to start moving forward with a focus on the future rather than things that happened in the past, and begin to work together to figure out what additional information may be needed, or what will resolve the situation. Sometimes that takes quite awhile.

Jan Serak

- **Re: hat about advocates/attorneys participating in mediation?** by **John Praeger** on Feb 07, 2006

I can't imagine that there are many parents out there who can afford an attorney, at hundreds of dollars an hour. Particularly if the clock is running with no agreed-upon cut-off. Do attorneys who serve as mediators agree to a reduced or fixed price fee? If you're using an attorney to mediate an agreement on assistive technology, it might be cheaper just to pay for the AT in question.

- **Re: hat about advocates/attorneys participating in mediation?** by **Jan Serak** on Feb 07, 2006

John -

From my perspective as a Parent Center Co-Director in Wisconsin, you are absolutely right about not many of the parents being able to afford an attorney to accompany them to mediation. Our Parent Center has developed a growing referral list of attorneys located

statewide who are willing to provide pro bono, reduced fee, or deferred fee services. We share that list with parents when the situation warrants. Some attorneys from the list we give to parents have accompanied parents to mediation sessions. Staff from both our Parent Training & Information Center and our Community Parent Resource Center, housed in our WI FACETS Parent Center, have attended mediations as supports for parents (for free).

Based on the results we have received from parties following mediation, the % of mediations that reach agreement, with or without attorneys representing the parties, is pretty close to the same amount. So, I am not convinced that a parent, or a school, has to have an attorney present in mediation - at least in WI. The situation and experience with attorneys may be very different in other states. We have tried to make attorneys in WI feel very confident in our system, welcome to use and participate in mediations, etc - so that they continue to support the system and urge their clients to use the system. A system will not be successful, I believe, without the buy-in from the Bar Association in your state.

Regarding your comment about "attorneys who serve as mediators" and their fee. I am not quite sure what you mean with your question of "attorneys who serve as mediators doing so at a reduced fee" - that may be an issue that is associated with something in your particular state law?

Wisconsin has 9 attorneys on our Wisconsin Special Education Mediation System (WSEMS) roster of 33 neutrals. All of our mediators currently are paid \$100/hour for pre- and post-mediation work, including travel, as well as for their time actually in the session (or sessions, if multiple ones are needed). The average cost for a WSEMS mediator for a case, including expenses, is around \$1,600. It might be a little more or less, but I don't have this year's exact average cost. But, they get paid the same as all of the other mediators on our WSEMS roster. All of our roster mediators have extensive mediation case experience; they all must, per state law, attend our WSEMS annual update training.

You also mentioned "an agreed-upon cut-off" time for the mediation. I did kind of allude to this concern in one of the threads of this online discussion - relating to should there be a time limit to a mediation.

The stakeholder group and partners who designed our system of mediation in Wisconsin adamantly opposed the setting of an arbitrary length of time allowed for a mediation session. Our greatest fear was that we would be pushing parties to premature solutions, using

"muscle mediation", to get agreements; or pushing parties to settle before they would really have had the opportunity and time to truly understand each others' perspectives, generate options & thoroughly discuss them, and have time to discuss agreement points. If an arbitrary time limit for a session, such as 2 hours, or a limit on the number of sessions, such as only one session, for example, is placed on a case - it may be truly cutting off a wonderful potential for resolving issues and moving forward to a better collaborative future for the parent and school to work together better in the future.

Jan Serak

- **Re: hat about advocates/attorneys participating in mediation?**
by **nissan Bar-Lev** on Feb 04, 2006
Thanks for your note Colleen!

Your comment about the nature of mediation as seeking to find a "compromise" is very interesting.

This view does reflect a common and general belief that the role of the mediator is to search for a compromise. I am not a mediator, but I have worked with mediators for the past 10 years. It seems to me that the professional and well trained mediators tend to search for the "interests" that lie behind the positions the 2 parties present in mediation. For example, if the parents' position is that they want a sophisticated piece of equipment for their child, the skilled mediator will search for the interests behind it: what will this device do for the child? Are there other devices that can address the same child needs that the 2 parties can agree on?

The mediation sessions conducted by skilled attorneys tend to center on the child's needs. If not, either agreement will not be reached, or it will be short lived. You do make a good point about the need for all conversations between schools and parents / advocates to be child centered. Could not agree with you more!

Nissan Bar-Lev

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- **Different types of mediation** by **Amy K.** on Feb 06, 2006

I can see why people are afraid to post questions. There is so much good information in this discussion that you're a little afraid that what you're about to ask has already been addressed and you missed it. Still, here goes.

Do mediation techniques differ depending on when they become part of the ongoing discussion between a family and a school (or school district)? That is, if I bring a mediator to the first IEP session (can I even do that?) does the mediator play a different role, using different techniques, than if he or she isn't brought in until much later in the (disagreement)

process?

Also, I'm still not clear on whether I should be thinking of mediation as a normal part of a positive process or as something that is called upon only if things start to go wrong?

Thanks,
Amy

- o **Re: Different types of mediation by Jan Serak** on Feb 06, 2006
Hi Amy -

You will have to check your state law to determine at what point you are able to request a mediator. Each state education agency is required to offer the option of mediation, at the minimum, when a parent files a request for a due process hearing. However, many states and local school districts offer mediation to resolve conflicts even when a request for a due process hearing has not been made.

"Mediation" would not be part of the IEP meeting itself. It happens outside of the IEP session. It would be the process used when a dispute exists, or when parties have definite indications of a dispute.

If you are talking about bringing someone to help with an IEP itself, then it sounds like you are asking about the role of an external neutral person, a facilitator, who would actually help facilitate the IEP meeting?

In WI, mediation is available at any time. We do not require filing for due process first. The WI Dept. of Public Instruction (WDPI) supports the idea of resolving issues as early as possible. Because we have both the mediation option and the facilitated IEP option, our intake coordinator at the WI Special Education System has to help parties with decision-making as to which option might be a more appropriate process for their particular issues, stage of the conflict, etc.

Wisconsin has added the option of a facilitated IEP as a possible earlier step before mediation - where we use a neutral from our WI Special Education Mediation System (WSEMS) as an external facilitator to help with the IEP meeting. This is not a process in WI that has state statutory language -it is really an option that WI is making available. The WSEMS facilitator helps the team focus on developing an effective IEP, but is NOT an IEP team member. The role of the facilitator, for example, would be to ask participants to clarify their intentions and meanings as well as to raise issues to build consensus. The role of the person from the district who is in charge of the IEP meeting is to focus on the process of getting the IEP document written.

The facilitator may offer ways to address/resolve conflicts in the development of the IEP. The facilitator manages the process of discussion - brainstorming, consensus building, helping parents and schools generate ideas. The facilitator models and helps maintain open, respectful communication among team members; The facilitator will help team members develop and ask clarifying questions about issues that may come up or may have come up in past IEP meetings. The facilitator, of course, maintains impartiality and does not take "sides", place blame or determine if a particular decision is right or wrong. The facilitator in WI uses an "opening statement" that was written by Eva Soeka, one of the partners of the WSEMS and Director of the Marquette University Center for Dispute Resolution Education (the intake center for WSEMS). The opening statement is designed so that the facilitator can share information about their background and begin to build trust and cooperation, but emphasizes that the facilitator is there to "assist the team" and not make decisions for them.

From exit evaluations of the facilitated IEP process, here are some things participants have said:

"The facilitator made all participants feel comfortable and able to fully participate...please continue this valuable service for families. Resolving issues before mediation or due process works for everyone." (advocate)

"My son was allowed to voice his opinion respectfully." (parent)

"I think we covered some tough issues and helped the parent develop a little more trust with district staff." (Special Ed. Director)

"The discussion was much more honest than it had been at previous meetings regarding this IEP."

Also - 86% of participants said they would use the facilitated IEP process again.

Some differences with how WI sees these 2 processes:

Objective:

Facilitation - to increase the effectiveness of the group

Mediation - to resolve a particular conflict

Timing:

Facilitation - Before any impasse has been identified (that is, before there is a well-defined dispute; when general tensions may exist)

Mediation - After impasse (ie, there are clearly disputed issues)

Method:

Facilitation - Entire group works together

Mediation - Entire group or with specific parties (as, caucus)

In Mediation, the end goal is to develop a written agreement to resolve the present dispute. In a facilitated IEP, the end goal is to develop the IEP document. In mediation, the mediator works with the parties to reach agreement - helps identify interests, generate and explore settlement options, etc. The mediator can be a "scrivener" - that is, he/she can record agreement points as directed and phrased by the parties.

In a facilitated IEP, if using an external facilitator, the facilitator works in tandem with the IEP case manager to get the IEP written. The facilitator is helping with the process of the meeting, keeps the meeting running smoothly, lets the IEP team members concentrate on the content of the IEP. Depending on the style of the facilitator and the situation at hand, the facilitator may totally chair the meeting, or may just take a more limited role and help with coaching the team members to make sure that everyone gets heard and that there is an effort to develop and consider creative options.

Jan Serak

- **Re: Different types of mediation** by **Amy K.** on Feb 06, 2006
Thanks so much. That was a really helpful reply. Now when I talk to the school (or County) I can use the right language.

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- **Assistive Technology** by **DT** on Feb 06, 2006
Most of the discussion has dealt with mediation generally. Is there anything about assistive technology mediation that is unique because it deals with technology, which can be expensive, needs training, changes from year to year, etc.? If the subject of disagreement

is the AT, do you need to find a mediator who understands technology? How hard is that to do? Thanks.

- o **Re: Assistive Technology by Jan Serak** on Feb 06, 2006
Parties often ask if the mediator should be an expert in the subject of the dispute.

Because a mediator does not "make a decision" regarding the disagreement, but rather helps parties reach their own agreement... the main characteristic that you will probably want to look for in a mediator is their "process expertise." Some mediators actually resist the practice of suggesting options themselves to the parties, so that the parties feel responsible for identifying their own unique, creative options that might lead to their agreement. So, extensive knowledge of AT would not necessarily be a critical factor of the success of a mediation.

In some situations, the parties may prefer a mediator with no special knowledge of the subject. The benefit of this is that it would avoid a mediator's preconceived notions of what a settlement should look like influencing the agreement. On the other hand, a mediator with significant substantive knowledge might be able to help the parties tease out key issues in the dispute. (Personally, I prefer the former.)

How does a mediator get assigned to your case? How do you know if the mediator will be good for you and your case?

Some state education agencies appoint a mediator. Parents & schools may feel that they do not have any control over who is the mediator. It is important to remember that mediation is a "voluntary" process. In Wisconsin, if either party objects to the mediator assigned to their case, they can request a different one. Even "during the mediation session or process", parties can indicate that they feel the mediator is not one with whom they feel comfortable, respected or that they have the impression that the mediator may not be neutral - and then request a different mediator. At least, that is how mediation works in WI. You should check in your state how the process of appointing a mediator works.

The CADRE website - <http://www.directionservice.org/cadre/choose.cfm> - includes a reprinted publication, which I have always found useful -
Five Steps to Choosing a Qualified Mediator

It makes some good points.

** Because no easy formula can predict mediator competence, the parties need should do some groundwork before agreeing to a certain mediator.

First, you must understand the mediation process (mostly that the mediator doesn't make the decision).

**If there is a list of mediators available through your SEA, ask for the list. Our WI Special Education Mediation System, for example, has short bios of each of our mediator on the WSEMS website. Parties can review the bios on line. They can even request a more in-depth bio of mediators if they wish. Know who is available as options to be assigned to your case.

**Word of Mouth. Talk to people who have been in mediation. Ask their impressions of the mediator/s? (Just remember that all cases, issues and parties are different.)

** Mediation Training. How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How many hours of

training has this mediator had? How recent was the training?

** Experience. Evaluate the mediator's type and amount of experience (number of years of mediation, number of mediations conducted, types of mediations conducted). How many cases similar to yours has the mediator handled? A mediator's experience is particularly important if he or she has limited formal training.

Certainly, when you talk with the mediator assigned to your case - observe the mediator's interpersonal and professional skills. Qualities often found in effective mediators include neutrality, emotional stability and maturity, integrity, and sensitivity. Look also for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define and clarify issues, problem-solving ability, and organization.

**Training, Knowledge and Experience. Ask the mediator, "How has your education and experience prepared you to help us work out this specific dispute?" If the mediator had formal training, did it include role play and observations of skilled mediators? While training and education do not guarantee competence, training is most effective when it includes practice-oriented segments such as role play and observation. Ask the mediator if he or she thinks subject-matter expertise is necessary for this dispute, and why or why not.

Ask "Do you participate in continuing education, on-going supervision, or consultation?" Many professional mediation organizations encourage or require their members to participate in ongoing education or other professional development.

Style. Ask "What values and goals do you emphasize in your practice?" For example, does the mediator encourage the parties to communicate directly with each other, or does he or she control the interchanges? The mediator should be able to describe his or her style of mediation and his or her role in the mediation process. Remember that different mediators may practice their craft in different ways, although some mediators can change their style to suit the parties' specific needs.

Another stylistic difference is the use of caucus. A caucus is a meeting between one of the parties and the mediator without the other party present. Some mediators caucus frequently during the mediation, while others seldom or never use this procedure. Ask the mediator whether he or she uses caucuses, and if so, when.

Ethics. Ask "Which ethical standards will you follow?" (You may ask for a copy of the standards). All mediators should be able to show or explain their ethical standards (sometimes called a code of conduct) to you. If the mediator is a lawyer or other professional, ask what parts of the professional code of ethics will apply to the mediator's services. Ask the mediator, "Do you have a prior relationship with any of the parties or their attorneys?" The mediator should reveal any prior relationship or personal bias which would affect his or her performance, and any financial interest that may affect the case.

Confidentiality. The mediator should explain the degree of confidentiality of the process. The mediator may have a written confidentiality agreement for you and the other party to read and sign. (In Wisconsin, this is done as the first thing that happens when a mediation session is first getting started.

There are a lot of other resources on the CADRE website to help parties understand the many considerations between substantive and process knowledge.

Jan Serak

- **Written agreements** by **Jeri** on Feb 07, 2006
You mentioned signing a confidentiality agreement. Are there other written agreements the parties usually sign? For instance, do you sign something agreeing to abide by the mediation? Thanks.
- **Re: Written agreements** by **Jeanne Bowman** on Feb 08, 2006
Written agreements to confidentiality are essential.
If the parties want the same mediator to work with them in the future, they may want to agree to that, in writing, at the first meeting.
The goal of a formal mediation is to reach agreement; the process of putting it in writing can clarify the details of that agreement.
Peacemakers talk about being SMART: making agreements that are Specific, Measurable, Achievable, Realistic and Timed. Some dispute resolution practitioners like to include a clause for agreement to check back on how the agreement is working and to come back and continue talking if things aren't working as planned. Our situations can be complex, and solutions may rely on people who are not at a meeting: agreeing to meet again and review can keep a conflict from re-igniting. The agreement may be as simple as sending the team back into an IEP with ground rules for communicating with each other, or a multi level set of actions to be accomplished before the next IEP meeting. Putting it in writing allows for the outcome of the discussion to be SMART, while keeping space for the tough stuff that needs to be said off the record, off the record.
- **Re: Written agreements** by **guest** on Feb 09, 2006
I love this idea of SMART! Simple to remember but very useful in terms of a checklist to cover. Thanks!
- **Re: Assistive Technology** by **Jeanne Bowman** on Feb 08, 2006
It's similar to discussions about reading instruction: it can be rocket science and the team will need a reading expert. That wouldn't be the mediator!
This might be a time to think about expanding the pie, when the team needs additional AT expertise. The mediator's role is to help the team look at interests and options. So, the mediator wouldn't have to have the content, but could ask the team about where that expertise might come from. If one party strongly feels that there isn't sufficient experience at the table, the mediator's job is to discuss that issue. Bringing fresh perspective, information, etc to the table can come from more directions than an independent education evaluation. Where else in a school system (not just a district media person or part time AT consultant) or community is there someone with that technology expertise –knowledge of expense, training, year to year changes -- that might inform the team? Helping the parties think outside the box is part of the mediator's role, to be curious. What about someone from a center for independent living, or rehabilitation agency, or university engineering department or retired rocket scientist acting as a resource for a team?
- **Re: Assistive Technology** by **Diane Golden** on Feb 13, 2006
I would be remiss if I didn't put a plug in here for short-term device loan programs . . . In one sense there is something unique about "disagreements" related to AT as compared to other special education and related services. Decision making about AT

for a particular student can be based on structured device trials. If the disagreement is about typical special education and related services (such as whether or not a student needs one placement versus another) those decisions cannot typically be based on trial periods as it is complicated and costly to change placements (not to mention it might not be justifiable under IDEA procedural requirements). Conversely an AT device can be borrowed and tried out over the course of a several weeks in the classroom and/or other learning environments where it will be used. Gathering data on device usage during such a trial period provides by far the best information for an IEP team to use to make a decision about what works and what does not in which school environments.

Of course the down side to using device trials to make decisions and mitigate disagreements is that schools must have access to a good inventory of devices to borrow from and be able to get devices on loan in a timely manner. We (Missouri Assistive Technology) operate a short-term device loan program that is available to schools statewide and have documented cases of preventing due process just by being able to provide timely loans of appropriate devices. We have had situations in which the devices recommended by "outside experts" who did AT evaluations for both sides were found to be "wrong" after device trials by school staff. In the end a device neither expert recommended was agreed upon as the best match for the student. (We did an issue paper on using outside experts to address this issue, see www.at.mo.gov/publications/experts.shtm).

An added benefit of device trials is the built-in learning that occurs within the school environment while the device is there on loan. Staff become aware of what devices are available and start thinking about other students who might benefit from those devices. With just a little bit of supportive expertise from the device loan program, school personnel can significantly expand their level of familiarity and expertise about AT through device borrows which creates benefits for more students.

Unfortunately, building an adequate inventory of cross disability devices and keeping that inventory current to meet school borrowing needs is costly. All of the short-term device loan programs with which I am familiar struggle to maintain their inventory and are always looking for dollars to support. I would hope someday this would be a priority that could be addressed during reauthorization by specifically authorizing, encouraging and/or requiring IDEA discretionary dollars to be used to support comprehensive device loan programs. If just a few due process hearings were prevented each year, device loan programs would probably pay for themselves in real dollars, not to mention time and other resources lost during due process procedures.

- **Re: Assistive Technology by jeanne bowman** on Feb 14, 2006

Diane

Thanks for the plug, resources and passion. Reaching families in rural areas, with real choices is an accomplishment to celebrate and pass along.

I know that for my local established adaptive technology center, the funding is "off the top" of IDEA dollars. It is a regional priority to keep it alive and functioning, especially with choices for the younger children.

Jeanne

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- **Whose job is it to tell parents?** by **guest** on Feb 07, 2006

Now that I've looked at the links provided in this discussion, I'm impressed by the resources

that exist concerning mediation. However, I mentioned them to my parent support group over the weekend and most people were completely unfamiliar with the mediation procedures in our district. Whose responsibility is it to get the information out to parents?

- o **Re: Whose job is it to tell parents?** by **Jan Serak** on Feb 07, 2006
Federal law includes the section on Procedural Safeguards. The school district needs to provide those to parents once a year - and that does, or should, include information about the availability of mediation as an option. Often the Procedural Safeguards brochure (and, now parents can opt to get the info. on-line) that is distributed has miniscule 4 point font of the safeguards which parents may not thoroughly read. So, I would suggest that the parents probably have been receiving the information, but possibly didn't really realize what it meant.

The Parent Training & Information Centers & Community Parent Resource Centers, funded by US DOE/OSEP under IDEA, also share information about options for dispute resolution as part of their grant activities.

In Wisconsin, our WI Special Education Mediation System (WSEMS) has been doing outreach training statewide to raise awareness about mediation since 1997. We generally train, (at conferences, small workshops, small parent groups, school directors' meetings, etc.) as a WSEMS parent-educator team. We reach mostly blended audiences of special education stakeholders - over 1,500 parents and others annually - in-person with information about mediation. We also distribute many thousands of brochures about the mediation system. Many other states have great brochures with information about mediation that I have seen.

Last year, WSEMS also trained 25 parent-educator teams, one in each of our 12 cooperative educational service areas, to do additional training in their areas about mediation, etc. As these teams are beginning to replicate the training, we are finding that awareness is increasing more exponentially than ever before. A great side-benefit of all of this training going on in WI is that parents and schools are becoming more used to the option of mediation being available, as well as the other options we have (facilitated IEPs, resolution session) - the word is spreading.

We also have the information on our WI Parent Center website, on the WI Special Education Mediation system website, on the website of our State Education Agency, and many school districts also have the link to WSEMS.

Jan Serak

- o **Re: Whose job is it to tell parents?** by **Nissan Bar-Lev** on Feb 08, 2006
The lion share of the responsibility of informing parents about mediation and other dispute resolution options rests with the local school district. For example, Wisconsin school districts notify parents about the availability of the mediation option at least once a year when they mail out (as part of the IEP process) the procedural safeguard document entitled: "Special Education Rights for Parents and Children". Here is the language describing mediation:

"Sometime you may disagree with your school about your child's special education. You or the school can ask DPI for mediation. Mediation can resolve disputes about your child's identification, evaluation, educational placement, or FAPE. Both you and the school need to agree to do it. In mediation a fair person helps the parents and the school work out their differences. DPI has a form to request mediation.

If you refuse mediation, the school may ask you to meet. They can ask you to meet with a neutral person to discuss mediation. The person may be someone from an

agency that gives parents training. The person may be someone from an agency that helps to resolve disputes. The meeting must be at a time and location convenient to you. The person will explain the benefits of mediation. The person will encourage you to use mediation. DPI will not delay or deny your request for a due process hearing if you do not go the meeting.

The DPI pays for the process, including costs of meetings. When you request a due process hearing from DPI, they will tell you about mediation. No one may use mediation to delay or refuse you a due process hearing. No one may use mediation to deny you any other special education rights.

A qualified and fair person (a mediator) runs the mediation. DPI has a list of trained people. They know the special education laws. DPI may assign the next person in the order on the list. If you or the school request someone from the list, both you and the school must be involved and agree. The person must be fair and objective. The person cannot have a reason to favor you or the school. The person may not work for a public school or a state agency providing special education. A person does not work for a public school or a state agency just because the person is paid to mediate. If DPI provides special education directly to your child, the person may not work for DPI.

The mediator will set each meeting promptly. The mediator will hold each meeting in a place convenient to you and the school. The discussions are private. At the beginning of the process, the mediator may require you and the school staff to sign a pledge to keep the process private. Things you and the district say cannot be used in a due process hearing or in court. An agreement between you and the school district must be in writing. Under state law you and the school district must obey the agreement."

Here is the link to the entire document:

<http://www.cesa7.k12.wi.us/sped/parentsinfo.htm>

Click on the "Special Education Rights for Parents and Children" slate. You can see that the fonts are rather readable...

Nissan Bar-Lev

- o **Re: Whose job is it to tell parents?** by **Jeanne Bowman** on Feb 09, 2006
Is there a hook in this?

The greatest frustration I have heard from parents, in my role as parent educator, trainer, support person and advocate has been "Why didn't anyone tell me?" about a diagnosis, service, resource, technology and more. What IDEA requires, and how your state interprets this will be in procedural safeguards documents, somewhere. But how the district provides further information, or promotes mediation or early dispute resolution strategies can vary incredibly.

Wisconsin's statewide system of disseminating information and training on mediation options has extensive investment, with great care in stakeholder involvement.

In my home district we receive a brochure on Alternative Dispute Resolution options with every IEP notice, http://www.scoe.org/selpa/docs/ADR_eng093003.pdf along with an invitation to attend special education community advisory committee meetings http://www.scoe.org/selpa/docs/cac_eng093003.pdf (well, many districts in the county mail out the CAC invitations, not all.) I keep saying California is different, but not all counties have early dispute resolution programs, although we have had what we call Capital M mediation statewide for years. This Mediation has been offered whenever a request for due process is filed. The state made small grants for early alternative dispute resolution available to 20 counties some years ago, so there are now at least twenty flavors of alternative dispute resolution in California.

Your support group is in the enviable position of newly discovering a resource, and researching it. You are getting a best practice picture of implementation nationally: the question becomes, more than whose job is it to inform parents, but how could this model be used locally?

How it looks to the families of your support group will vary!

The process in our county, and in Wisconsin, was informed by active, visible, dynamic parents partnering with school folks. Please let us know what you discover about your local procedures.

- **Re: Whose job is it to tell parents?** by **Nissan Bar-Lev** on Feb 09, 2006
You are absolutely right, Jeanne. Our experience in Wisconsin tells us that parents tend to listen better to other parents, and educators tend to listen better to other educators. The best approach to present information on mediation, is to have the information delivered by a team that is composed of a parent & educator to a blended audience of parents AND educators. Two main advantages result: (1) The actual joint presentation by a parent and educator goes a long way in demonstrating and promoting collaboration between the 2 groups. Jan Serak and I (parent advocate and educator) demonstrate our collaboration efforts in multiple special education settings. We often hear such comments as: "If these 2 can get along, perhaps we can too". (2) Having blended audiences in the presentation insures that each group hears the same information. Folks are assured that the other party is not told something different. This tends to reduce apprehension about participation in mediation by either party.

Nissan Bar-Lev

- **Re: Whose job is it to tell parents?** by **Connie Jacobs** on Feb 15, 2006
I don't mean to sound oppositional, but when is the teacher supposed to find the time to prepare these presentations? In your experience, have they been given time on the job to focus on this or are they expected to prepare something on their own time? With all the well-meaning theories and best practices that have been coming from Washington in the past few years, teachers have been expected to do more, research more, prepare more extracurricular presentations, participate in pilot projects, write more reports. And it's not like we were eating bon-bons all day before. Maybe I'm just feeling overloaded today, but these approaches sound good on paper. When I read them I always have the same question: Between which breaths

am I supposed to do this? I'm not disagreeing with you that a team approach is best. I'd just like to see a realistic appreciation of the time it takes to do these things well.

- **Re: Whose job is it to tell parents?** by **Jeanne Bowman** on Feb 22, 2006

Hello --

What dispute resolution, at all phases, is really attempting to do is help people find their common ground. The most challenging piece can be finding time together. And then, making that time count.

In my experience, when an educational community decides to embrace early conflict resolution, or appropriate dispute resolution, they block time for representatives of all stakeholder groups to work together on the project. Administrators, general and regular, teacher, general and special, parents general and special, community members with a stake in services to disabled students and cultural brokers training together on conflict resolution can in itself change a system. The opportunity to learn together, not just the content of training or a project, but the shapes of our lives can shift assumptions in our working relationships. No one person does it all, and the community has a chance to reflect together on what it values. Thanks for taking the time to explore this venue for sharing information: I love that it can be accessed at any time, we can tout what we've learned, and then talk with each other about limitations and success.

Jeanne

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- **Logistics Reminder** by **Jackie Hess [SI Faculty]** on Feb 09, 2006
If you're feeling overwhelmed by the number of links on the screen, you can enter the discussion via the "Review the Discussion as Transcript" option. It will take a little longer to load, but you'll be able to read all of the posts as one long document. If you then decide to post a comment or question, return to the discussion index (or main) page and re-enter via the "Join the Discussion" link.

Thanks for all of the great questions and answers thus far.

-
- **What about dealing with power relationships in mediation?** by **Jan Serak** on Feb 09, 2006

The variety of "power" influences on mediation may include: power on both sides, unclear power, and a power imbalance - power of only one party. Usually, most special education mediation participant power influences would probably be the latter- power imbalance, with the parents being the party lacking the power.

The mediator is in a challenging situation with this power imbalance - as, the critical factor is for the mediator to maintain neutrality. How far the mediator goes to "assist" or "help" the weaker party will determine whether or not he/she can maintain all parties' trust in his/her neutrality.

When there is a lack of power, the mediator must define reality for the party lacking the

power and assist the parties working together and bringing in as much information to the discussion as possible - but has to be very careful to not compromise his/her neutrality.

Have you participated in a mediation, as a parent or as a school district, when you felt the mediator maintained a strong sense of neutrality in a situation of obvious power imbalance? What was the result of the mediation? Did you notice any special techniques that the mediator used to move the process along, but not compromise his/her neutrality?

Jan Serak

- o **Re: hat about dealing with power relationships in mediation?** by **Jeanne Bowman** on Feb 09, 2006

Jan

One of the best books I have found on this topic is

Negotiating at an Uneven Table : Developing Moral Courage in Resolving Our Conflicts by Phyllis Beck Kritek published by Jossey-Bass 2002

(As long as her style works for you, it can be a dense read)

Kritek requires the reader to reflect honestly, and comes from the perspective of a female nurse in the male dominated field of health care. This translated very well for me in thinking about the power imbalances that occur between parents and educators, students and teachers, students and parents.

Another, slightly sideways approach to this subject occurs in

The Spirit Catches You and You Fall Down

by Anne Fadiman published by Farrar, Straus and Giroux

A heart catching story of cultures in collision, missed communication and folks who thought they knew best, but were profoundly ignorant. This is on my must read list for anyone who wonders about the impact of 'cultural competency' and negotiation.

Jeanne

-
- **What about caucus?** by **Jan Serak** on Feb 09, 2006
Caucus is an opportunity for each party to meet privately with the mediator. The mediator does not share information from caucus without permission of the party. The caucus may be "called" by the mediator or either party.

Caucus may be used for a variety of reasons:

- * to address emotional issues - such as, the mediator may want to allow for venting or cooling off; or the mediator may be unable to read a party's emotion, the mediator may use caucus to check in to find out what they are
- * to help parties identify issues, especially if they are unclear in their opening statements
- * to "educate" a party who may have poor negotiating skills (as, the mediator might help them find words to describe how they are feeling or how to better describe their interests so that they can be more clear in the joint session)
- * mediator may sense a party is ready to concede with a commitment, and may caucus to prevent premature agreement
- * help parties keep moving forward
- * to explore settlement options
- * to pause - ie, give parties time to think without the mediator present
- * the mediator may need time to review his/her own notes and evaluate how to proceed
- * control communication between parties - such as when communication between parties is very painful, extremely strained, etc., the mediator may start by giving the parties the opportunity to talk through him/her

- *reality testing
- * evaluate progress with the parties

Where does caucus take place?

When a mediator is arranging for a mediation, it is ideal to reserve 3 rooms - one for the joint session room, and 1 for each of the parties to use for caucus. The rooms should be "eavesdrop-proof"

Who does the mediator caucus with?

The mediator should meet with both parties whenever there is a caucus "called." The amount of time that a mediator spends with each caucus is not necessarily the same. Meeting with both parties maintains the mediator's neutral image and party's trust in the mediator. Even if the mediator doesn't have anything to discuss with one of the parties, he/she should still meet with the party, and ask, "Is there anything you'd like to discuss?"

What information can be shared from caucus?

The mediator should put the burden on parties of what exactly they want the mediator to share and how, by addressing confidentiality at the end of each caucus. The mediator might say, "Is there anything that you do not want shared?" or "It is your responsibility to let me know what you don't want me to share." or "Do you want me to propose that as an offer, or should I explore that further?"

What about overusing caucus?

Mediators vary in their styles related to use of caucus. Some use it exclusively, some use it sporadically, and some not at all. In general, one would think that it is better to do as much as possible with the parents and schools in joint session together so that they become more effective in their communications with each other - so as to prevent future disputes.

Have you participated in mediation? Did you experience caucus? and, if so, what benefits or negatives did you experience? if not, do you think a caucus might have been helpful?

Jan Serak

- o **Re: hat about caucus?** by **Jeanne Bowman** on Feb 09, 2006

Jan

I approach caucus with caution: like garlic, it's a good servant but a poor master. The Capital M mediation style that was used in California in the past relied so much on caucusing it become more akin to shuttle diplomacy. This works for getting resolution for an entrenched positional problem, but didn't do so much to foster relationships. The mediator did a good deal of the 'work' rather than the parties speaking directly to each other. This heavy use of caucus, to the extent that the only time the parties were in the same room was for introductions and checking agreement, could feel more like arbitration. Lower case m mediation, or solutions panels and other earlier resolution options can focus on relationship restoration and building. The quick caucus when things get hot, and they do, is great.

Jeanne

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- **When do most mediations occur?** by **Tina** on Feb 10, 2006

Have any of you noticed a pattern in terms of when the greatest number of mediation

sessions and due process hearings tend to occur? I would guess it happens more at the junior high and high school level than in elementary school? Do parents with children going from pre-school or kindergarten to first grade have any idea of the options open to them? Does any organization keep track of those statistics?

- o **Re: When do most mediations occur?** by **Nissan Bar-Lev** on Feb 11, 2006
Tina,

Great questions. I will check with our mediation office on Monday to see if any pattern of "when mediation occurs" has emerged.

My experiences tell me that the driving force behind the development of a dispute is poor communication between school staff and parents. Our state mediators report quite often that effective communication could have averted many disputes which go to mediation. Unfortunately, poor communication occurs at all levels, elementary, middle or high school.

Interestingly enough, very few of our Wisconsin mediations involve AT disputes. The largest number of mediations result from disagreements in the area of Emotional Behavioral Disability, including Functional Behavioral Assessment, to be followed by disputes in the area of reimbursement for private school tuition, transportation issues, placements, determination of disability, and extended school year services.

Another interesting bit of Wisconsin statistics is that autism, a disability that comprises only 3% of the Wisconsin population of students with disabilities, accounts for about 25% of all disputes.

What type of disputes end up in mediation in your area? Which AT issues result in mediation? Do specific disabilities tend to frequent the mediation option more than other disabilities?

Nissan Bar-Lev

- **Re: When do most mediations occur?** by **Ralph Harrington** on Feb 13, 2006
I've also noticed that few disputes in my district have centered on technology (at least, to my knowledge). But I'm not sure that's an indication of great agreement on those issues, but rather, a lack of enough information on them to rise to the point of being visible in the discussion. To put it more simply, parents don't know enough about technology options to ask for them and schools don't raise the issue if they're not asked. I know that's a generalization and probably isn't the case in all our schools, but that's just what I've seen.

- o **Re: When do most mediations occur?** by **Jeanne Bowman** on Feb 14, 2006
I asked Carlo Rossi, Sonoma County Independent Youth Advocate this question -- he says
My experience is that most mediations occur right about now....yes, it seems to be the season; I think it happens after mid year break when families think that that their child has not been making progress over the first half of the school year; this time through the end of the school year seems to be a "hot" time for mediations.

- **Re: When do most mediations occur?** by **Marshall Peter** on Feb 15, 2006
Greetings-
CADRE (The National Center on Dispute Resolution in Special Education)

<<http://www.directionservice.org/cadre/>> summarizes national data on the use of mediation, due process and complaints. Unfortunately the data doesn't include detail about the age or disability of the student involved. The one distinction is that Part C (Birth-3) dispute resolution data is reported separately. When comparing utilization rate per 10,000 students we find considerably less utilization of procedural safeguards among these very young children when compared to Part B. The average rate of Dispute Resolution events per 10,000 for Part C is about 40% of the Part B rate. While some states probably collect and analyze data regarding age and disability for internal reporting and management purposes, we are not aware of any public reporting on this topic.

My colleague at CADRE, Philip Moses, and I have both found the discussions here very interesting and illuminating and wish to congratulate, Jan, Nissan, Jeanne and other participants on an outstanding job of unpacking critical issues.

- **Hi There Everybody!** by **Jeanne Bowman** on Feb 13, 2006

We are about to reach the mid point of the month.

I'm wondering where you all are as you read our posts. We understand there are many of you, which is great. I'm curious about how far the forum is reaching.

Is there anyone checking in from Alaska? Oklahoma? From under the snow in the North East? In the sun in Georgia or from the beaches of the Pacific Rim?

Jeanne

- **Re: Hi There Everybody!** by **RM** on Feb 13, 2006

I'm an SLP in Maine. On a lot of IEP committees. No specific questions, just want to know more about mediation and facilitated IEPs.

- **Re: Hi There Everybody!** by **DMS** on Feb 13, 2006

Texas, PTIC

I am new.

- **Re: Hi There Everybody!** by **Sherry** on Feb 13, 2006

I'm in a school district in Idaho. Small town. We mostly know each other. Lack of trust isn't so much the issue, as lack of information. I think mostly we'd like to have an "expert" at an IEP meeting to give both sides information they don't have.

- **Re: Hi There Everybody!** by **jeanne bowman** on Feb 14, 2006

Thanks, it does help me to have a sense of who I'm talking to.

I want to keep my thoughts global, when many of my stories are local.

You've given me faces and places.

You, dear reader, receive the fist Happy Valentines Day greeting for today! (Technology rocks – it's still the 13th while I write this, but not at the server).

Jeanne

- **Re: Hi There Everybody!** by **Pam** on Feb 15, 2006

I'm in Toronto, where our system is somewhat different from yours. But I still find these discussions valuable. People being people, we certainly have the same issues. Thanks.

- **Re: Hi There Everybody!** by **Colleen** on Feb 16, 2006
I'm a (tenacious) mom in Pennsylvania.
- **Re: Hi There Everybody!** by **Allysa** on Feb 20, 2006
Louisiana checking in. A number of these emails make the school out to be the bad guy. But I've got to say that I see a whole lot of special ed teachers, and gen-ed too, go to the mat for their kids. Sometimes the parents don't even show up for the IEP meeting (though that's not the majority). But I've seen the teachers lobby for AT as much as the parents. And a lot of teachers, especially special ed, go to conferences to learn more. They're not the bad guys!
- **Re: Hi There Everybody!** by **guest** on Feb 21, 2006
I'm a Family Advocate in upstate New York. We got snowed in but good, so I had time to read this whole discussion. Thanks!
P. Dougherty

- **Re: Hi There Everybody!** by **Jeanne Bowman** on Feb 22, 2006

Hello Again,
Edward N Lorenz asked the question "Does the flap of a butterfly's wings in Brazil set off a tornado in Texas?"
We are international!
Our tech support tells us we've got folks looking in from Canada, United Kingdom, Australia, Switzerland, Mexico, Singapore, Japan, Netherlands, Argentina, Israel, Germany, Belgium, Portugal, Taiwan, India, Brazil.

Welcome, world.

Does anyone else feel a shifting breeze after reading our discussion?
Have you followed a link that's caught your breath? Given you a moment of "Ah Hah!"?
Do you know of one that you would like to flap your wings and crow about?

Jeanne

- **Re: Hi There Everybody!** by **ck** on Feb 24, 2006
Vermont
:-)

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- **Facilitated IEP's vs mediation** by **guest** on Feb 13, 2006
I am a professional who works with families in the field of assistive technology and the other day a parent contacted me about a problem she was having with the school district providing assistive technology and including it in the IEP. Apparently this was a long standing problem that hadn't been resolved, so the issue of mediation came up. However, the parent insisted that when she had tried mediation in the past, what she said in the meetings was held against her later. She did seem more open to the facilitated IEP process, which she felt had worked better.

I know you have addressed the difference between facilitated IEP's vs. mediation earlier in this discussion, but I still would like to learn more about safeguards for the mediation process - I apologize if you have covered this already.

- **Re: Facilitated IEP's vs mediation by Nissan Bar-Lev** on Feb 13, 2006
Here is the description of "Mediation" and "IEP Facilitation" taken from our "Expert Perspective" found on this website. I hope it helps in distinguishing between the 2 dispute resolution options:

Mediation.

Mediation is best used when: help is needed to settle a specific dispute; impasse has been reached; or when there is a history of dispute between the parents and school. What is great about mediation is that every step of the process is voluntary. You only participate if you want to. You can stop anytime you want to. If a parent requests mediation, the school does not have to agree. Likewise, if the school requests mediation, the parent does not have to agree to participate in mediation.

The mediator is not a decision-maker like a judge or a due process hearing officer. The mediator helps facilitate and structure discussion between the parties during mediation and does not actually impose a decision or interpret law. The setting for the mediation session is usually one of "structured informality." The mediator helps parties understand how the mediation process works; helps parties decide who will participate in the mediation session. While various mediators use different approaches, a typical session starts with the mediator confirming the agreement of parties to mediate (such as by parties signing an Agreement to Mediate form). The mediator describes mediation process and confidentiality provisions of mediation. The mediator usually does an opening to introduce himself/herself and asks the participants to each explain their viewpoints about the issues. Federal law provides for mediation to be private and confidential so that parties feel comfortable openly discussing any issues. The mediator encourages the parties to work on generating options, helps them assess the various options.

Some mediators use "caucus" – which is an opportunity to meet privately, either with the mediator or with colleagues. The mediator should not share information from the caucus in an open mediation session without permission. Caucus is often used to move the process forward, to let parties vent, to prevent premature agreement, to educate a party with poor skills, to explore settlement options, etc.

If there is an agreement, both the parents and the school sign it. The agreement should outline what the parties feel they will be able to do to resolve the situation. People tend to follow the terms of mediated agreements because they participated in developing them. The mediator can be the "scrivener" – that is, he/she can record agreement points as directed and phrased by the parties, but should not be writing the agreement for parties. This would get the mediator into the realm of "practicing law without a license." In WI, agreement is legally binding, enforceable under WI contract law. WSEMS does not have any responsibility for enforcement of agreements.

While there are no guarantees that mediation will lead to an agreement, often even in process of mediation, the parties may be able to work together to better identify their issues or reach a partial agreement on some of issues, or going through the process may result in their improved communication for a better long-term relationship.

Facilitated IEPs

While not required under state or federal law, the use of facilitated IEPs is

encouraged in the President's Commission Report – but, was not included as part of IDEA 2004. The Report had an emphasis on early conflict prevention and management - for IDEA to support early processes for conflict avoidance for schools & parents.

In Wisconsin, for example, a facilitated IEP is an option for early conflict resolution that is available to parents and schools. A facilitated IEP uses a neutral trained professional (a facilitator) to help the IEP team with the process of deciding what will be included in the IEP. This facilitation may take place at any IEP team meeting. The facilitated option in Wisconsin is voluntary. If either the parents or school do not want to use a facilitator, a facilitated IEP will not be arranged. The process is free. WSEMS does the neutral intake and screening of the cases and pays the facilitators with their federal discretionary grant from the WI Department of Public Instruction. In some cases, when parties have become very positioned on a certain issue, the intake coordinator may suggest that mediation may be a more appropriate way to try to resolve the issue. In the WSEMS system, results have shown: 96% of participants agree the process will improve future meetings; 86% would use the process again;

A facilitated IEP is often used to help when the school and parents think an IEP meeting will be difficult to manage, as when there has been a lack of trust, if problems are expected with communication. A facilitated IEP is most effective when requested in the early stages of the IEP process. The facilitated IEP meeting is held at a time and place that is acceptable to all IEP team members and the facilitator. The facilitator helps IEP team focus on developing an effective IEP - but is not an IEP team member. The facilitator offers ways to address and resolve conflicts in the development of the IEP; models and helps maintain open, respectful communication among team members; helps team members develop and ask clarifying questions about issues that may have come up in past IEP meetings; maintains impartiality and does not take sides, place blame or determine if a particular decision is right or wrong.

Nissan Bar-Lev

- **Re: Facilitated IEP's vs mediation by Nissan Bar-Lev** on Feb 13, 2006
Mediation occurs when the 2 parties have identified a specific dispute or a number of disputes, like AT, ESY, availability of specific accommodations in the curriculum, etc. On the other hand, IEP facilitation is used whenever there is a general sense of distrust, or poor communication between the parties, and the skills of a neutral facilitator are needed to reestablish the trust and the effective communication.

Since IDEA 2004 does not require states to implement the IEP facilitation option, states vary a great deal in the way they address the IEP facilitation. They range from “no such thing” on one end of the continuum to providing the full services of a professional mediator to facilitate IEP meetings at no cost to parents or school districts.

If the disputed issue continues to be AT, I would choose the mediation option as it is designed to focus on a specific dispute. Perhaps with the feedback and results from the previous mediation, this one will be more successful.

Nissan Bar-Lev

- **Re: Facilitated IEP's vs mediation by Jeanne Bowman** on Feb 14, 2006
I'll assume that when the report is that 'what she said in the meetings was held

against her' there was a breach of confidentiality. There are of course, other possibilities, including that the mediator or the parties didn't get to all the issues, and so the dispute continues. Personally, I'd want an IEP re-convened to add in the assistive technology discussed in mediation. One of the beauties of mediation is that it is a forum where items that are not allowed in an IEP discussion can be touched on --- like costs. In a facilitated IEP you would have to blend a bit of mediation, such as a caucus or going 'off the record' to discuss cost. Both mediation and facilitated IEP's, when done well, are going for those specific measurable achievable realistic and timely agreements.

It is very difficult in the education system to ensure complete confidentiality for a mediation (or facilitated IEP). Any time decision makers are involved in meetings, support staff knows where they are; school safety requires visitor sign ins; the decision tree for allocating funds can involve many more people than are at a meeting; follow up activities will impact folks who aren't in attendance and need information; the debriefing from a meeting can be very difficult to do without speaking of particulars especially when emotions run high... For all parties.

I have had folks experience serious breach of confidentiality because of assumptions that no one would know about mediation – just the fact of its taking place. That isn't possible. But, we can help everyone be clear on what information is shared and what isn't. Anita Archer talks about 'assumicide', mediators prefer to D.I.E. first -- Describe, Interpret and Evaluate. In tense situations it is easy to jump to an evaluation from a statement. Let me make up a scenario: a school secretary asks a superintendent how an IEP meeting went. The secretary forgot to mention that she gave directions to an IEP facilitator who was lost, and was really concerned that the meeting took place. The facilitator was such a nice person, and the principal hadn't mentioned anything about a special meeting. The superintendent assumes that someone else spoke out of turn, again, and that the site principal runs a loose ship and further more that the secretary deserves her reputation as a busy body. We learn to be careful about how we interpret and then evaluate behaviors.

I might want to explore what 'holding it against' was in terms of describing a behavior or action. Especially if I had hired a mediator with an eye to helping get a positive relationship re-established between the parties.

I'm digressing – if the parent feels the facilitated IEP process worked better for her, and the parties can move forward together, there are clear safeguards to the IEP.

Safeguards for mediation, let's start a new thread on that! (I have to do more homework on state and federal statute first: Nissan? Jan?)

Jeanne

- **Re: Facilitated IEP's vs mediation** by **guest** on Feb 14, 2006
Thank you to Nissan and Jeanne for sharing your experience and insight on mediation vs. facilitated IEP's and safeguards for parties involved. I will be following the thread on safeguards to learn more....

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- **Mediation Timelines etc** by **Carlo Rossi** on Feb 13, 2006
Good Morning: Jeanne asked me to join in about mediation timelines...I'm not sure what the question was?

- **Re: Mediation Timelines etc** by **Nissan Bar-Lev** on Feb 13, 2006
I think the question was whether mediation sessions tend to occur more often at the middle school / high school than at the elementary level. We do not see it in Wisconsin. Our requests for mediation come from all levels and ages. The only difference is that the requests for mediation at the high school level reflect much more complex and involved special education cases than in our elementary school requests for mediation.

Nissan Bar-Lev

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- **Safeguards in mediation** by **jeanne bowman** on Feb 14, 2006
In the Facilitation vs. Mediation thread I've promised to do homework on this. The safeguards and protections for mediation may vary state to state, and we know that the reauthorization of IDEA will have impacts as well. Nissan shared that under Wisconsin state law mediations are regarded as contract agreements. There is a burning question in our field regarding mediation supporting the procedural safeguards under IDEA – can a mediator who is not fluent with the requirements of IDEA ensure that the rights of the child are honored and protected? I'd be very interested in your thoughts on this.
Jeanne

- **Re: Safeguards in mediation** by **Cary** on Feb 14, 2006
Greetings !

Hi -

Well, I needed to pop-up from under the snow in my community here of Massachusetts to grasp some topics of discussion. Attempting to answer the question, "... can a mediator who is NOT fluent with the requirements of IDEA ensure the rights of a child ...".

If and ONLY if he/she works as a team-player. In other words, they may be very technologically savvy and understand specific concepts of what a disabled student would require but deficient or lacking knowledge of the IDEA. This is where the keyword, "team-player" comes in. They must be resourceful enough to realize their limitations and acquire professional help in this field during an appraisal of the disabled student. This is my opinion. I hope it is on the right track.

Cary

<http://ADATech.org>

- **Re: Safeguards in mediation** by **Nissan Bar-Lev** on Feb 14, 2006
Here is how we have chosen to address this particular issue in the Wisconsin Special Education Mediation System (WSEMS):

We take great pains to inform our WSEMS mediators on Federal IDEA and Wisconsin corresponding Chapter 115 procedural safeguards. We do it in

three key steps.

1. At the initial training to become a WSEMS mediator, three of the five days are devoted to state and federal law in special education. The mediators hear the corresponding perspectives of attorneys who represent schools and attorneys who represent parents on special education law. In addition, they also hear from parent advocates and special education directors on the same subject.
2. On an annual basis, the WSEMS mediators are required to attend a training in which the lion share of the day is an update on special education law. In fact, we will conduct our 2006 WSEMS mediators training next month. Four well known attorneys (two on each side) will provide the legal / legislative update.
3. We have purchased a group license for all WSEMS mediators to receive weekly electronic updates on IDEA 2004 and other special education issues from a well known legal publication.

With such exposure to IDEA and state law procedural safeguards, the resulting mediation agreements are safeguarded as well. In addition, it is common in our system for the mediators to ask the parties to check with their attorneys if they have any doubts about the agreement.

Nissan Bar-Lev

- o **Re: Safeguards in mediation by Philip Moses** on Feb 15, 2006
The issues raised here are complex and exist in virtually all domains of mediation whether the setting is that of a divorce mediation, environmental dispute or workplace conflict. The question of whether a mediator should have content or subject matter expertise has been on the "hot topics" list for almost 3 decades and there are diverse perspectives on this. Many view the role of the mediator as safeguarding the process, not the rights of participants. Others believe otherwise or may fear that less empowered participants could be taken advantage of. There really isn't any right answer to the question. (We do note that under IDEA, "The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services." Its left to States to determine the meaning of "qualified" and "knowledgeable".)

It really is case specific and depends on the needs and desires of the participants. One of the powerful aspects of mediation is the inherent fluidity and flexibility of the process and the opportunity for the participants to shape both the process and the role of the mediator. What is really most important is that all participants have an understanding and agree on the role and scope of the mediator (as well as the process).

If a mediator does have content expertise, the key is how that knowledge is used. The mediator need not be the source of information but a facilitator towards acquisition of the requisite information and guidance that the participants may need. The sophisticated mediator will have a variety of strategies available to them that

ensures that the participants have the best information available in order to make the best decisions possible.

- **Re: Safeguards in mediation** by **Nissan Bar-Lev** on Feb 16, 2006
The interested readers may want to review the earlier discussion on this discussion board on the question of mediators' technical knowledge in the special education field.

It is important for states to assure all parties engaged in special education mediation that the child's civil rights and IDEA procedural safeguards would not be violated in the mediation process. There is a big difference between (1) mediators possessing the technical knowledge of the special education field and (2) mediators understanding the child's civil rights / IDEA procedural safeguards.

Well-trained mediators in the special education field are familiar with the latter, and are vigilant in assuring it throughout the mediation process. When in doubt, the parties are asked to check with school or parents attorneys.

Wisconsin's effort in training the special education mediators in understanding child's civil rights and procedural safeguards is documented in an earlier post (several days ago) on this discussion board.

Nissan Bar-Lev

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- **Role of the child** by **KLW** on Feb 15, 2006
I haven't read all the posts yet, so you may have addressed this already. If so, just ignore. What role, if any, should the student play in a mediation? Obviously the age of the child is a factor. You read a lot about the need to teach kids to be self-advocates. Does that apply to mediation? I can think of pros and cons for involving a student in the process.
 - **Re: Role of the child** by **Marshall Peter** on Feb 15, 2006
I think that the default assumption should be that older students (perhaps 14 and above when transition begins to loom large) should participate to the maximum extent possible in mediations about their special education program. I've always appreciated a slogan that has been used by self-advocates "Nothing about us without us". CADRE has prepared a document on this topic, "The Involvement of Students in Their Special Education Mediations" which can be accessed at:
<<http://www.directionservice.org/cadre/student.cfm>

- **Re: Role of the child** by **Nissan Bar-Lev** on Feb 15, 2006

Hi

Excellent question about the student participation at their own mediation session.

Generally speaking, I would rely on the well-trained mediator to identify the key stakeholders in a particular dispute, and invite them to participate in the mediation session. Under Wisconsin's state statutes, BOTH parties will need to agree to allow any additional participants in mediation - beyond the two parents and two school representatives that are required by law.

It is a very sensible move to have an adult student participate in his / her mediation, but I would defer to the mediator's expertise on the subject.

I agree whole-heartedly with my colleague, Marshall Peter perspective: "Nothing about us without us". The CADRE article that he referenced is an excellent, well written publication. I would highly recommend to the interested readers to access many other well written publications on the CADRE web site:

<http://www.directionservice.org/cadre/index.cfm>

Nissan Bar-Lev

- **Re: Role of the child by Bonnie** on Feb 16, 2006

I have always brought my daughter to IEP meetings, because I wanted everyone to see and think about the real live person we were talking about, not just a stack of papers and forms. I've never been in a mediation, so maybe that would be different. But I think having her there has helped us get more services. People tend to write her off until they see that in spite of her serious disabilities, there's a thinking, feeling person inside. Then they're more willing to help.

- **Re: Role of the child by Nissan Bar-Lev** on Feb 16, 2006

Dear Bonnie,

I could not agree with you more. Too often, we are too engulfed by paperwork, curriculum, legal issues that we tend to lose track of what our real task and commitments should be all about: the child. When my agency conducts trainings for staff, we place an empty chair in the middle of the room as a reminder to all: don't forget the child, this is what it is all about!

Nissan Bar-Lev

- **IDEA 2004 - Federal rules about mediation by Jan** on Feb 17, 2006

To ensure that everyone has access to the IDEA 2004 rules related to mediation, it is copied below and you can also find it on the CADRE website -

http://www.directionservice.org/cadre/stat_prtb2004.cfm. As we have said previously, each state may add additional provisions.

Sec. 615 Procedural Safeguards.

`(e) MEDIATION- `(1) IN GENERAL- Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

`(2) REQUIREMENTS- Such procedures shall meet the following requirements:

`(A) The procedures shall ensure that the mediation process--

˘ (i) is voluntary on the part of the parties;
˘ (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and
˘ (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

˘ (B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY- A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--

˘ (i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

˘ (ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

˘ (C) LIST OF QUALIFIED MEDIATORS- The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

˘ (D) COSTS- The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

˘ (E) SCHEDULING AND LOCATION- Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

˘ (F) WRITTEN AGREEMENT- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

˘ (i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

˘ (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

˘ (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

˘ (G) MEDIATION DISCUSSIONS- Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

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- **Buckhannon Case - how does this affect mediation?** by Jan on Feb 17, 2006
The "Buckhannon case" is a precedent-setting case related to attorney fees associated with mediation...one with which stakeholders should be familiar.

The following abstract from an article related to the case can be found on the CADRE website (along with tons of other fabulous references/research related to dispute resolution) -<http://www.directionservice.org/cadre/raisearch.cfm>

Title: Buckhannon, special education disputes, and attorneys' fees: Time for a congressional response again.

Publication Date: 2003

Authors: Hanson, S. M.

Source: Brigham Young University Education & Law Journal

Abstract: Discusses effect of Buckhannon case on attorney fees in special education mediation. Prior to this case, if parents were the "prevailing party" in mediation, the parents' attorney could seek fees from the school district. Now, if parents and school districts enter into a settlement through mediation, it is considered a private settlement agreement and the parents' attorney cannot seek fees even if they prevail. In order to get attorney fees since the Buckhannon case, they must be negotiated for and agreed upon as part of the formal mediation agreement. The author states that parents are now left with a choice between representing themselves, taking a financial risk and hiring representation, or making attorney's fees an issue in the mediation session. The author believes that this case, as applied, puts parents at a disadvantage in the mediation process because the school will likely be represented.

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- **Mediation - participation of families from diverse backgrounds** by Jan on Feb 17, 2006

Keys to access: Encouraging the use of mediation by families from diverse backgrounds.

Publication Date: 1999

Authors: Engiles, A., Fromme, C., LeResche, D., & Moses, P.

Source: Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

Abstract: This document is intended to provide educators with guidance and strategies to increase the participation of families from diverse backgrounds in mediation programs to settle differences about educational programs for children with disabilities. Introductory information discusses what mediation is, who mediators are, a typical mediation process, and the relationship of education to culture. The document then presents 52 specific strategies organized into four categories: (1) policies and systems (e.g., adopt a policy that mediation services must be sensitive to cultural, linguistic and class differences); (2) education and outreach (e.g., involve families, parent training centers and advocacy groups in the development and distribution of education and outreach materials); (3) mediation procedures and processes (e.g., give preference to multilingual and culturally competent intake coordinators); and (4) mediators and practitioners (e.g., ensure that mediators and educators are aware that some individuals and families do not welcome the involvement of government or other agencies in personal or family affairs). The paper concludes that use of these strategies demonstrates a commitment to equal access, mutual respect, and basic human rights. An annotated list of organizational resources and recommended reading is attached. An appendix presents the regulatory provision for mediation under IDEA '97 (Individuals with Disabilities Education Act Amendments 1997). (ERIC)

Link: <http://www.directionservice.org/cadre/articles/keys.htm>

- **Re: Mediation - participation of families from diverse backgrounds** by Jan on Feb 17, 2006

The roster of neutrals (as, mediators) for special education in many states include mediators from diverse backgrounds, professionally, and also including cultural, ethnic/racial diversity.

Our Wisconsin roster, for example, include mediators from a wide range of professional backgrounds, including law, psychology, social work, business and education. The roster also includes 3 mediators representing diverse cultures - 2 who are Latino and 1 African-American. All 3 are Spanish-speaking.

People considering participating in mediation in Wisconsin, for example, can go onto the www.marquette.edu/wsems website to learn more about the backgrounds of various mediators available to them. Some are looking for a mediator who may have more knowledge in the subject area of the dispute. For example, some of the Wisconsin mediators have experience related to disabilities and/or special education -such as, one formerly was a teacher of children with Emotional Disabilities, one was a parent of a son with learning disabilities, several were psychologists, etc. Or, sometimes, people personally think they would like a mediator with no special knowledge of the subject. And, sometimes it is important to parties to have someone that is culturally competent - either of the same ethnic/racial background or someone that they believe has strong cultural competency and that they feel will understand a particular cultural issue or perspective that may be related to the dispute.

What has been the experience of others on this discussion group related to addressing issues of diversity in mediation?

-
- **What about new AT ?** by Nissan Bar-Lev on Feb 18, 2006

What about Assistive Technology (AT) ?

Over the past 17 days, we have presented topics, discussed and answered questions but have not concentrated on the topic of AT in the mediation context.

We live in extremely exciting times - when new technology emerges practically by the day. For example, Apple's latest iPod version with its new pics and video options opens a world of AT possibilities for children with disabilities in schools and elsewhere. In fact, researchers at the University of Wisconsin are currently piloting some exciting new venues for its use.

Another example is Sony's sleek, handheld Playstation Portable (PSP). The PSP is known for its high-resolution games, but, like the iPod, it also allows users to download photos and videos for specialized purposes for students with disabilities.

Or how about the new emerging "virtual world" that teaches real-world skills? For example, check out this MSNBC report on "Game helps people with Asperger's practice socializing": <http://www.msnbc.msn.com/id/7012645/print/1/displaymode/1098>

What other uses for children with disabilities would you envision for the above technology? We would like to hear from you about the latest AT devices that you encountered in use by children with disabilities, and whether you were able to convince the school to purchase it? How did you convince the school? And If the school declined, what approach have you taken? Did you go to mediation? How did the mediation conclude?

- o **Re: hat about new AT ?** by **Colleen** on Feb 19, 2006

As far as I have seen in PA most of the time just getting basic technology is a struggle. We had a laptop listed on my son's IEP since kindergarten and he didn't actually get one until 7th grade. Instead they set up an un-functioning computer in the back of the class and said that it met his IEP. After disputing that in 3rd grade they set up a functional desktop, which wasn't so bad for elementary because they didn't change classes, but it made him sit at a large desk instead of with the rest of the class. By middle school we said they would either need to get a laptop or set up a computer in each room for his use, so they decided to get the laptop, but it took a year to have the order go through.

We then had to battle to get him appropriate reading software, we trialed various programs and they focused on cost and focused on features that he needed. He now uses WYNN, which works out good because if he doesn't have the vocabulary on his communication device he can highlight it and have his laptop speak.

At home he has all the typical teenage gadgets, Playstation 2, Gameboy Advance SP, an IZ, portable DVD player, laptop, and he loves Karaoke (Even though he is non-verbal) this helps him fit in and have friends over, plus to have something in common to talk about.

He now uses the Dynavox DV4 and he can play MP3s on that and have photo's, but the memory is far more limited then the newer gadgets on the market. I often see things and think that it would be great if they were just be built into one and combined with the AAC. The general technology on the market is far more sleek, attractive, lightweight, user friendly, cheaper then the newest AAC devices, which I think really lag compared to the latest things in the general market. They don't make the items for people with disabilities upgradeable like computers or other technology, you can't upgrade the memory, put add-ons, change the covers, etc.

I think the schools don't want to pay for anything that appears "cool", otherwise it may appear to be wasting money, so they want very sterilized basic, only do what is needed. I could never envision any schools around here purchasing Playstation portables for students with disabilities. I believe that the overall theme is to go to all lengths to make sure school doesn't seem any bit fun.

I don't see many students getting the technology they need, and not many parents that know of the possibilities.

- **Re: hat about new AT ?** by **Nissan Bar-Lev** on Feb 19, 2006
Hi Colleen,

The key in any such disagreements between parents and schools is to find a well-trained and knowledgeable AT specialist. A professional that is familiar with the new generation of AT devices. Once the device is recommended for a student at an IEP meeting, it becomes an issue of FAPE (free appropriate public education), and it becomes a fair game for any IDEA dispute resolution option, including mediation.

Actually, there is nothing wrong if the AT device looks "cool". In fact, the "Cooler"

it is, the more likely that it will be used consistently. This should definitely be a consideration by the IEP team.

Nissan Bar-Lev

- **Re: hat about new AT ? by Herman Carr** on Feb 20, 2006
Our experience has been like Colleen's, well, maybe not quite as bad, but still almost like a joke (a joke we haven't found too funny). At the beginning of 4th grade (it took us that long to get "smart" about getting AT named in the IEP) we got the appropriate computer hardware included, but we didn't specify which software needed to be loaded. So the computer showed up early in the school year, but without the software he needed. By the time they got the software, it was March and a lot of the curriculum was over. We raced to get everyone trained on the software but it took Josh (our son) close to two months to get fluent on it. So then it was May. So for that year the supposed AT was useless. We figured everyone would learn from their mistakes and that 5th grade would be a breeze. But unbelievably, the same exact thing happened in 5th grade!! The school blamed the district's purchasing schedule. The district blamed state policies and budget cuts. We ended up buying Josh the software for Christmas, but had a hard time convincing the school to let us load it on their PC. They finally relented, after we (in complete frustration) threatened to sue them. In reality we couldn't and wouldn't have done that, but the threat worked. It made for very chilly conferences though and a hostile 6th grade IEP meeting. I've been printing out some of this discussion, in the hope that we can all do better for Josh in middle school.

- **Re: hat about new AT ? by Allysa** on Feb 20, 2006
Here, here!!!

- **Re: hat about new AT ? by Nissan Bar-Lev** on Feb 20, 2006
Herman,

I agree with you. I don't find the joke very funny either. There is nothing funny in your son's losing precious time that he could have used with needed software.

Hopefully the middle school in 2006/2007 will present Josh with the high tech support he needs. However, given the history of the last two years, some proactive steps now may be needed:

1. Discussion with the district's special education director to ensure that next year's staff is given proper training this spring.
2. If you sense that staff members or administrators are dragging their feet, perhaps you could request the support of a neutral (a mediator) to move the process forward.

Nissan Bar-Lev

- o **Re: hat about new AT ? by Tom** on Feb 20, 2006
Nissan:

This is a great question!

I have heard Joy Zabala and Dave Edyburn talk about the essence of the definition of AT as "AT is anything." As a result, I see nothing in the definition of AT to exclude the types of examples you are suggesting.

To me, it's much more problematic to collect evidence about the impact that results from using AT and then use that information in making decisions. Seems to me that a lot of AT is "prescribed" based on hope. The iPod may have great potential as a tool for students that can't read their textbook so I now convert text into MP3s so a child can listen to his assigned chapter reading as he rides the bus home. However, does it matter whether the potential of this device is captured in a way that meaningfully improves the student's academic achievement for us to make the case that the iPod is AT?

As a mediator, what type of evidence would you like to see by those of us making a case about the "need" and "value" of a specific assistive technology device? Would you like me to passionately tell you that the student needs it? Do you want to see trial data over a period of one day, one week, or one month? Or, something more? In the end, isn't this about making decisions on how to use scarce resources and don't we need to determine who can benefit and who can't?

Tom

- **Re: hat about new AT ? by Nissan Bar-Lev** on Feb 20, 2006
Tom,

Great comments!

As a special education director for a consortium of school districts, I rely on my staff recommendations regarding the appropriate usage of different AT devices for students with disabilities. When my AT specialist is recommending a high tech device (neither the "low tech" or "mid tech" devices will do), I usually look for about 4 to 6 weeks worth of data pointing to the advantages of its use by the student (most companies of high tech devices will allow a 6 weeks free trial). It is nearly impossible for IEP teams to ignore such compelling student data.

Nissan Bar-Lev

- **Re: hat about new AT ? by Jan Serak** on Feb 21, 2006
Since the role of the mediator is to "facilitate" the discussion between the parties (school/parents) to the dispute, the mediator will not be making a decision in the situations - rather, the mediator will be assisting the parties work to identify what information and steps they need to resolve the situation and come to agreement between themselves on what steps are needed.

The mediator, therefore, is not really looking for "evidence" from the parties to "make a case about the need or value" of a specific AT device? Rather, the mediator will really be focused on helping the parties figure out what information and steps are needed to figure this out.

Some steps the mediator might take in helping the parties:

1. INTERESTS - the mediator might first help the parties really hear each other about what underlying "interests" are driving whatever "position" they are taking related to the issue/s. The parent could certainly "passionately tell the mediator that the student needs a particular AT device." However, it is the school that needs to hear why the parent is so passionate - what is the WHY in the situation... WHY does the parent think that the student needs it. The parent may feel that the particular device is the only one that will look age-appropriate so the child is not bullied; may feel that it is one that the parent has heard helped other kids "write without getting tired or making errors" and is most concerned about the child's fatigue factor or self-esteem, etc. The school may talk about their scarce budget resource and concern that they have purchased devices in the past that have been expensive and then have gone unused or have been broken; they may talk about the fact that they believe a certain device was seen at a recent AT conference & is the latest great AT answer to the specific situation; they may talk about having a particular teacher of the student who is AT phobic and won't be able to help the student with the device, etc.

2. GENERATING OPTIONS.

The mediator would help the parties suggest/create as many options and variations on the options as they can think of that would potentially meet as many of their interests as possible. This could be a list of several AT devices that might be appropriate for the child, or resources that could be tapped to find out what AT devices might be available that might be appropriate for the child, or a list of some AT consultants who might be included in the identification of AT devices or the need for AT devices, or various options of ways information could be collected that would provide enough information FOR THE PARTIES to make an educated decision about the issues, etc.

3. ASSESSING THE OPTIONS.

The mediator would be able to help the parties to have a discussion about all of the various options that were generated. The mediator would help the parties identify what information would be needed to assess the options. The parties would decide together how they would know if and what additional information is needed, such as, if and what trial data might be needed - a day, week, month, or more. If neither the parents or the school staff participating in the mediation session are not experts in AT, the mediator might help the parties decide together on a mutually acceptable AT consultant who would be able to identify what additional data is needed. The mediator might help the parties work together to figure out a timeline to assess the various AT options discussed, etc.

4. WRITTEN AGREEMENT

The mediator will not write his/her written "findings or ruling" in the case. Rather, the parties will work together, assisted by the mediator, to write down what the next steps that they have agreed will be to resolve the situation. This might be, for example, that the district will call a particular AT Consultant, ask the consultant to meet with the parent and student to identify and try at least 3 different devices within a certain price range and maybe including some already owned by the district and come back with the amount of data that the AT Consultant knows is the best-practice amount needed to make a recommendation for the device.

Mainly, with my response, I wanted to point out that it is the parties that need to identify their own evidence/information, with the help of the mediator, that they feel is needed for both parties to satisfactorily resolve the issue - but that the mediator does not need evidence/information to make a ruling or decision related to the case.

Jan

- o **Re: hat about new AT ?** by **Jeanne Bowman** on Feb 22, 2006
There is nothing like the delight that Nissan gleams with around his using, sharing and learning more with technology and devices. I've been thinking about making the match between student and machine, with the triangulation of expert input, trial use with data collection and cost considerations. But that doesn't capture the absolute glee of Nissan; popping hot tunes from one port into another, making his presentations sound as well as look great. His animation and delight with technology supporting his ability to engage an audience is palpable. But it's nothing compared to what you will see here:

<http://news.bbc.co.uk/1/hi/technology/4690784.stm>

Technology and mediation is all about checking the options, expanding the pie, but it's also about enabling joy. The kind of giddy interaction that operating an Xbox brings to the elementary age after school set, the part that's not just academic.

Any other serendipitous resources, big wide world?

Jeanne

-
- **State contacts for dispute resolution; conflict resolution professionals; and trainers?** by **Jan Serak** on Feb 19, 2006

If you are looking for more information that is specific for your own state, check out the CADRE website -

A database, <http://www.directionservice.org/cadre/state/>, includes state information for special education and Birth to 3 mediation systems - contact info. for the SEA, state mediation coordinator, mediation service provider; and a short Q&A.

Find a list by state of conflict resolution professionals (self-reported by the professionals - ie, without CADRE endorsement or verification that the person has met state or national professional standards for neutrals, etc.): <http://www.directionservice.org/cadre/profs/>.

And, if you are looking for a trainer located in or near your state who can provide training related to conflict resolution: <http://www.directionservice.org/cadre/trainers/> .

For upcoming workshops & conferences related to special education and conflict resolution: <http://www.directionservice.org/cadre/indexcomingatt.cfm> .

And, upcoming workshops & conferences related to conflict resolution in general: <http://www.acrnet.org/conferences/index.htm> for conferences sponsored by the national Association for Conflict Resolution and its chapters.

and <http://www.acrnet.org/conferences/other.htm> for other-sponsored conferences.

- **Re: State contacts for dispute resolution; conflict resolution professionals; and trainers?** by **Colleen** on Feb 26, 2006

I looked up my state of Pa, to find the state system is the mediator. PaTTAN is run by the state and that is the contact and the Office of Dispute Resolution is under the state. That doesn't seem right, even though it says they will assign an "impartial" mediator. How can they be impartial when they are assigned and paid for by the education system?

- **Re: State contacts for dispute resolution; conflict resolution professionals; and trainers?** by **Jan Serak** on Feb 27, 2006

When you look through the listing on the CADRE site for all of the various states, you will see a very broad spectrum of ways in which SEAs have chosen to make mediation available to schools and parents. Some other states also run their systems in the manner that you describe.

Some do it through discretionary grant funding to a totally outside entity (as, a university, a private mediation organization, community mediation centers, etc.) from the SEA. Some run the system "in house" through their dispute resolution departments. IDEA 2004 really is not specific on how the system can run. State laws, in some cases, have specified how their systems run – others have left it open.

You know - in the end, it is all about perceptions of the overall system by stakeholders and reputations of the mediators – as to whether the system gets used; and whether parents and schools think that the system is neutral and think that the mediators are impartial, etc.

Thoughtful systems design for an effective system of dispute resolution is critical. It will make or break whether parties want to use the system.

When our WI system was established, the broad group of special education stakeholders which helped advise the design of our system - along with the expertise of Eva Soeka Director of the Marquette University Center for Dispute Resolution Education – indicated that they felt that it was imperative to have an intake site that was neutral. Hence, the MU CDRE became the intake site (i.e., rather than the SEA office) for the WI Special Education Mediation System (WSEMS). The Wisconsin stakeholders also felt that it was imperative to have a roster of mediators that was separate from the SEA. The Wisconsin roster mediators have always been trained, supported, and paid through the WSEMS. They have no contact with the SEA directly.

When Wisconsin parties complete their voluntary exit evaluations at the end of mediation sessions, they are asked about whether they would use mediation again and if they would use the same mediator again. We have a very high positive % response for both questions. If parties felt that the WSEMS system or the mediators were not "impartial", you would think that the % response would be very low.

Does your state gather exit evaluation information from the parties? Perhaps this would give your SEA an idea of how parents/schools perceive the system and the mediators.

Word spreads – if a party had a bad experience with a mediator who was not neutral, parties would not want to use that mediator and would probably share their thoughts with others. If a party had a negative experience with an intake process that was directly done by the SEA, again, they might not want to use mediation in the future, and might spread the word to others about their experience. Parents talk to other parents. School personnel also spread "the word" amongst colleagues.

I remember seeing posters promoting use of the mediation system in one state that were obviously directed to promote the use by parents. Unfortunately, the posters cast a very negative light on the schools. While parents possibly would want to try mediation as a result of the advertising campaign, certainly school districts might feel that the system was biased against them – and, since the use of mediation is voluntary, schools possibly would think twice about using the system. Perception is everything.

In the materials that our WSEMS develops, for example, we aim at keeping the language in our system promotion/training materials/etc. very neutral. We direct information always to BOTH parents and schools. We distribute the materials as widely to both groups as possible. Perception is everything.

One example of something that our system initially overlooked was that the Request for Mediation form that we initially used had our SEA logo in the upper corner, and a state form number on it. While our SEA NEVER got a copy of the Request (as it only went to the WSEMS intake coordinator), parties could easily think that the form would possibly be seen by someone at the SEA. When a stakeholder brought this to our attention, we quickly changed the logo to the logo of the WSEMS project. Perception is everything.

The whole issue of "impartiality" is a big one in the area of mediation in general, not just related to special education. The Association for Conflict Resolution Ethics Committee, for example, has worked on Model Standards of Practice to guide the conduct of mediators- <http://www.acrnet.org/about/committees/ethics.htm> . Some states have included ethical guidelines for mediators in their state rules. Some state mediation associations have developed ethical standards for their members. It might be interesting for you to check what type of standards guide the mediators in your state.

In general, a mediator should always error on the side of disclosure. For example, the mediator should clearly reveal to the parties any prior history with either of the parties or attorneys involved in the dispute – preferably prior to the mediation session. Racial, gender, religious, class generally do not need disclosure unless it becomes an issue or concern raised by the parties.

In mediation, parties make informed decisions with the assistance of a mediator who helps them define their agreement. The mediator definitely does have the power to significantly influence the agreement by their use of many tools – as, control of communication, questioning, directing, reframing, facilitating certain activities, etc. The reputation of the mediator, and his/her potential for continuing to have a good reputation in the state, is certainly

dependent on how well he/she uses the tools of mediation.

Just because the mediator is paid by the SEA directly does not necessarily mean that they are not impartial. Not sure if this answers your question, but potentially at least gives you something to think about.

- **What is the IDEA Partnership & how does it relate to dispute resolution?** by **Jan Serak** on Feb 19, 2006

Special Education stakeholders may be interested to know about the IDEA Partnership focus on dispute resolution to make training available to national organizations.

IDEA Partnerships, funded through the Research to Practice Division of OSEP, is part of OSEP's National Technical Assistance and Dissemination Network. The National Association of State Directors of Special Education (NASDSE) has led the IDEA Partnership project since 2003. At this time, there are 55 partner organizations included as partners - coordinated by the NASDSE project to bring national organizations into collaboration with States, districts, schools, and higher education.

IDEA Partnership partners identify priority issues which they feel are national priorities of their respective organizations. A Dispute Resolution workgroup has been identified for 2005-06 with the following expectations for participants:

- ***Work and collaborate with a cross stakeholder team
- ***Assist in developing and presenting cross-partner presentations on Dispute Resolution with CADRE
- ***Meet face-to-face as a team to participate in the development of the presentations
- ***Consider invitations to be a part of a cross-stakeholder team to present together at national meetings (the first 2 presentations - by a team of 4 partners - are the SSWAA Conference in Boston & CEC Conference in Salt Lake City.)
- ***Collaborate with CADRE on conference calls
- ***Communicate with partner representatives, the IDEA Partnership and CADRE

If your national organization is interested in having a presentation by the IDEA Partnerships Dispute Resolution team at your national conference, please contact Terry Jackson at NASDSE to make arrangements: terry.jackson@nasdse.org . I imagine that the availability of these presentations will be limited, so be sure to get your request in early for a presentation. It would be great to bring this training to a number of national organizations interested in knowing more about dispute resolution in special education.

Jan Serak

- **Re: hat is the IDEA Partnership & how does it relate to dispute resolution?** by **Jan Serak** on Feb 19, 2006

Sorry, forgot to include the website with information about IDEA Partnership:

<http://www.ideapartnership.org/>

- **Re: hat is the IDEA Partnership & how does it relate to dispute resolution?** by **guest** on Feb 20, 2006

So what does this mean for the average family, OT, or teacher? How long will it take

all these regulations to go into effect? I'm sure the Department of Education means well, but is IDEA 2004 really going to change things at the school level? They're cutting education budgets everywhere. So how meaningful is it to say we've got a right to something if there's no money for it?

- **Re: hat is the IDEA Partnership & how does it relate to dispute resolution?** by **Jan Serak** on Feb 21, 2006

You have asked several questions which I will answer from my perspective.

Regarding what does IDEA Partnership mean at the local level....
The existence of the IDEA Partnership grant through OSEP means that there will be a basic PowerPoint training available soon, that has been developed by a large group of special education stakeholders working together, that can ultimately be used to train parents, OTs, teachers, etc. nationally about dispute resolution options available under IDEA 2005 federal rules.

The national group of stakeholders that developed the training will be able to provide several trainings, sponsored by the IDEA Partnership grant, this year. The Power Point training will also be available for use by any local stakeholder or group to provide training for the average family, OTs, teachers, etc. about dispute resolution. So the information will be getting out there and available... Parent Training and Information Centers and Community Resource Centers (there is at least one PTIC or CPRC in each state), for example, will have the information and be able to reach the average parent with the information. OTs should be able to get the training from their national organization, AOTA, filtering down to the state organization. School Social Workers will have training from their national organization, and begin to share it with their state affiliates. I would imagine that the training and perhaps other products associated with the training will also be available on various websites, as handouts, on-line discussion boards within states, etc. How this information will be disseminated is just waiting for the imagination of all the stakeholders participating in its development and those who begin to receive the training. The intent of the IDEA Partnership is to get the word out far and wide.

Regarding your question about when do "regulations" take effect...
I think "IDEA Regulations" are what you mean - at this time, the word on the street is that they may be finalized by OSEP and out by fall or the end of 2006. They would go into effect immediately. The IDEA 2004 "rules", however, are in effect now in all states. IDEA 2004 has already changed things required to be done at the school district level - what is in the rules/law as required, is required. Whenever in IDEA 2004, the language indicates that something "may" be done or is silent on a particular issue, this is really something to be yet interpreted by each individual state through state rule clarification or amendments or potentially by precedent-setting litigated legal cases, etc.

Regarding "cutting education budgets"...
You are correct, many state and local school funding is being cut. The right is for free, appropriate public education under IDEA 2004.

This FCTD website is a superb resource for helping parties with a dispute figure out ways of "expanding the pie." That is, the website can be a great resource for parties to a dispute who may be in mediation, or participating in a facilitated IEP meeting, or a resolution session, or whatever - to work together to identify a myriad of options (ie, "expand the pie") to meet the

need of the child.

The beauty of mediation is that during the mediation session, which are confidential, the mediator is able to help the school to say (which they generally can't say in an IEP meeting) that cost to them is a supreme interest of theirs related to the issue; and to help the parents say things they might not normally be able to mention in a regular IEP meeting. With that information out on the table in mediation, then the work of the mediator is to help the parties work together to find creative ways to address the situation in a way that will not break the bank at the school, will meet some interests of the school, will meet some needs of the child, and will meet some interests of the parent.

Jan Serak

- **The AT Dispute** by **Nissan Bar-Lev** on Feb 21, 2006
The AT Dispute

As I mentioned in an early post, very few of Wisconsin's mediation disputes are in the area of AT. Such disputes between schools and parents are best resolved through a proven mediation technique labeled "triangulation" or "using objective criteria".

It goes like this: A parent requests the school district to provide his son with a laptop & specialized software to allow easy accessibility to word processing. He argues that his son needs the computer to do homework, write papers and engage in other writing assignments.

The school officials respond that the student can use a computer in the computer lab like all other students in his classroom. The parent threatens the school with advocacy / attorney involvement, while school officials respond that they have already contacted their school attorney. The dispute is picking up steam, and the lines are drawn in the battle of wills that no one really wants.

An alternative to this dreaded battle of wills is an agreement by the two parties to allow an AT specialist, acceptable to both parents & school officials to evaluate the student and his need of specialized AT device. Both parties agree to accept the AT recommendations, as it is based on objective criteria.

We would like to hear about some of your experiences in attempting to resolve a dispute with school officials regarding AT. Was mediation involved? What were the arguments used by the two parties?

Nissan Bar-Lev

- **Re: The AT Dispute** by **guest** on Feb 21, 2006
First, let me thank you for all the great information. I guess my experience isn't typical, but I'm in a school district in Virginia that seems to go out of its way to educate parents about assistive technology. They frequently offer workshops about it and (I think) there are AT specialists assigned to each school. The impression I always get at my daughter's IEP meetings is that everyone is interested in getting her the technology she needs. We did face some budget problems in middle school

and then my husband and I wound up buying some equipment and software programs. The school administration got a little weird about it. They had questions about ownership, maintenance, training, etc., but the Special Ed teacher made the problems go away. We haven't ever used a mediator but we have had several facilitated IEPs and we always felt that brought a level of professionalism to the table. It also seemed to nip problems in the bud, so that might be why we've never had a mediator. The facilitator's process seemed designed to get all of us to stick to the facts. That worked well.

Alice

- **Re: The AT Dispute by Nissan Bar-Lev** on Feb 21, 2006
Alice,

Thanks for your kind comments. It is so refreshing and reassuring to hear the anecdotal information that schools try to do the right thing. The intent is always there, but the details get a little murky here and there... It is always amazing to discover how many potential problems simply "go away" (as you write), when sensible staff members step up to the plate and score another victory for common sense. Obviously, there is no need a mediator in this kind of school climate. Other schools may not be that fortunate...

Nissan Bar-Lev

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- **What about the neutrality of the mediators?** by **Nissan Bar-Lev** on Feb 22, 2006
An important factor that determines how often the mediation system is used in your state – is its perceived neutrality by both the parents and by the school officials. A highly used system would indicate confidence by the two parties that the mediators, as well as the entire system are impartial in their dealings with the two parties. Since IDEA 2004 highlights the "volunteer" nature of participating in mediation, and if the actual mediators are perceived to be less than neutral, why would anyone participate?

How does a state mediation system establish a reputation as being neutral? Here are a few thoughts from Wisconsin: Our statewide mediation system is co-administered by a parent advocate and a school official, in conjunction with a dispute resolution expert. This triad makes all system decisions, including (1) selection of all mediators; (2) determining the monetary compensation for mediators; (3) creating training materials; (4) training annually all mediators; (5) joint outreach training by the parent advocate and the school official to blended audiences of parents and school staff in promoting the system use. The statewide visibility of the parent advocate and the school official, standing side by side in front of audiences sends an important message to parents and school staff: "your interests and unique perspectives are being addressed and reflected in this state mediation system".

How about the neutrality of your state special education mediation system? Is it heavily used?

How much confidence do you have in your state special education mediation system?

Nissan Bar-Lev

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- **Consumer Guide for Selecting a Mediator** by **Matthew** on Feb 23, 2006
Here in Ohio we have a Commission on Dispute Resolution and Conflict Management. They have quite a few resources on their website, but one in particular that might be of interest to the people in this discussion is their Consumer Guide: What you need to know when selecting a mediator. It's online at <http://disputeresolution.ohio.gov/Brochures/cgmediator.htm>

Thanks Nissan, Jan and Jeanne for all the information.

- **Re: Consumer Guide for Selecting a Mediator** by **Nissan Bar-Lev** on Feb 23, 2006
Thank you Matthew for sharing Ohio's excellent document on "What you need to know when selecting a mediator". I like its "plain language" approach and selection of critical topics.

Another good source of similar information is the Wisconsin Special Education Mediation System (WSEMS):

<http://www.cesa7.k12.wi.us/sped/wsems/index.htm>

Checkout the list of mediators (including the brave souls who posted their pictures), the Frequently Asked Questions segment, Resources, etc.

Nissan Bar-Lev

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- **Idea Partnership Facilitators Handbook and meeting in the middle** by **Jeanne Bowman** on Feb 23, 2006
The Dialogue Guide Facilitators Handbook a resource that gives me ideas about how to bridge the bottom: teachers, parents, community with the top: lawmakers, researchers & academics, policy makers. Given that we have folks from sixteen countries browsing our discussion, it sang to me as valuable beyond our borders.
http://www.ideapartnership.org/documents/Dialogue_Guide_Facilitator_Handbook.pdf
Section 1: 4 (page 8 of 32)
The section is a box presenting a snap shot of differences between debate, discussion and dialogue. The Handbook supports action for stakeholders by encouraging reflection together. It goes beyond persuasion and information, into deeper understanding of each other. This reflection is based on having broad participation, and appreciation of each participant's role and experiences. Don't be surprised that the booklet is infused with principles and practices of group facilitation and mediation.
Jeanne

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- **Schools loaning laptops?** by **ck** on Feb 24, 2006
I have really enjoyed all the discussion and learned so much, thanks to all who have

participated!!!

One of the most frequent requests I hear from parents is the need for their child to have a lap top computer in order to fully participate in school. Sometimes that makes a lot of sense and sometimes it seems like, while it may be beneficial, it may not actually be warranted. The answer from the school is almost always a firm "no" citing concerns over cost and worries about care of the equipment.

Schools are often very willing to purchase software for students to use at school, but when it comes to getting technology for homework support it gets to be a sticky issue. The idea of having a "loan" of a laptop to see if it benefits the student seems to make sense, but I do not know of any schools that currently do this. Does anyone have any experience with getting laptop loaners from school districts and having a month or so to collect data?

- **Re: Schools loaning laptops?** by **Nissan Bar-Lev** on Feb 24, 2006
As a school administrator, I can tell you that the key issue in the school providing a student with a laptop, or any other word processing device is one of FAPE (free appropriate public education).

Typically, the IEP team determines (with the assistance of Well-trained and knowledgeable school AT specialists) that a student is in need of such a device in order to do his homework, daily assignments, etc. it is noted on the IEP that such assistive technology device is needed to ensure FAPE. Without, the student will not be able keep up with his class, fall behind, thus not receiving FAPE.

I am not familiar with any loan program. One problem would be, what happens to the student's FAPE provision at the end of the loan?

Nissan Bar-Lev

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- **The advantages of using the mediation option** by **Nissan Bar-Lev** on Feb 24, 2006

The following information on mediation, its benefits and how it takes place is located on the Wisconsin Special Education Mediation System website:

<http://www.cesa7.k12.wi.us/sped/wsems/index.htm>

This website contains many other mediation-related topics

About Mediation:

Mediation is a process to resolve disputes. It involves a neutral party, a mediator, who helps the parties to the dispute in their discussions. The mediator may help the parties identify issues, clarify issues, or create options for resolution. Mediation generally concludes with a written agreement among the parties.

Mediation is a process that was used in many ancient civilizations to resolve disputes. In

more modern times, mediation became popular in the late 1970s to resolve community disputes like the neighborhood's barking dog. In the 1980s and 1990s, mediation became increasingly popular to resolve environmental, corporate, and commercial disputes. It also often became an option offered by the courts that allowed parties to avoid lawsuits. As mediation became more commonly used, it was studied and found to generally save time, money, and leave the parties with a greater sense of satisfaction about the outcome of their dispute.

In 1997, when the United States Congress amended the Individuals with Disabilities in Education Act (IDEA), the legislators required each state to develop a mediation system to offer to parents as an alternative to due process. Wisconsin developed its system by calling together a group of leaders in the special education community, including, parents, teachers, school officials, attorneys, advocates, and experts on mediation. They worked for nine months to develop a Wisconsin law that describes the mediation system. The information on this website reflects the Wisconsin law. If you have more questions, go to Frequently Asked Questions and you may find the answer.

Benefits of Mediation:

Economical Decisions

Mediation is generally less expensive when contrasted to the expense of a lawsuit.

Rapid Settlements

In an era when it may take as long as a year to get a court date, and multiple years if a case is appealed, mediation often provides a more timely way of resolving disputes. When parties want to get on with business or their lives, mediation may be desirable as a means of producing rapid results.

Mutually Satisfactory Outcomes

Parties are generally more satisfied with solutions that have been mutually agreed upon, as opposed to solutions that are ordered by a judge or hearing officer.

High Rate of Compliance

Parties who have reached their own agreement in mediation are also generally more likely to follow through and comply with its terms than those whose resolution has been imposed by a judge or hearing officer.

Comprehensive and Customized Agreements

Mediated settlements are able to address both legal and non-legal issues. Mediated agreements often cover procedural and psychological issues that are not covered by the law.

Greater Degree of Control and Predictability of Outcome

Parties who negotiate their own settlements have more control over the outcome of their

dispute.

Personal Empowerment

Mediation negotiations can provide a forum for learning about and exercising personal power or influence.

Preservation of an Ongoing Relationship or Termination of a Relationship in a More Amicable Way

Many disputes occur in the context of relationships that will continue over future years. A mediated settlement that addresses all parties' interests can often preserve a working relationship in ways that would not be possible in a win/lose decision-making procedure. Mediation can also make the termination of a relationship more amicable.

Workable and Implementable Decisions

Mediated agreements can include specially tailored procedures for how the decisions will be carried out. This fact often enhances the likelihood that parties will actually comply with the terms of the settlement.

Decisions that Hold Up Over Time

Mediated settlements tend to hold up over time, and if a later dispute results, the parties are more likely to mediation again to resolve their differences rather than an adversarial approach.

The Mediation Session

Before We Start:

- The session is held within 21 business days after the mediator is agreed upon by the participants.
- The mediator works with the participants to find a convenient location, date, and time to meet. Mediations may be held in libraries, community centers, the school, school district offices, attorneys' offices, or other locations agreeable to the participants.
- The mediator helps the participants decide who else may be present at the session.

The Day Has Arrived:

- Everyone sits around a table with the mediator in a relaxed, informal manner.
- The mediator explains the Agreement to Mediate and then asks the parties to sign it.
- The mediator explains the mediation process and the mediator's role.
- The mediator asks each participant to explain his or her viewpoints on the situation.
- The mediator may ask questions to clarify, brainstorm, or create options.
- Typically, there will be no audio, video or written record of the session.
- Anyone may ask the mediator for a break at any time, or the mediator may decide to call for a break.
- A mediation session may last from 1 hour to 1 day. The parties are asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.
- The parents and school district representatives work together to write down how they have decided to resolve their dispute. They both sign this written statement, which is called the mediation agreement. A participant may, at his or her own cost, have a lawyer review

the agreement.

After the Session:

All participants are asked to complete a survey about the session. The information is given anonymously and remains confidential. The survey helps WSEMS to measure how the mediation process is working

Nissan Bar-lev

- **Mediator neutrality & IEP facilitation by Jeanne Bowman** on Feb 24, 2006
Mediator or IEP facilitator neutrality is a great notion honored more in the breach in school systems that want to do better, right now, with their most precious resource: their staff. Let me focus on early conflicts that can be resolved with out a neutral, external mediator. On this forum we've heard from folks who are using IEP facilitation for testy assistive technology issues. I notice that facilitation of IEP's is becoming the training of choice for school staff to reduce friction. And there is inherent conflict in a system that doesn't always have an AT specialist close at hand, or unlimited funds for a device, or policies that can be updated as fast as technology changes.

IEP facilitation training can take the best of the framework of the IEP process – a team focused on student needs and strengths that identifies goals to serve those individual needs, yet stay with the least restrictive environment – and blend it with powerful mediation techniques.

I suspect that there are very few completely neutral mediators with expertise on the IEP process who are facilitating IEPs. We've touched on the notion that you don't need to know specifics, but the field is making great investments in staff training to bring up the mediation and facilitation skills of educators who do know special education.

We aren't completely neutral when we come from within the system, we never the less can promote skills that empower all of an IEP team. As a parent trained in IEP facilitation I can testify that it is not an easy role. The attempt to be neutral, and keep the group on task is hard work. And being aware of when the pull of my bias, experience, or awareness of a resource to contribute to the discussion is extraordinary. I am not transparent. But I can leave myself aside (mostly) and work on behalf of the team. I've observed facilitation by school staff, who are also biased, but quite capable of being clear on how to keep the process clean as they facilitate. The value of supporting trust and positive relationships in the IEP becomes an explicit part of that process.

I'd love to talk more about the concerns you have about neutrality in IEP facilitation. Any observations?

Jeanne

- **More on student participation in mediation by Jeanne Bowman** on Feb 24, 2006
In my neighborhood here in Northern California there are two programs that offer direct conflict resolution support to the student (and family) in the IEP process. These two

independent child advocates have extensive experience with the systems that serve people with special needs. Their resumes include juvenile justice work, university teacher training, parent leadership development, special education advocacy, direct service to special needs youth, adults and more. Both are parents. The positions are hired outside of the school system, to serve on the dispute resolution continuum.

<http://www.socialadvocatesforyouth.org/counseling.html>

http://www.solanocoe.k12.ca.us/projects/300/ADR_Brochure.pdf

I think it's important to be aware of this local mediation, in its broadest sense. Carlo Rossi and Carol Gonsalves are passionate about bringing people together, and both keep the focus on the child.

Check it out!

Jeanne

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- Typically, there will be no audio, video or written record of the session.
- Anyone may ask the mediator for a break at any time, or the mediator may decide to call for a break.
- A mediation session may last from 1 hour to 1 day. The parties are asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.
- The parents and school district representatives work together to write down how they have decided to resolve their dispute. They both sign this written statement, which is called the mediation agreement. A participant may, at his or her own cost, have a lawyer review the agreement.

After the Session:

All participants are asked to complete a survey about the session. The information is given anonymously and remains confidential. The survey helps WSEMS to measure how the mediation process is working

Nissan Bar-lev

- **Farewell** by **Nissan Bar-Lev** on Feb 26, 2006

The saying "all good things must come to an end", applies to this fabulous month-long opportunity (though too short of a month...) to share information and thoughts on AT and mediation. I understand that audiences ranging from 700 – 900 daily have accessed our webboard exchanges ...

Special thanks to the FCTD staff who made it all possible. The design of the webboard and its brilliant simplicity of exchanging information provides for the ultimate accessibility.

Should you have any additional comments, thoughts or questions, we will be around through Tuesday, February 28th. After Tuesday, please feel free to contact me at my office for any issue. See contact information below.

Best wishes to all,

Nissan

Nissan B. Bar-Lev
Director of Special Education, CESA #7
530 W. Main Street, Chilton, WI. 53014
(O) 920-849-9384 (M) 414-460-4777
E-Mail: nbarlev@wi.rr.com
<http://www.cesa7.k12.wi.us/sped/>

- **Re: Farewell** by **Lorianne Keys** on Feb 27, 2006
Thank you Nissan (Jeanne and Jan too) for all the great information. I didn't post any questions because you answered all the questions I had in your long posts. But I copied all the information and shared it with my colleagues and it prompted some lively discussions. Obviously you all are doing a lot of things right up in Wisconsin. Thanks for taking the time to share it with us.

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- **Another great FCTD discussion** by **L. Ross** on Feb 27, 2006
While we're handing out thanks, I wanted to thank FCTD for another great discussion, full of information and links. I never post (just a coward, afraid to "misspeak") but I never miss them. Is there another one scheduled?

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- **On Power....** by **Jeanne Bowman** on Feb 27, 2006
When I just don't get someone, or am finding myself confounded by communication blocks and need to know if it's just me going banana's I pick up "Dealing with People You Can't Stand" by Dr. Rick Brinkman & Dr. Rick Kirschner, published by McGraw Hill. There are things I can do that will help me better understand the needs of people who are very different from me in how they communicate and get things done – and this book makes that lemons to lemonade process clear. It reminds me of the things that I do that might put other folks into a blender, and helps me think from the perspective of that other.

After I'm done with making lemonade, I look at "The Eight Essential Steps to Conflict Resolution: Preserving Relationships at Work, at Home and in the Community" by Dudley

Weeks, PhD published by Jeremy P Tarcher/Putnam

This takes me from positive reframing and communication skills to a reflection on my personal power in combination with my conflict partner and long term mutual benefit. "When people are using positive power, they work to help their relationship or conflict partners become positively powerful, too. Successful relationships and effective conflict resolution require that all parties involved be positively powerful. The parties need each other to be working powerfully and positively if the conflict is to be resolved and the relationship improved."

"Shared positive power flows from a partnership atmosphere; from clarified perceptions of the self, the partner, the conflict and the relationship; from the recognition of individual and shared needs; and from the individual positive power of each of the partners."

This work shines with a 'we can do it' attitude, with deep respect for our humanity.

When I am feeling overwhelmed (or overpowered) by a conflict that is bigger than communication styles and personality fit and when I wonder about the power imbalances inherent in our complex systems this is the book I go to.

What are your "go to" books when the going gets tough?

Jeanne

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- **Good Bye from Jeanne** by **Jeanne Bowman** on Feb 28, 2006
Good Bye from Jeanne

I've learned a lot by moderating this forum. How much I love to write, how challenging it is to do on a deadline. I've had to examine my personal relationship to technology, partly because my laptop was stolen – brain, they took my brain!!! Much of the work I've done has been in my living room, at the family computer. I've been told that in order to preserve confidentiality, my parental rights have been terminated – it seems I botch stories according to my offspring. Absolutely nothing about us, without us. The joys of having a household of independent, authentic, empowered, creative and private special education graduates who thrive. To them, many thanks for the time on your machine.

The iPod and play station are powerful images that I take away from this discussion (that and the pink ballerina with accoutrements). Not because they are assistive or adaptive devices, but because they are part and parcel of the lives of many of our youngsters. Were they universally designed? They are cargo that connects our children not just as means to social engagement but part of it. These pieces of technology are not an accommodation to facilitate learning; they embody it. I am thinking outside that X Box (oops, is that a precursor to the play station? Has it changed before I finished my sentence?), and that funny moon pie that eats compact discs and now Nissan says shows pictures. Colleen you brought play and fun powerfully into our picture. I will miss your tenacity, your thoughtful comments and your follow through. Thank you.

One of the technological side trips I took -- writing is wool gathering, wandering and meandering -- was to run my name through my favorite search engine. I am not the Jeanne Bowman who wrote Nurse Novels, a professor of mathematics or an employee of Wisconsin Facets. One day I hope to meet Jan's coworker.

Jeanne Bowman
Technical Assistance Coordinator
Matrix Parent Network
94 Galli Drive, Suite C

Novato, CA 94949
415 475-2116
Region6@matrixparents.org

Assistive technology opens access; mediation is a place to talk through the rest of the story. Thomas Hehir says in his article (now incorporated into a book) "Eliminating Ableism in Education" <http://gseweb.harvard.edu/%7Ehepg/hehir.htm>

"As the disability movement has demonstrated over and over, there is more than one way to walk, talk, paint, read, and write. Assuming otherwise is the root of fundamental inequities."

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- **So long and thanks for all the fish** by **Jackie Hess [SI Faculty]** on Feb 28, 2006
That should divide our audience into "Hitchhiker's Guide to the Galaxy" fans and everyone else. A huge thank you to our very knowledgeable discussion moderators. Nissan, Jeanne and Jan, you offered a lot of excellent information to a great number of people (most of whom lurked quietly, despite your valiant efforts to get them to post).

The transcript of this discussion will be available to everyone in our Online Discussion Archive. It will also be included on our 2006 Assistive Technology Resources CD-ROM.

Thank you to everyone for another information-rich discussion. Please join us in April for a month-long discussion of AT Issues for Transition-Age Students. You may be surprised at how we define "transition age."

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- **Common values** by **Jan Serak** on Feb 28, 2006
March is roaring in like a lion - making it time for our month of discussion to end.

I sincerely thank all who participated in this month's discussion - and to all of you who "lurked." Having this opportunity to come together, to learn from each other, to share thoughts, to explore common values and understanding, to help each other learn more about our various perspectives, has been a real gift to me personally.

The dramatic growth in the use of alternative dispute resolution (ADR) over the past twenty-some years, including in the area of special education, has sometimes been called a "quiet revolution." It feels good to have been a part of the revolution.

Research related to ADR and special education is in its infancy stage. We have so many questions yet to be fully answered. Has the availability of ADR in special education strengthened or weakened children's rights? Does the use of ADR truly transform parent/school relationships into positive, collaborative ones? Will increased reliance on ADR result in near-elimination of due process hearings? It is great to see that the CADRE website now includes a collection of research studies on ADR and special education.

Hopefully, more research studies will become available to help us refine our state systems of mediation. Hopefully, we will continue to see increasing use of ADR by parents and schools. Hopefully, we will continue to see adequate, and expanded, funding of ADR systems for special education in our states.

As the Co-Director of WI FACETS, one of Wisconsin's OSEP-funded Parent Centers and a

partner on Wisconsin's Special Education Mediation System, I hope that I have represented the parent perspective adequately and brought you ideas and resources. Should you wish to contact me: 877-374-4677 ext. 102 or jserak@wifacets.org

Jan Serak

Resources

ADA Mediation Guidelines

These mediation guidelines were put together by a national Work Group that consisted of twelve mediation practitioners, trainers and administrators. They were developed between January 1998 and January 2000. The guidelines address ADA mediation issues in the areas of Program & Case Administration, Process, Training, and Ethics. The mediation guidelines that are presented here are meant to relate to any mediating claims that arise under the Americans with Disabilities Act (ADA), other disability civil right statutes, and comparable state and local civil rights laws. These particular guidelines do not apply to disputes that may arise within the special education system.

<http://www.mediate.com/articles/adaltr.cfm#>

Beyond Mediation: Strategies for Appropriate Early Dispute Resolution in Special Education

This briefing paper derives from the Consortium for Appropriate Dispute Resolution in Special Education (CADRE). The paper begins with basic information about mediation under the Individuals with Disabilities Education Act (IDEA) and how various states have implemented mediation programs to fulfill the law's requirements. Within their background description of Conflict Resolution under IDEA, they discuss due process hearings, mediation, and dispute resolution options. They discuss the importance of developing prevention strategies within the various plans to avoid conflict. If these prevention strategies do not work, which is sometimes inevitable, they provide disagreement strategies. Finally, if the argument moves beyond just a disagreement, you can implement their conflict resolution strategies. The appendices in this briefing paper offer additional mediation resources. http://www.directionservice.org/cadre/beyond_med2002.cfm

Considering Mediation for Special Education Disputes: A School Administrator's Perspective

This article discusses how even though each state's Education Agency is responsible for providing mediation services, the process ultimately depends on the participation of administrators and parents in order for the mediation program to be successful. This article discusses the various advantages and disadvantages of mediation from an administrator's perspective in order to help their colleagues make an informed decision about whether it is in the best interest of the school district to participate. The article outlines the following topics: mediation, mediation under IDEA, the benefits of mediation, and the concerns about mediation.

<http://www.directionservice.org/cadre/administrators.cfm>

Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

CADRE is the National Center on Dispute Resolution that is funded by the United States Department of Education, Office of Special Education Programs. They use advanced technology as well as traditional means to provide technical assistance to state departments of education on implementation of the mediation requirements under the IDEA legislation. They support parents,

educators, and administrators through information and prevention methods concerning conflict in special education. Their website is a wonderful resource for mediation. They have an extensive literary database and also offer some materials in Spanish. They have a resource database that contains information about mediation, legislation, parent involvement, school involvement, teacher involvement, etc. Finally they have state specific information that may be useful when looking for personal situation information. <http://www.directionservice.org/cadre/index.cfm>

Families and Schools: Resolving Disputes through Mediation

This document, which was published in July 2002, was put together by CADRE and NICHCY. It was put together to respond to some of the questions that so many parents, teachers, administrators, and others have about mediation. The document presents real life stories so that the reader can gain better understanding of the mediation process and its inherent flexibility. Each of these stories are very different in order to allow readers to see the different angles of mediation. Even though these stories are different, they are also the same in the fact that each ends with a successfully negotiated agreement making it possible for the children involved to get the services they need and the parents and schools to work together with renewed collaboration and partnership. <http://www.directionservice.org/cadre/casestudies.cfm>

How to Prepare for Mediation

This two page information guide was put together by Minnesota Special Education Mediation Services. It discusses the various things that need to be done so that you can be fully prepared for the mediation process. The first portion of the guide talks about your role, as a parent, in the mediation process. They tell you the things that you need to have together before entering the meeting. Next, the guide provides information about what exactly will happen during the mediation session. It discusses how it will start with a general introduction of the issues and then will proceed into discussion about the various options that can be taken to help the student. The session ends with some sort of agreement. The second page of this document contains two simply laid out to-do lists. The first one is "Things to do before Mediation" and the second one is "Things to do in Mediation." <http://education.state.mn.us/mde/static/007454.pdf>

IDEA Reauthorized Statute – Procedural Safeguards: Mediation and Resolution Sessions

This resource was put together by the National Dissemination Center for Children with Disabilities (NICHCY). It was released after the re-authorization of IDEA in 2004. It describes the five main aspects of this legislation in relation to new mediation guidelines. It talks about how IDEA 2004 requires that mediation is available whether or not there is a request for a due process hearing. It provides parents and schools the opportunity to meet with the disinterested party. IDEA 2004 added mediation requirements, which are further discussed in this resource. This is a good resource to sum up how the new IDEA legislation effected the field of mediation services for special education. <http://www.nichcy.org/reauth/tb-safeguards-2.pdf>

Special Education Mediation

This fact sheet was prepared by the Maine Parent Education Consortium. It is very informative and well-organized and can be used as a quick reference when looking for the basic information about mediation. The fact sheet is broken up into the following categories: benefits of mediation, other options/considerations, what happens after mediation has been requested, who attends mediation meetings, the purpose of a mediator, what happens during mediation meetings, and the basic ground rules to follow throughout the process. Under each of these categories, there is a simple list of facts related to that topic. <http://www.mpf.org/SPIN/FAQ%20Sheets/spedmediation.html>

Special Education Mediation: A Guide for Parents

This eight-page guide to special education mediation was designed for parents and put together by the Alliance and CADRE. The guide begins with a discussion of what exactly mediation is and how to know whether if your mediator is adequately trained. The special education legislation is a very important part of mediation and this guide pulls out the most important parts of the IDEA legislation to better enhance the understanding of mediation. The guide moves on to discuss the

various benefits of mediation and how to initiate the process. The FAQs section of this guide is very useful because it takes the parts of mediation that most people may have trouble understanding and clarifies it for them. Finally, the guide offers a very useful resources section.

<http://www.directionservice.org/cadre/pdf/ParentGuide.pdf>

Special Education Mediation: Real Solutions Where Everyone Wins

This publication is geared towards residents of New York, but a lot of the information can be applied to people who live outside of New York. It is a great resource in the fact that it describes a cooperative way to help resolve differences of opinion between parents and school districts regarding special education programs and services. For New York residents, they offer a list of Special Education Training and Resource Centers in New York State Training Networks.

<http://www.vesid.nysed.gov/specialed/publications/policy/mediationbook.htm#main>

The Involvements of Students in Their Special Education Mediation

This briefing paper was put together by CADRE in October of 2003. It discusses the importance of including the student in the mediation process. The benefits for the student if they are included are endless. Their inclusion can help empower the student, help them foster relationships among those involved in mediation, and help contribute to better mediated agreements. The document goes into more benefits. It is important in the mediation process that if you want the student to benefit as much as possible that you have them participate in the correct way. This paper discusses how to get the best benefits for your child. Finally, the paper talks about possible obstacles and challenges that may arise when including a child in the mediation process and how to overcome those.

<http://www.directionservice.org/cadre/student.cfm>

The Role of Attorneys in Special Education Mediation, Feinberg, Edward and Jonathan Beyer, CADRE. <http://www.directionservice.org/cadre/articles/roase.htm>

Keys to Access, Engiles, Anita and Cathy Fromme, Diane LeResche, Philip Moses, CADRE.

<http://www.directionservice.org/cadre/keys.cfm>

Getting to Yes: Negotiating Agreement Without Giving In, Fisher, Roger, William Ury and Bruce Patton. Excellent reference on interest-based negotiation. This book can be purchased through the Conflict Resolution Network Bookstore at <http://www.crnetwork.ca/bookstore/>