

Melody Musgrove

Featured Address to Symposium Participants

CADRE's Fifth National Symposium on Dispute Resolution in Special Education

October 26-28, 2011 – Eugene, OR

MELODY MUSGROVE: I have to tell you, when I was looking at the program and some of the titles of the sessions, I thought, "This is going to really be a fun conference." I had to look back over some of these. Moving from Agony to Ecstasy with IEP Facilitation. Doesn't that sound exciting? Recent Case Law: The Good and the Not So Much. North, South, East, West: Collaboration Works the Best. These are just great. The Four Ways to Assure Mediator Quality (and why none of them work). And my -- let's see, What's Brewing in the Kettle: Bringing Mettle to the Mediator's Toolbox. These are just so much fun. And my favorite, I guess having a husband and son who are also attorneys, Have Wig, Will Gavel. Yep, Jim, that's yours. So good job, that sounded like a lot of fun. So when I was thinking about, you know, what I would say to you today, I thought about how important it is that all of you have made the choice to come here. I know that travel budgets are very restricted and many of you can only choose to attend one, maybe two conferences a year. And the fact that you chose to be here for this I think really speaks volumes and is awfully important. And it also speaks to the high quality of the work that's done by CADRE. I was telling -- first of all, Marshall Peter is just one of the really great, you know, guys in this field, and so it's so easy to be supportive of him as well as all of the people in CADRE because we believe that this is just a very successful investment on behalf of OSEP and look forward to continuing to support this work. As Marshall told you, I consider myself a classroom teacher. I always will. Both my parents were teachers. I taught, I was a classroom teacher in special education. And out of all the experiences that I've had, from a district administrator to state director, hearing officer, my experience as a classroom teacher I think is the experience that has best prepared me to do the job that I do now. I am very honored to be a classroom teacher who works for the U.S. Department of Education. I think the highest callings are to teach, to heal, and to serve. And whether it's healing emotionally or physically or otherwise, or serving, all of you in this room are here because you serve in some capacity, and those are very high callings. Now I thought about the many experiences that I've had in working with teacher -- working with parents, whether it was through IEP meetings as a teacher and a local administrator, or problem-solving at the district level and then at the state level. And you know, I've dealt with parents of every stripe, of those who've had, you know, PhDs, those who have a

sixth-grade education, those who are wealthy to those who can barely put food on the table every day. And there are just some things that we all really have in common. I have had parents come in that were just absolutely furious. I mean, you know, that the kind where they're talking to you and they're just, you know, there's spit coming out of their mouth, they're so angry. You know, and they're just furious with everything. And in my experience, I can tell you no matter how angry they were and no matter what they said, I've never had a parent tell me that they didn't care what happened to their child. Regardless of where they came from or what their experiences were, they cared deeply about their children. They may not know how to express it very well, but they cared very deeply. Usually it was because their whole life was just such a mess and they didn't know what to do about it, and this was just one more thing that was just frustrating the ever-loving daylights out of them, and they didn't know what to do about it. But I'll also tell you, I can't tell you how many times when a parent would come in and just be just red in the face and furious. And they would sit them down and let them start talking, and I can't tell you how many times they just talked themselves right out of it. I mean, at the end, you know, without me saying hardly anything. They were just exhausted, but they had just talked themselves right out of being angry. They just wanted someone to hear and to know what they had to say and what their concerns were. And as a teacher, I was never involved in a due process hearing. As a local administrator, I was never involved in due process. Now, obviously when I became a hearing officer, again, that was a different world, but -- and is that because there were no problems in the districts that I worked in? Absolutely not. It was just how we were able to deal with them and the kinds of relationships that we were able to build with parents that I think were so important. You know, in many ways you play really a vital function of a team of people who seek to make sure that children with disabilities get what they need, that they're able to take advantage of the opportunities that are presented to them, that you're able to help children feel welcome and valued in the schools, that we manage and resolve conflicts in ways that do not destroy the relationships and do not destroy the children that are being served by our programs. I've learned that so much of our success in life and work is about the relationships that we build. This morning at our table, Hilary and Marshall and others were talking about some of the things that they've been hearing since we've been here. And I said, "No matter how good the technology gets, there's just no substitute for coming together face to face and hearing what other people are doing and sharing information." And sometimes it makes you feel a little better about your situation when you hear how bad it is someplace else. And so it's always good to be able to come together and I think there's just not substitute for that. I've tried to take that

same approach as the director of OSEP, of reaching out to national organizations, reaching out to other offices in the U.S. Department of Education to build those kinds of strategic alliances that are so important. This job is not going to get any easier. In this time of really stretched resources, it's very difficult, so it's important that all of us who care deeply about children with disabilities and their futures, that we come together and communicate and build the kinds of strong relationships with one another that are really going to help us get this work done. The Department recognizes that many states have unique circumstances. I think we've demonstrated that by trying to give flexibility where there is an opportunity to give flexibility, but there are some things that really are important to be in place like a good tracking systems and clear procedures for each required process, to have good training for hearing officers and mediators and others involved. And we know that these things can really make a big difference in how effectively our dispute resolution procedures are carried out and how well they serve parents and educators that are involved. We encourage states and local educational agencies, early intervention providers, and others to continue their efforts at early and timely resolution of disagreements. You know, there's so much promise, and I'll talk a little bit more about IEP facilitation, but the really critical issue is how soon you can intervene before the relationship is completely fractured. I say that, you know, due process is sort of like getting a divorce except it's like getting a divorce with children because after it's over, you still have to be able to get along and work together. It's the only legal process I know when it's over, you still have to be able to work together. So the more that we can do to intervene early and make sure that resolutions -- that problems are resolved early is awfully important. Of course, everyone has a role to play in designing and creating better practices. We know the best dispute resolution systems are those that have strong stakeholder input. And as a matter of fact, this is true of pretty much everything we do. Throughout my entire career, I have found that including stakeholders in the decisions that are made while they're being made pays off in incredible dividends later, whether it's we convene a stakeholder group to look at the state performance plan and your performance report. We did, when I was a state director, our self-assessment. We had heavy, heavy stakeholder input. It is so important because everyone needs to hear from each other and know what the problems are, why the decisions are being made as they are, and hearing the wide range of perspectives that need to be represented in this work. We really need to improve our ability to involve a wide range of stakeholders in creating these systems that are built on knowledge of what works, that employs really highly-skilled practitioners and people like you, who really know how to get this job done and to use data to track and improve our practices. We need to

extend support of growing networks to parents and professionals who understand the principles and the practices of mediation and other more collaborative means of dispute resolution. Sharing amongst yourself and taking this work back to the colleagues where you work is a critical way for us to discover and share and develop sound dispute resolution practices across the country. Our interests, OSEP's interest in dispute resolution, is evidenced by our continued commitment and strong belief that the National Center and the APR/SPP indicators focusing on dispute resolution are really critical pieces of our efforts to improve results for children by ensuring that we all work together in the most effective way possible. So what have we learned? It's been 13 years since we initially funded a center on appropriate dispute resolution. So what have we learned in special ed 13 years later? First, we know that the increased spotlight on the appropriate dispute resolution has led to a much deeper understanding and much better attention and willingness to use collaborative processes for mediation, such as mediation and IEP facilitation. Secondly, we've really seen a range or a continuum of dispute resolution activity develop, gain credibility and gain support in an environment where partnership holds sway over divisiveness. I know you're thinking, "Boy, could we take this to Washington?" You know, because there's so much, you know, partisanship and divisiveness, so it's important that we continue to focus on relationships that, again, that illustrate the importance of partnership over divisiveness and where family members and educators view themselves as members of the same team, not oppositional, not adversaries. The range or continuum is expanding upstream, where we see practical and positive approaches being implemented by states, and that's not always been the case. Stakeholder capacity building, telephone intermediaries, ombuds models, IEP facilitation, and many other innovative approaches are really taking hold out there where you work and are showing not only considerable promise, but real results and improved relationships with parents. Less use of adversarial procedures and, ultimately, resources being shifted back to providing services for children. And that's really a big impetus for the OSERS is to make sure that our resources are really -- and our attention is focused on improving results for children, not on adversarial processes. During CADRE's life as a national center, states have increasingly integrated their dispute resolution options, recognizing that the same people are using them. There are efficiencies to be gained by working better together and ultimately the entire arrangement runs better when treated as a whole and a coordinated system rather than different processes and that have their own lives. With CADRE's recent work on exemplary dispute resolution systems, we're more capable than ever of identifying, describing, and categorizing the components and functions of optimal systems. So we've

had 13 years, now what's next? What does the future hold? What should we be prepared for and where should we be focusing our attention? This is a difficult time. Marshall and I were talking yesterday about, you know, never in my, you know, career, have we had a mid-year rescission in IDEA funds. This year, one week before October the 1st, when Congress passed the continuing resolution, they implemented a 1.5% cut to the money that was to be distributed in Part B on October 1. That's never happened before. We've never had states applying for waivers of Maintenance of Effort in the past. So you know, the continuing constriction on budgets is very real, as you know, and we're all concerned about what impact that is going to have on dispute resolution, on making sure that children are getting the services that they need, so the potential for increased conflict is real and we know that. More than ever, there's a critical need for adults to keep the focus on making sure that children are getting what they need and that we work together for the best interest of children. There are a lot of areas for future development. We certainly need more research in dispute resolution. We need to devote attention to finding out what really works to promote agreements that are durable, that improve relationships between schools and families and that lead to improved outcomes for students. You know, when I was state director, Mississippi had one of the oldest consent decrees in the country, the Mattie T. Consent Decree, which they still do, but actually it's going back to court this year to hopefully come to an end. It was signed -- it was filed in 1975 and signed in 1979. So when I became state director, we went and revisited that consent decree, realizing that when that thing was signed in 1979, we didn't know anything about consent decrees at that time. And there were no measurable goals that said, "Here, once you've done these things, you're going to be released from the consent decree." So we revisited it, put in place some goals to make sure that we could tell whether or not we're doing what we were supposed to do. And when I left, we had met six of the eight goals and I think they have now met the others and will be going back to the federal court to present, you know, their case on behalf of that. But look at the resources that were spent through those years on the Mattie T. Consent Decree that could've gone to services for children. However, the consent decree was really an important tool to make sure that we did improve and get some things done, but we've learned so much more about what things really worked to be able to get -- make things happen for children. We should be focusing on efficient and effective practices that have been empirically validated. CADRE, of course, compiles information in the RAISE database on research in special education dispute resolution, and I hope you are contributing to that database. We need everyone to contribute to that, to the data set so we have a broad representation. We need to be examining

whether dispute resolution processes have stable, long-term results. We certainly don't want to invest in efforts that simply delay resolution of the problems, but that actually leads to good resolution, or sidetrack them to other processes that don't actually work for the child. We have -- we should have respect for and reflection of the varied characteristics of culture and of socioeconomics. And to the extent appropriate, it should lead to an expansion and evaluation of the voice of the students. And of course, that's really what it's all about is the voice of the student. We should renew our commitments to make sure that students are really participants in the collaborative decision-making process and that dispute resolution focuses on the voice of the student. Students and their programs and achievements are really what it's all about, and we should listen carefully to the students and to their experiences and what are their aspirations and their expectations for the future. There are additional opportunities in the area of personnel preparation. We know that we can do better at training teachers and administrators to engage in collaborative problem-solving, but even beyond that to engage in the kinds of, in classrooms, effective instructional strategies that make sure that children get what they need in that classroom, which really reduces the need for dispute resolution later. I've been, you know, preaching for inclusive education for my entire career. And you know, I've gotten in trouble lately for sharing this story, but obviously it's not going to stop from sharing it anyway. But when talking about inclusive education as I visit schools and I'm really committed to staying connected to the real world of educating children with disabilities, and that's not in Washington, it is in schools and classrooms all across our country. So I try to visit, you know, schools very often. And I was doing it monthly until our travel budget was cut, but now I'm starting that back again. And I go to schools and talk to administrators and talk to district administrators, principals, students in classrooms, classroom teachers, special ed teachers, general ed teachers. And in meeting with the district administrators, I would say, "I'm going to tell you a little secret that I look for, I listen for, whenever I go into schools." And I did this first in a state that will remain unnamed, but I went in, I was telling the administrators, "Now when I go into classrooms, there's something I listen for from teachers. If I go in and I'm -- there's a special ed teacher who has, you know, children in a separate setting and I hear them say, 'Next semester, we're going to try little Johnny in social studies. He's really doing good in my class and we want to see if he -- we're going to try him in the general ed class next semester in social studies.' Red lights go off in my head because that tells me that you're saying that child has to earn his way into general ed when general ed is his home to begin with." So we should not -- and I want you to know I said that to the district administrators. We went to a school and the very first classroom we went to,

god love her, this teacher who was, you know, really trying to do the right thing said exactly that. She said, "This little girl has really been doing so well this semester and we're going to put her in science in the general ed classroom." And the superintendent was with us, and he just, you know, hung his head. But I tell that because, I mean, it is such a very real example of how the system has gotten, you know, kind of messed up that we think all of a sudden that children with disabilities belong in a place that is called special education. That's never how this was designed to work. And it's those kinds of tensions that sometimes become the middle of the process of what you deal with so often. So we can prevent a lot of the need for these kinds of -- for dispute resolution if we can make sure that children get what they need in the right setting to begin with. As the Department shifts from what the Secretary calls a compliance-driven bureaucracy to an engine of innovation, I love that term, engine of innovation, the same must be said of how we deal with disputes. We should be an innovation engine for disputes. Reforming special education also means reforming how we resolve conflict. Innovation in special education dispute resolution has often outpaced other aspects of our educational environment. 20 years ago, some states were offering mediation as a response or option to a due process complaint. Now the use of IEP facilitation has become a common approach to prevent and resolve conflict related to education problems across the country. If we're to be successful in the area of dispute resolution, we need to model better collaboration at the federal level, and we are working to do that. As I said, we reach out, we meet monthly with OCR, we are working collaboratively with the Office of Elementary and Secondary Education on a number of projects. You know, forever have we in special ed not been saying, "Well, where's general ed in all these discussions? Why isn't general ed in the room when we're having these conversations?" Well, they're in the room now, and we're working closely -- more closely than ever, I believe, on having some collaborative projects that really send that message that, you know, we're in this together. All children are general ed children first, and we should be making efforts to meet their needs together, not separately. CADRE's work represents a high level of collaborative decision-making. CADRE's developed long-term trusting relationships with many of the organizations and stakeholders, including the National Parent Center, our Technical Assistance Coordinating Center, the Regional Resource Center, NECTAC, NASDSE. In other words, CADRE actually walks their talk. They model the kind of collaborative decision-making and collaborative processes that we all want to see. And they are actively engaged in building partnerships. Along with stakeholder involvement, leadership plays a critical part, and you know that. Leadership plays such a critical part in all aspects of our work. Again, I can go into a school just as you can, and within 15 minutes I can tell

you what kind of school that is. And it's always about the leadership. I mean, if you have a strong principal that is absolutely committed to inclusive practices and making sure that every student who comes through the door is valued and is a meaningful part of the school culture, then you see, you know, there are just certain characteristics of those schools. The same is true in schools and districts where the leaders are absolutely committed to collaborative decision-making, to effective dispute resolution. So we really need everyone's help in ensuring that leaders understand the value of dispute resolution and not drawing that line in the sand before the relationship is hopelessly broken. Of course, your work also serves a much deeper purpose. The idea of peaceful dispute resolution, of peacemaking and peace-building, should be not one that -- not only one that we just support and promote, but it really should be something that we impart to our children, to our society, to our families every day. And there's -- I've always said there's always middle ground. Sometimes we come with these, you know, really extremes on each side, whether it's in our government, whether -- I don't care what the subject is you're dealing with, there are always people on each end of the continuum. And I say that the middle ground may be this big, but it's our job to find it and to get on it and to help people come together because there's always an area that we can agree on. And I think that's awfully important. I believe that -- I'm sure some of you are aware that Alexa, Assistant Secretary Alexa Posny, did an event yesterday here in Eugene. I think it was covered on public radio as well as I saw a little clip on NBC news last night locally about that around the American Jobs Act and what that actually means to Oregon. For Oregon in general, 253 million for modernization projects as well as \$350 million for an estimated 4,600 teacher jobs. And for Eugene specifically, over \$2,700,000 would come to the school district as a result of the American Jobs Act. So it's really important that attention is called to -- you know, all of the politics gets, you know, so out of sorts there in D.C., but it's really important for people to understand the practical side of what this would actually mean to our schools. I'm sure your schools, like many schools across the country, could use a little updating. Not only updating, there are schools that are really, really in bad shape that have had no infrastructure improvements in many years, and our children deserve to learn in a good, safe, inviting environment. And I know that many of you have worked very hard to make that happen, but there's got to be resources committed to that.