

STRATEGIES FOR APPROPRIATE EARLY DISPUTE RESOLUTION IN SPECIAL EDUCATION and THE CADRE CONTINUUM

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This document, **Beyond Mediation: Strategies for Appropriate Early Dispute Resolution in Special Education** describes some of the causes of special education conflict and explores the range of early dispute resolution strategies already being used to resolve disagreements between families and schools about children's educational programs and support services.

Executive Summary

CAUSES OF CONFLICT

Over the years there has been increasing concern regarding the predominant use of due process procedures to resolve special education disputes. Stakeholders -- parents, educators, administrators, and related service providers -- acknowledge the problems associated with special education due process hearings. These procedures generally do not result in increased trust between parents and school personnel and can have a negative long-term impact on the relationship among them.

The tremendous financial, temporal and emotional costs of due process hearings have inspired parents, advocates, and educators to seek alternative methods for resolving special education disputes.

There is a nationwide shift away from the formal and often legalistic confrontation that is inherent in due process proceedings, to an emphasis on early resolution of special education conflicts, strengthened problem-solving skills, and the desire to build trust between school personnel and families.

To determine the appropriate use for these early strategies of dispute resolution, it is helpful to understand the character of the conflicts that are inspiring such innovations. Conflicts arise between stakeholders in special education for a variety of reasons. These conflicts can be grouped into one of three general categories:

- Design
- Delivery
- Relationships

Design conflicts arise when stakeholders have differing understandings or ideas about special education services. These debates typically concern eligibility for services; methodology of intervention; perceptions about student needs; the scope of the IDEA entitlement; and educational placement.

Examples: *Parents may contend that their child has needs that warrant special education services while the school team may conclude that the child is ineligible for these services and/or that the educational needs of the child can be met through the general curriculum. In other cases, the school team may contend that a child has needs that warrant special education services but the parents may conclude that the needs of the child can be met without the services. Once a child is determined eligible for special education services, disputes may arise over the most appropriate methodology for intervention. Parents may come to an IEP meeting with an independent assessment identifying a preferred methodology. The goal of providing appropriate educational services to children with special educational needs in the least*

restrictive environment is an additional source of disputes for parents and school districts.

Delivery problems are those associated with implementing an IEP that has been agreed upon by the family and the school district. Although the stakeholders may have reached agreement both on the needs of a child and on the services that child should receive, conflict may arise if either the school district fails to provide the agreed upon services or the parents feel that services are not being appropriately provided.

Examples: *Delivery conflicts often involve issues of provider competence, scheduling, transportation, coordination of services, procedural requirements, privacy, and/or confidentiality. Conflicts frequently include parental contentions that the district failed to implement agreed upon services and/or violated procedural safeguards. Personnel shortages have created serious problems in this regard for many school districts. School districts are struggling with the challenge of implementing individualized educational programs in the face of increased special education costs and reduced staff.*

Relationships are perhaps the most important but elusive source of disputes between school districts and parents. Relationship conflicts may stem from loss of trust, breakdowns in communication, and cultural differences. Although only a handful of states include this category in their analysis of requests for mediation, mediators and mediation program coordinators consider relationship conflicts to be a central reason that increasing numbers of parents seek mediation.

Examples: *Disagreements over substantive issues among parents and members of school teams frequently devolve into interpersonal antagonism. By the time mediation takes place under IDEA, the details of the dispute may have become less important than the animosity between the parties. At this point the parents may accuse the school personnel of not acting in good faith, trying to deny their child an appropriate education, not individualizing the child's program, and only wanting parents to passively comply with what appear to be predetermined recommendations primarily motivated by cost-containment. Conversely, the school district personnel may contend that the parents are making extravagant requests, misunderstanding the intent of IDEA, and simply looking for cures or panaceas – that they have not accepted the magnitude of their child's disability and are attempting to embarrass the school district by focusing on minute procedural violations.*

While providers and families may often have disagreements concerning the design and delivery of special education services, strategies for prevention and early resolution of disputes promise to ease the consequences of special education conflict. Early dispute resolution strategies not only help stakeholders avoid conflicts arising from mistrust and miscommunication, but also help resolve substantive disputes so that expensive and adversarial due process hearings or litigation can often be averted. Early strategies for conflict management afford opportunities for all parties to engage in respectful dialogue ensuring that the perspective of each stakeholder is heard and that appropriate services are provided to children with special needs.

RESPONSES TO CONFLICT

The CADRE Continuum of Processes and Practices. Several states and districts have developed early dispute resolution strategies that, along with due process hearings and mediation under IDEA, may be placed on a conflict management continuum. This continuum places various strategies according to the stage of the conflict at which they are implemented and the degree of intervention they require. It is important to understand that while the continuum appears to be linear and generally progressive, there is no set pattern of use. For example, a conflict may be initially introduced through the invocation of a procedural safeguard (Stage IV) and subsequently resolved through a telephone intermediary (Stage II). Also, there is considerable fluidity among the various stages of conflict as well as among the dispute resolution strategies themselves.

Capacity Building and Prevention. On this continuum, the earliest stage of conflict management is capacity building and prevention. This stage begins when stakeholders who have shared interests gather to influence the special education system, or when training is provided that increases the capacity of stakeholders to resolve differences without direct third-party assistance. Capacity building and prevention strategies address special education conflicts before they occur or when they are still in their embryonic stages. Schools and families may be aware of the potential for a dispute to arise, such as from different perspectives about a new intervention methodology for children with autism, but they are not yet presented with an actual conflict. Strategies at this stage are characterized by communication and negotiation skills acquisition for individual stakeholders, enhanced communication between stakeholders, and the development of consensus building opportunities for stakeholders in the system.

Early Dispute Assistance. After this first stage, conflicts may be resolved through the assistance of various third-party entities. Early dispute assistance strategies mark the stage when the parties first begin to identify a specific difference of opinion or experience a misunderstanding. Although the disagreement may be minimal, this stage is significant because it marks the first time that one of the parties seeks outside assistance. At this stage, families and schools often utilize informal methods of dispute resolution that do not rely on significant intervention from a neutral third party.

Conflict Resolution. Conflict resolution strategies are used when informal attempts to resolve the disagreement have failed and the dispute has become more defined and protracted. At this stage, the conflict itself may be easily identified, but the source or basis of the dispute may be difficult to identify and resolve. A neutral third party may take an active role in attempting to resolve the conflict either by using facilitative strategies or by employing more direct intervention such as offering evaluations, recommendations, and guidance.

Procedural Safeguards. When a dispute is not resolved using early and informal methods of conflict resolution, it typically requires the more formal procedures of mediation, complaint investigation or a due process hearing as prescribed by IDEA. While not covered in this publication, litigation, including appeals, is the final legal recourse for resolution of conflicts. Stakeholders may also pursue legislation or administrative rule making to create statutory or regulatory mandates and prohibitions.

Stage I			Stage II			Stage III			Stage IV			Stage V			
Capacity Building & Prevention			Early Dispute Assistance			Conflict Resolution Options			Procedural Safeguards			Legal Review			
Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Process (Tier II)	Litigation	Legislation
Third-Party Assistance ←←←←← →→→→→ Third-Party Intervention															
Decision Making by Parties ←←← →→→ Decision Making by Third Party															
Interest based ←←←←← →→→→→ Rights based															
Based on mutually acceptable solutions ←←←←← →→→→→ Based on legally defined rights															
Informal & Flexible ←←←←← →→→→→ Formal & Fixed															

For more information regarding this document and information on individual dispute resolution practices, visit the online **CADRE Continuum of Processes and Practices**: <http://www.directionservice.org/cadre/ctu/pdfsearchC.cfm> or contact CADRE at cadre@directionservice.org