



# Stakeholder involvement yields better mediation system

By Jane Burns

Parents of children with special needs usually want their public schools to serve their children with the Mercedes plan — while school districts typically state that, legally, they only need to provide the Ford plan.

It's a conflict dating back to the mid-1970s, when the Education for All Handicapped Children Act of 1975 mandated that every child in the United States is entitled to a "free" and "appropriate" public education. The acronym for this entitlement in the special education community is FAPE, and the culture of conflict in the special education community came from a lack of definition for FAPE by Congress. Parents and school districts see the definition very differently, and mostly in the amount of resources the district needs to commit to give a child FAPE. Parents began to sue districts over

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a denial of FAPE for their special education children. Thus began the culture of conflict.

Congress reauthorized the Individuals with Disabilities in Education Act in 1997. In that reauthorization, the lawmakers mandated that every state must offer special education mediation to school districts and parents as an alternative to the traditional dispute resolution method of a due process hearing with an administrative law judge. Congress was looking for a way to save resources for parents and

school districts in reducing the amount of litigation, and for a better way for parents and school districts to resolve disputes.

### The Mediated Consensus Policy Process

After the 1997 IDEA mandate requiring special education mediation, the Wisconsin Department of Public Instruction invited a group of stakeholders to write a state law in response to the federal requirement.

Lawrence Susskind wrote in his 1981 Vermont

Law Review Article, "Environmental Mediation and the Accountability Problem," that different public interests must be involved directly in policy decisions that affect them. These interests in the special education setting included parents, school staff, attorneys for schools and parents, parent advocacy groups, interest groups for schools like the teachers' union, state school board association, and state government representatives.

This type of process is very similar to the mediated policy consensus process Prof. Howard Bellman teaches. In his handout the Mediation Consortium, six stages are listed in the convening/feasibility/assessment stage.

**The first step** was the identification of parties, as listed above. The neutral for the stakeholders' process had conversations with parties to continue to identify stakeholders and to make sure all possible interests were represented in the process.

**The second step** was the identification of key legal, resource, and other constraints. The stakeholders needed to identify where the money was to come from to pay for this system,

who was going to administer it, and what other statutes could affect the writing of this statute. For example, Wisconsin's mediation confidentiality law, Wis. Stats. Sec. 904.085.

**The third step** was identification of issues to be included. Do the number of parties at the table need to be limited? Does a request form need to be signed?

**The fourth step** was a feasibility determination. Would parties actually use this system to resolve disputes?

**The fifth step** was the parties' commitment to participate. All parties agreed to be present for every meeting or send a substitute.

**The sixth step** was the design process, which necessitated six meetings of the stakeholders with a neutral facilitator. The defined end product was a single-text document in the form of a statute to be submitted to the state legislature for voting.

### Working Together Works

We at the Wisconsin Special Education Mediation system think this collaborative effort

represents the "best practice" in the field of mediation design — whether for a system, or for legislation.

The strength of having these stakeholders at the table was that most of them were potential users of the system. If they didn't buy into the defined end product, the system could fail. In fact, many of these stakeholders became gatekeepers of the system, encouraging disputing parties to enter the system.

On Dec. 19, 1997, then-Gov. Tommy Thompson signed Wis. Stat. sec. 115.797 into law. This law was written by the stakeholders in the mediated consensus policy process, and was the first piece of education legislation in Wisconsin to pass both houses of the state legislature without bipartisan objections.

These stakeholders, with new ones added over the last 10 years, continue to meet and help the Wisconsin Special Education Mediation system with new projects — most recently to

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STAKEHOLDER, Continued from page 8 help design a facilitated Individual Educational Program meeting procedure.

But, perhaps the best measure of success is the Wisconsin Special Education Mediation system's agreement rate. We have received 748

requests for mediation from August 1998 to May 2007. Of those 748 requests, 496 went to a mediation session, resulting in 424 full or partial agreements, making an 85 percent agreement rate. Thirty-four case files are currently open.

Jane Burns is the Intake Coordinator for the Wisconsin Special Education Mediation System in Milwaukee. She can be reached at [jane.burns@marquette.edu](mailto:jane.burns@marquette.edu).