

Factors that Escalate Parent-School Conflict and  
The Value of Mediation in Special Education  
by  
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# **Factors that Escalate Parent-School Conflict and The Value of Mediation in Special Education**

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(ABSTRACT)

Conflict resolution strategies in special education are necessary in view of increased disability and civil rights legislation impacting schools. With increase in federal laws and regulations comes an increase in parental expectations and unclear interpretations of “what is right” and “what is legal” regarding meeting the educational needs of students with disabilities. The purpose of the study was to identify factors that escalate and de-escalate parent-school conflict in special education and to understand the special education mediation process from the perspectives of parents, school officials and mediators in Massachusetts.

Data were collected through telephone interviews with 44 participants. Interviews were audio taped and transcribed verbatim. Parent participants had experienced special education mediation either during the school year 1995-1996 or 1996-1997. School officials and mediators had experienced multiple special education mediations.

A grounded theory approach was used to analyze data. Eight categories of factors that escalate parent-school conflict in special education were identified: (a) Discrepant

Views of a Child's Needs, (b) Knowledge, (c) Service Delivery, (d) Valuation, (e) Reciprocal Power, (f) Constraints, (g) Communication, and (h) Trust. Participants in each group revealed that the mediation process was of value even though one may not achieve the desired outcome. Strengths of the mediation process were identified in the areas of its ability to provide disclosure, empower participants, provide opportunity for communication, provide suitable outcomes, strengthen relationships and provide a pragmatic approach to problem solving. Limitations of mediation were reported in its ability to be misused by participants seeking opportunities for fact-finding and its lack of ability to be enforced.

Results indicated that training in conflict handling strategies is needed by parents and school officials. Results of the study supported using early intervention conflict identification and resolution strategies so that conciliatory attitudes and trust might be preserved in parent-school relationships.

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My children, my parents, my husband \_\_\_\_\_, and my Roanoke friends saw this process through many stages and followed it to completion. They each made sacrifices for me and tried to make the experience more manageable. I appreciate the ways that people showed their caring and commitment to me. They are each recognized for the individual gifts of time, patience, good humor and caring they so willingly offered in time of need.



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## Chapter 1

### Statement of the Research Problem

With increased civil rights and disability legislation affecting schools in the United States come unclear interpretations of law and regulations. This is a breeding ground for misunderstandings and conflict between parents and schools.

The arena of conflict resolution in special education has not been the subject of extensive study (Schrag, 1996; Symington, 1995). There are few studies of parent-school conflict. Most of the mediation studies are position-opinion papers that expose the ills of due process hearings and suggest mediation as an alternative. Few of the mediation studies that exist are data-based studies. This chapter provides an introduction to the research problem. Subsequent chapters expand the themes presented in Chapter 1.

The Individuals with Disabilities Education Act (IDEA) seeks to make schools and parents accountable to each other for the education of students with disabilities. Specifically under IDEA, exceptional children and their parents are guaranteed the rights to:

1. Non-discriminatory evaluation to determine if students have a disability, and if so, what kind and how extensive a disability they have.
2. Individually tailored education for each student with a disability based on the evaluation and augmented by supplementary (related) services.
3. Education of students with disabilities with nondisabled peers to the maximum extent appropriate for the student with disabilities.

4. Parent participation in all educational decisions related to designing and implementing special education programs.
5. Procedural safeguards to ensure that parents' and children's rights will not be violated.

Collaboration between schools and home rests on the last two of the IDEA principles presented above: parent participation and procedural due process (Turnbull, Turnbull, Shank & Leal, 1995). The regulations of IDEA legitimize the parent role in the educational system by granting parents of exceptional children the opportunity for shared decision making with professionals in defining the parameters of an appropriate education (Turnbull & Strickland, 1981).

On June 4, 1997 President Clinton signed into law P.L. 105-17, referred to as IDEA 1997, which made significant changes in the way parents, teachers, and administrators go about the important work of ensuring quality education and early intervention for some 5.8 million children with disabilities in the United States (Council for Exceptional Children, 1998). The IDEA Amendments of 1997 significantly enhanced the role of parents in the special education process. More than 20 years of research and experience has demonstrated that the education of children with disabilities is made more effective by strengthening the role of parents. Expanded parental involvement is evident throughout the act in the specific areas of: evaluation, placement, IEP development, discipline, procedural safeguards and mediation (CEC, 1998).

In the process of designing or implementing an appropriate program for a student with a disability, differences of opinion inevitably arise between parents, school officials,



and other professionals involved with the student. With increase in federal laws and regulations comes an increase in parental expectations and unclear interpretations of "what is right" and "what is legal" regarding the educational needs of students with disabilities. Knowing what is legal and what is right, and knowing whether it is in a person's best interest to pursue one or the other if they are not the same, can create conflict for an individual, a family, a group, or an entire organization (Dobbs, Primm & Primm, 1991).

Imagine paying up to \$30,000 for someone (other than yourself) to determine "what is right" and "what is legal" concerning your child's educational program. Crowley, Smith, and David (1991) reported that due process hearings within Illinois can range from \$5,000 to \$30,000 when expenditures for the hearing officer, attorney's fees, court transcripts, staff time, and other costs are included. Zirkel (1994) provided an example of a due process hearing, concerning a child in Pennsylvania, that spanned nineteen sessions and almost two years from filing until the final decision was granted. The cost of the transcript alone was \$27,000. The cost of the hearing officer, including travel expenses was \$20,000. Other due process hearings have lasted as long as 25 days to over several months, resulting in even higher costs (Schrag, 1996). In addition, the passage of the Handicapped Children's Protection Act of 1986 (HCPA) has further increased costs, in that attorney's fees are recoverable in administrative and civil action proceedings including pre-hearing settlements.

When parents and school officials disagree, IDEA provides mechanisms to resolve conflicts between parents and schools. Although confrontation is inherent, the

confrontation itself gives parents and schools a chance to determine what each wants for the student and how it might be possible to achieve desired outcomes. Substantive interpretation of the 14<sup>th</sup> Amendment (due process rights) concerning educational practice is based on the assumption that "fair procedures produce fair and acceptable outcomes" (Turnbull and Turnbull, 1978).

Conflict is a part of the human condition and an integral part of a dynamic, free society. Recognizing this fact, while learning new ways to diminish the negative aspects of inevitable conflict, can lead to constructive solutions based on stronger partnerships between individuals at all levels in schools and other organizations (Dobbs, Primm & Primm, 1991). Mediation is one of the constructive conflict resolution methods available for resolving special education conflict within educational settings.

### Problem Statement

If differences that develop between parents and schools are beyond the capacity of the participants to resolve, due process provisions of the *Procedural Safeguards* section of the Individuals with Disabilities Education Act [34 C.F.R. 300.506-515] can be invoked to involve a third party to settle the dispute. Federal mandates in support of parental involvement and the individual rights of children with disabilities have been based, to a large extent, on due process and specifically on administrative and court hearings (Siders & Walker, 1992). Prior to the IDEA Amendments of 1997, states were not *required* to provide mediation as a method of dispute resolution. States, however, since the passage of P.L. 94-142 (1975), have been required to establish procedures for

dispute settlement through due process hearings. Though there are positive influences and outcomes of due process hearings, there are areas where the impact of due process implementation is inconsistent with the intent of P.L. 94-142, now P.L. 105-17. Neal and Kirp (1983) state "Studies of the implementation history speak less of the promise of legalization and more of its pathology; compliance with the *letter* rather than the *spirit* of the law..." [italics added] (p. 64).

Since the passage of P.L. 94-142, criticisms of the hearing process have increased steadily. *The Ninth Annual Report to Congress on the Implementation of EHA* (U.S. Department of Education, 1987) states the following regarding the due process hearing, the primarily adversarial process used in resolving special education disputes:

Due process is considered...to be an essential and necessary guarantee of the child's right to an appropriate educational program and the parent's right to challenge the recommendations of the school. On the other hand, however, as a result of its legal orientation, many parents and administrators who have participated in due process hearings consider hearings to be ill suited for resolving educational disputes. Among the negative aspects reported by both groups are loss of control over decisions affecting the child and the developing of adversarial attitudes and tensions between school personnel and parents (p. 82).

P.L. 105-17 provides that all states must offer mediation as a method of resolving parental disputes. Mediation is a collaborative problem solving process that is structured, but flexible, and is less legalistic than due process proceedings or court hearings (Dobbs,

Primm & Primm, 1991). As stated in the 1997 IDEA Amendments, Sec. 615, procedures shall ensure that mediation is voluntary on the part of the parties, is not used to delay a parent's right to a due process hearing, and is conducted by a qualified and impartial mediator.

Prior to the 1997 Amendments, many states had pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation was not required by statute until 1997, mediation appeared as a comment in the code of Federal Regulations 34 C.F.R. 300.506:

...an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of disabled children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of state educational agencies or local education agency personnel who were not previously involved in the particular case. In many cases mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

As of 1997, most states had developed a state managed mediation program for the resolution of special education conflicts. Virginia, among several other states, had not developed a formal state managed special education mediation program. Ahearn (1994)

reported that Alaska, Kansas, Mississippi, Nebraska, New Mexico, North Carolina, Virginia, West Virginia, and Wisconsin had not developed state managed programs.

Review of the literature about special education mediation revealed the following:

1. The advantages of mediation were reported in several studies (Budoff & Orenstein, 1985; Dobbs, Primm & Primm, 1991; Singer & Nace, 1985) but constitute a relatively small body of professional literature. The adversarial nature of due process proceedings constitutes a larger body of professional literature (Ballard, Ramirez, and Weintraub, 1982; Budoff & Orenstein, 1982; Goldberg & Kuriloff, 1991; Strickland, 1982; Zirkel, 1994) and within this body of literature one finds most of the discussions about mediation.
2. Most data based studies reported data collected from follow -up parent mediation surveys; fewer studies of mediation in special education included interviews with actual mediation participants (of the studies that did include participants, most did not include mediators).
3. Evaluation information regarding the short and long-term impact of special education mediation and other alternative dispute resolution procedures is lacking (Ahearn, 1994; Schrag, 1996; Symington, 1995).

A literature review of parent-school conflict, particularly related to special education issues revealed the following:

1. Studies that identify factors that escalate or de-escalate conflict are very few.

2. Empirical studies that focus on early responses to conflict or site based management of special education conflict are nearly non-existent.

Lobbying efforts of the Council for Exceptional Children (CEC) and other professional organizations prior to the re-authorization of IDEA resulted in the inclusion of mediation in the amended IDEA. Mediation maintained strong support from both the House and the Senate during the lengthy re-authorization process. Studies that seek information about conflict prevention or parent-school "conflict handling" methods appear to be both timely from a policy perspective, and cost-saving (both emotional and financial) from an administrative perspective.

Schrag (1996) has reported that there is insufficient information concerning: (a) the demographics of mediation participants, (b) user satisfaction, (c) agreement rates in mediation and (d) the implementation of mediated agreements. There is a need for understanding the factors that lead to parent-school conflict. An examination of conflict factors can inform parents and school personnel in developing methods of handling conflict.

Given the lack of research, studies of existing conflict resolution strategies would contribute to improvement and expansion of options available for use by families and schools. Across the country, a broader continuum of alternative dispute resolution approaches and options is being implemented. Peer mediation, use of ombudspersons, panel mediations, and forms of arbitration are emerging as viable conflict resolution options. In special education there is a significant trend within this continuum of dispute resolution options to focus on resolving disputes as early as possible. Preventive

strategies such as parent/professional partnerships, peer mediation, and on-going staff development are effective in encouraging cooperative school community cultures (Schrag, 1996). These efforts substantiate the call for increased parental involvement under IDEA 1997.

### Purposes

The purposes of this study are to identify factors that escalate and de-escalate parent school conflict in special education and to understand the special education mediation process from the perspectives of parents, school officials and mediators in Massachusetts.

### Research Questions

The research questions addressed in this study are:

1. What factors escalate, de-escalate, or contain special education conflict?
2. What are parents', school officials', and mediators' perceptions of the special education mediation process?
  - a) What are the participant's views of the strengths and limitations of mediation?
  - b) What actions occur after a signed mediation agreement?
  - c) What actions result if mediation does not render a signed agreement between parents and school officials?

## Conceptual Framework

A study of special education conflict and mediation could have been approached from other perspectives, however, I chose to anchor this study in communication literature, conflict theory, law, and social psychology literature. Fundamental to all conflicts are the series of actions and reactions, moves and countermoves, communication strategies, perceptions and interpretations of messages, that directly affect substantive outcomes (Putnam and Folger, 1988). The interactive nature of conflict makes it a complex subject. When special education conflict is also viewed through the defining parameters imposed by civil rights and disability legislation, parent-school conflict is elevated to a position of significance both financially and programatically. Administrative decision making in special education is governed by these parameters.

## Assumptions

An assumption of this study is that conflict prevention is predicated upon knowledge of (a) variables that affect the development of parent-school conflict and (b) variables that influence the quality of inter-personal interactions and the overall relationship between parents and schools.

An additional assumption is that studying a state (Massachusetts) with a history of over 20 years experience resolving conflict through mediation and hearings provides opportunity to examine a variety of dimensions of parent-school conflict in special education.



In the present study, I tried to build on the insights of previous work and avoid some of its perceived limitations. I attempted to provide substantive answers about *why* mediation may or may not work for parents, schools and mediators. My foremost concern was to explore the kinds of events that precipitated conflict between parents and schools regarding special education issues.

## Chapter 2

### Review of the Literature

#### Background Information

The Individuals with Disabilities Education Act is designed to promote parental participation in the decision making process regarding the education of children with disabilities. It also defines a process by which disputes will be handled when parents and schools disagree over the identification, placement, or selection of programs for such children. Under the *Procedural Safeguards* section of IDEA, detailed procedures for conflict resolution are mandated. A history of approximately 20 years of special education conflict resolution is documented in the professional literature.

Early emphasis was on seeking and assuring access to appropriate public education for all children through due process hearings and litigation. In the 1980's a growing professional interest in mediation and alternative dispute resolution procedures emerged as a response to overly litigious and costly due process hearings. The 1980's saw the emergence of mediation in many different areas including business and commercial disputes, environmental concerns, domestic relations issues and international disputes. It has been applauded as a common sense, expedient, and cost- effective method of settling disputes. Mediation involves the introduction of an impartial third party into a dispute. The third party has no ultimate decision making power and is charged with assisting the disputing parties in *voluntarily* reaching settlement of the issues that are in dispute. On a continuum, mediation is an extension of the process of

negotiation. The role of the mediator is to serve as an unbiased facilitator of the negotiation process. Through this voluntary process, with the assistance of a mediator, both parties have an opportunity to identify issues in order to develop options, consider alternatives, and reach an agreement that addresses their needs (Fairfield, Hart, et al., 1989). Mediation can be an alternative to litigation and a means to empower participants to make decisions and work out their own solutions.

A discussion of conflict within organizations is particularly appropriate within a study of parent school conflict. Schools operate within a governmental environment that controls resources, establishes authority systems, and specifies programs intended to realize the legitimate aims of public education. School governance theories describe how schools are linked to social purposes and frame overall strategies for pursuing these purposes (Mitchell & Boyd, 1989). Paradigms of school governance emphasize political responsiveness to students, families and community interests within at least two broad, changing contexts: (a) schools are less hierarchical with the advent of parent advisory committees, school business partnerships, and site based management, and (b) schools have become more diverse in student populations, social issues, and programs. Schools have become increasingly diverse organizations and society's conflicts are increasingly being reflected in the school as workplace (i.e. issues of school violence, sexual harassment, diverse family structures). Gender, race, and ethnicity have changed some of the ways that conflict is being conceptualized in organizations (Kolb & Putnam, 1991).

Conflict is seen as a perennial feature of organizations, always present and enacted in accord with particular conventions and rules. Conflicts in organizations are

not just the dramatic confrontations that receive the most attention or publicity. Disputes are embedded in the interactions between members as they go about their daily round of activities. Though differences sometimes are publicly aired, the vast majority of conflicts occur out of sight or in forms other than official negotiation or grievance processing. The definitions of what constitutes conflict, the variety and contradictory forms it takes, the interactive processes involved, requires a close look at the routine and mundane activities that comprise life in organizations (Kolb & Putnam, 1991).

This study of parent school conflict and the use of mediation to resolve these issues is grounded in the interactive nature of school structural and organization issues, the legal framework of civil rights and disability legislation and the on-going interactive communication issues between parents and schools. The co-existence of these factors within daily operational context of attending school has provided challenges for parents, students and schools alike. In this study, historical background information is presented as deemed necessary to provide understanding of the multiplicity and complexity of parent school conflict in special education.

This review of related literature examines: (a) a theoretical framework for examining parent-school conflict, (b) the pragmatic evolution of special education mediation, (c) adequacies and inadequacies of the existing legal framework for dispute resolution under IDEA, and (d) consolidation of the legal, theoretical, and pragmatic issues related to conflict resolution under the re-authorized IDEA (P.L. 105-17).

This chapter reviews existing research on conflict resolution in special education. Research in this area of education is limited and confined to an approximate 20 year

period since Public Law 94-142 was written. Specifically, this chapter presents a conceptual framework for examining conflict issues and reviews the existing conflict resolution literature base in special education. The conceptual framework of this chapter is presented visually in Figure 1. This figure illustrates the four categories of conflict issues presented in this literature review.

I began the literature search by reading articles on due process hearings and consulting the references that mentioned mediation as an alternative to due process hearings. I conducted computer searches using ERIC Silver Platter retrieval system, Psyc Lit, *Dissertation Abstracts International* and Sociofile. Key words used were conflict, conflict resolution, special education mediation, parent school conflict. Key words were used alone and in combination with related terms. I found a limited number of articles, many of them position-based in nature. I also consulted reference sections of recent publications on mediation to locate additional relevant sources of information. Professional journals on mediation and negotiation were consulted and relevant articles were reviewed. I discovered more position papers and located few actual data based studies. See Figure 2 for a breakdown of types of mediation and due process hearing studies reviewed.

**Figure 1**  
**Thematic Representation of Conflict**  
**Issues in Special Education**

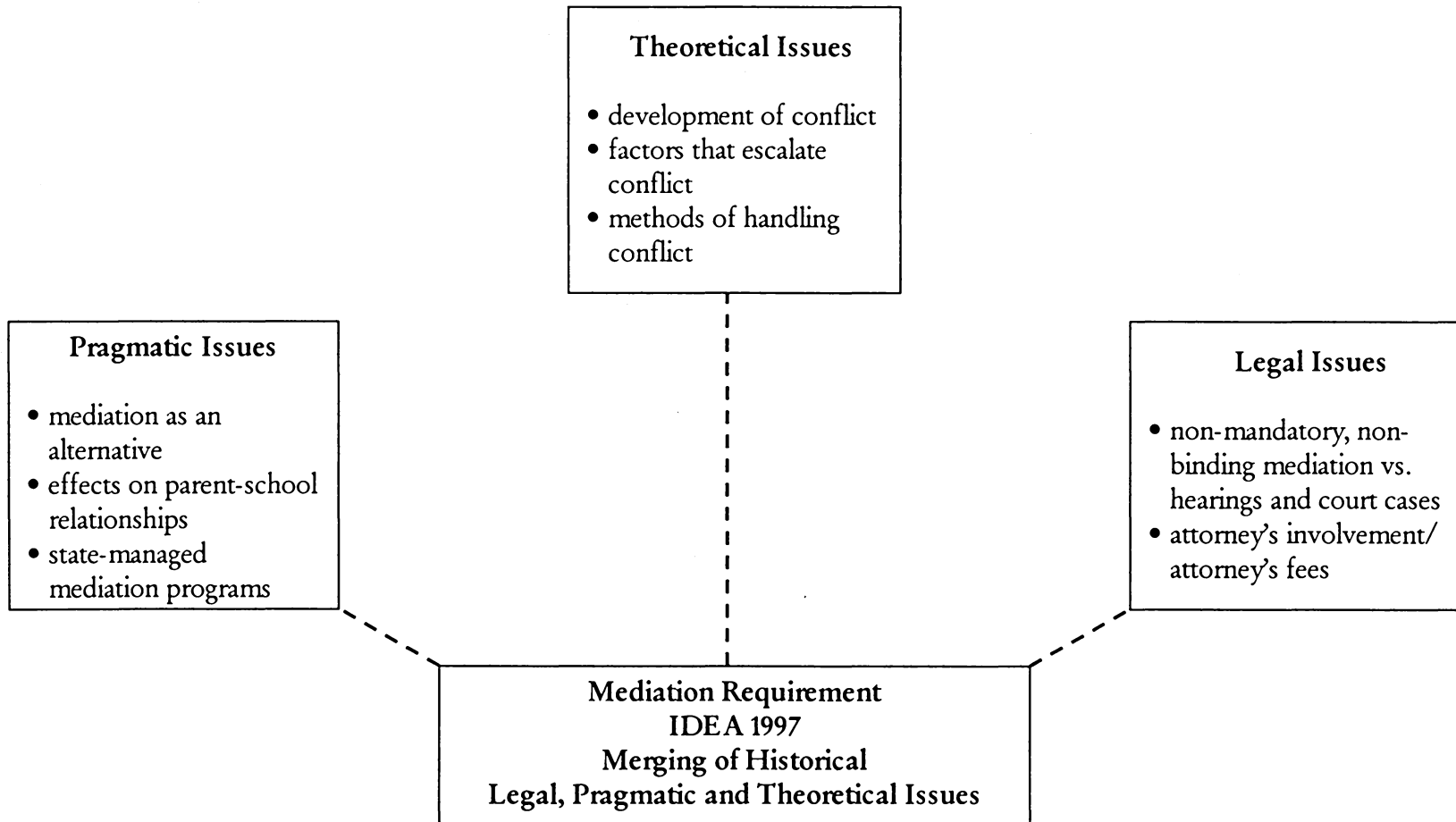


Figure 2

## Mediation and Due Process Hearing Studies in Special Education 1974-1997

### Mediation Studies- Data Based

- Ahearn, 1994
- Budoff & Orenstein, 1985
- Dobbs, Primm & Primm, 1991
- Forbis, 1994 (doctoral dissertation)
- Lake, 1991 (doctoral dissertation)
- Regan, 1990 (doctoral dissertation)
- Singer & Nace, 1985
- Sykes, 1989
- Symington, 1995
- Turnbull & McGinley, 1987
- Vitello, 1990

### Due Process Hearing Studies - Data Based

- Ballard, Ramirez & Weintraub, 1982
- Budoff & Orenstein, 1982
- Budoff & Orenstein, 1985
- Daynard, 1980 (doctoral dissertation)
- Folberg & Taylor, 1984
- Fielder, 1985 (doctoral dissertation)
- Goldberg, 1989
- Goldberg & Kuriloff, 1991
- Government Accounting Office (GAO), 1989
- Hehir, 1990
- Kammerlohr, Henderson & Rock, 1983
- Kirp, Buss & Kuriloff, 1974
- Kotin, 1976
- Smith, 1981
- Strickland, 1982
- Turnbull & Strickland, 1981
- Turnbull & Turnbull, 1978

### Position/Opinion Papers on Mediation and Due Process Hearings - Non Data-Based

- Amon & Karstaedt, (n.d.)
- Crowley, David & Smith, 1991
- Ekstrand & Edmister, 1984
- Fielding, 1990
- Goldberg, 1989, 1994, 1995
- Opuda, 1997 (unpublished paper)
- Prasse, 1988
- Salend & Zirkel, 1984
- Schrag, 1996
- Siders, & Walker, 1992
- Zirkel, 1993, 1994

## Theoretical Base for Understanding and Handling Parent School Conflict

Labor, management, and international relations are fields that have used mediation extensively. However mediation, among other alternative dispute resolution (ADR) techniques, is used in business and commercial disputes, environmental concerns, public policy disputes, consumer disputes, and domestic relations cases. School-based mediation and conflict management programs are taught to young students as a means of preparing them for the inevitable conflicts that may occur on the playground or later in life. Business schools are increasingly restructuring curricula to include courses in ADR, and most law schools now offer dispute resolution courses (Hathaway, 1995).

Mediation has a theoretical base as strong as any research or conceptual design developed for intercommunication or human relations studies (Gallant, 1982). Mediation has been used since the late 1970's as an alternative to civil litigation and can be viewed as one of several alternative dispute resolution strategies. These strategies can be grouped and placed on a continuum according to how the decision is reached, who makes the decision, the extent of formality, costs incurred, amount of preparation required, and extent of privacy provided (Schrag, 1996). See Table 1.



Table 1

Continuum of Dispute Resolution Procedures

Negotiation/ Facilitation Ombuds Advocates	Mediation/ Conciliation	Mock/Mini Trial Prehearing Conference	Arbitration	Med-Arb	Due Process	Litigation
Decisions by the parties			Decisions by a Higher Authority			
Informal			Formal			
Low Cost			High Cost			
Limited Preparation			Extensive Preparation			
Private			Public			

(Schrag, 1996)

Mediation in special education is a process in which a mediator, a neutral third party, helps people reach an agreement about the educational placement, program, or other services to be provided for a child with special needs. Mediation is conducted in an informal, private, and cooperative forum. The mediator provides a problem-solving structure and process, and provides guidelines so that everyone involved can be listened to with respect (Schumack and Stewart, 1995).

Most formal mediations follow a similar process:

1. Introduction - The mediator establishes rapport, explains procedures, and describes the role of the mediator.
2. Story Telling/Clarifying - Both parties explain the situation from their viewpoint. Parties state their special concerns and goals for resolution. The mediator creates a joint problem/issue list for discussion.
3. Problem Solving - The mediator notes shared positions and interests, reframes issues, encourages parties to generate options jointly and evaluate options. The mediator may meet with each side separately in

individual session (caucus), to gauge positions of both sides or to clarify issues.

4. Agreement - If agreement occurs, details are worked out specifically: Who does what? When? Where? How? A written agreement is drafted and signed. If there is no developed agreement, the mediator may provide a list of outstanding issues as they were revealed during mediation for use in subsequent resolution endeavors (Arizona Department of Education, 1993).

Mediation has been considered a cost effective, practical, and humane way of resolving conflicts. Mediation and other alternative dispute resolution strategies are predicated upon theoretical concepts of how conflict develops, how conflict is contained, or how it is resolved.

#### Nature of Conflict

There are probably as many definitions of conflict as there are occasions for its occurrence (Kolb & Putnam, 1991). Some definitions suggest that conflict exists when there are perceived differences in interests, views, and goals. Deutch (1973) suggests that actual behaviors that interfere with the aims of others must be present. Some define conflict in terms of inconsistent claims to resources. Contextual circumstances may define conflict. The definition of conflict is fluid in any situation as different parties bring their interpretation to both perceptions and behaviors (Kolb & Putnam, 1991). For the purpose of this study, conflict may be said to exist between parents and schools when

there are real or perceived differences that arise from specific educational circumstances and that engender negative emotion as a consequence.

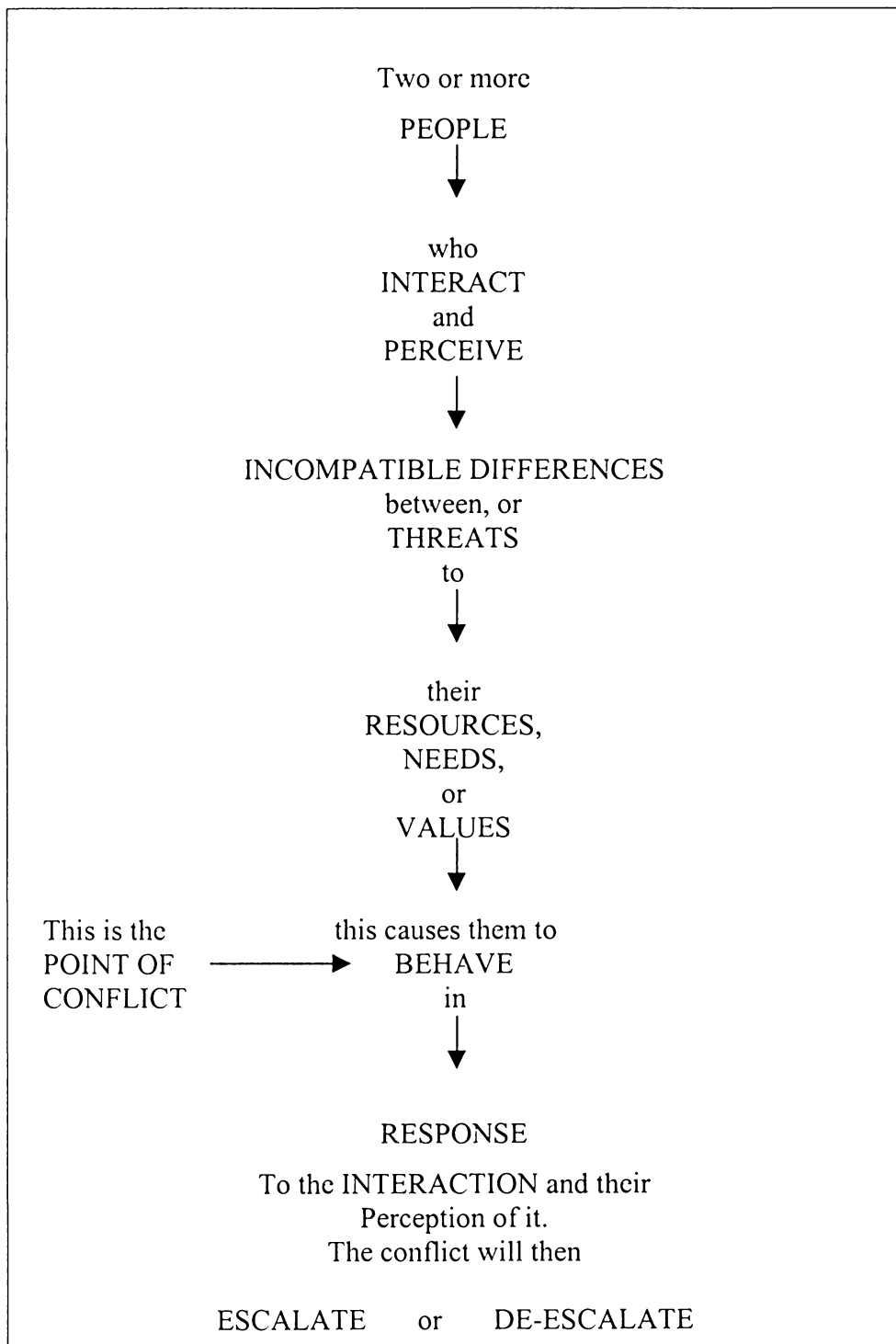
Most conflicts, large or small, interpersonal or international, follow a similar pattern (Deutch, 1973; Filley, 1975; Pruitt and Rubin, 1986; Putnam and Folger, 1988). A theoretical view of the development of conflict is represented in Figure 3.

Most scholars accept the claim that conflict theories are generalizable across contexts. Putnam and Folger (1988) indicate that fundamental to all conflicts are the series of actions and reactions, moves and countermoves, communication strategies, perceptions, and interpretations of messages that directly affect substantial outcomes. Given the complex and long-term nature of some learning problems, parents and schools can benefit from a relationship that survives the rigors of time, changing circumstances, and divergent viewpoints (Brock & Shanberg, 1990).

Operating under a legal mandate to educate students with disabilities from ages three to twenty-one and to collaborate about students' needs, it is important to review conflict literature that is particularly relevant for parents and school personnel who make decisions concerning students with disabilities. Building and maintaining strong working partnerships that will benefit children and that can be achieved within existing budgetary and legal processes is a goal of IDEA 1997.

What does the literature say about the development of parent-school conflict relative to application in special education issues? Five theoretical types of conflict issues have been identified by Deutch (1973): (a) control of resources, (b) personal preferences, (c) differences in values, (d) what is "reality", what is

Figure 3

Development of Conflict

(Deutch, 1973)

not, and (e) nature of the relationship between parties. Amon and Karstaedt ("n.d.") "personalize" the five areas with a synopsis of how these theoretical conflict issues may play out in any special education case:

Parents and various professionals associated with a child with disabilities are constantly relating to one another as educational decisions are made about that child; however, this may result in relationship conflict. We often hear professionals say, "parents are never realistic, they only think of their child, they're too emotional, and they don't communicate unless they are angry or want something." On the other hand, we hear parents say, "professionals assume they know best and that we as parents know nothing, they don't value our input, they usurp our right to know and decide, and they blame or judge us if we don't do what they say."

Parents and various professionals associated with a child with disabilities often have different interpretations of a child's needs. Misinformation about or lack of information regarding the laws and regulations may result in information conflict. Without accurate information, decisions are difficult.

Role definitions and clarifications among professionals and parents or even among varying agencies are often the sources of conflict. This is particularly true in the early childhood arena [20 U.S.C. §§ 1471-1485] where there can be any number of players from various agencies. Another area where structural conflicts arise relates to transition services where

limited physical and financial resources, geographic constraints, time, and organizational structure are among many sources of conflict.

Beliefs about what is good or bad, right or wrong, just or unjust, often cause value conflict. Values about the benefits of neighborhood schools, the amount of modification and accommodation general education should make, grading, and graduation policies are often the sources of conflict (p. 1).

Very little empirical research is available that addresses conflict prevention in special education. The most comprehensive study of factors leading to special education conflict was conducted by Fielder in 1986. Relying heavily on work by Deutch (1973), Fielder examined conflict in special education from the perspectives of: (a) nature of issues giving rise to conflict, (b) evolution of relationships, (c) development of expectations, (d) development of trust, (e) quality of communication, and (f) methods of handling conflicts. This conceptual framework guides the literature review in this section.

### Issues Giving Rise to Conflict

Most of what we can identify as issues giving rise to conflict in special education has been learned from studies of issues in due process hearings. Issues and decisions in hearings might well provide the basis for which to anticipate the issues most likely to be disputed and eligible for mediation (Arizona Department of Education, 1993). Table 2 shows issues giving rise to conflict and their frequency.

Table 2

Issues Disputed in Hearings and Their Frequency

<b>Study/Year</b>	<b>Frequency of Hearings Requested by Issue</b>	<b>Frequency of Hearings Requested by Disability Area</b>
T.E.C. Smith (1981) (based on 38 states)	Placement - 89% IEP - 6% Evaluation - 4%	(Rank ordered) MR LD BD/ED HI/VI
Budoff, Orenstein, & Abramson (1981) (Massachusetts)	Services – 50% Placement – 20% Identification - 18% Miscellaneous – 12%	Data not available
Kammerlohr, Henderson & Rock (1983) (Illinois)	Objection to placement - 67.5% Services insufficient to meet needs - 11.1% Failure to provide transportation - 5.4% Placement inconsistent with evaluation - 5.1% All other issues below 3% frequency	BD – 21.3% LD – 13.7% Deaf – 10.5% Multiple Disabilities – 10.5%
Government Accounting Office (1989) (50 states)	Placement - 38% Eligibility - 22% Appropriateness - 18% Procedural issues - 12% Related services - 10%	Data not available

These studies of issues disputed in hearings and hearings requested by disability type were conducted in the 1980's. A variety of studies in the 1980's examined factors associated with the implementation and application of the due process hearing procedure. These four studies are data based studies. Smith (1981) reported data from 38 states and 3,691 cases. Placement issues constituted almost 90% of issues leading to requests for due process hearings. Exceptionalities most frequently represented in this study ( in rank order) were: first, mental retardation; second, learning disabilities; third, behavior

disorders/emotionally disturbed; fourth, hearing and visual impairments. Special education directors in 50 states and the District of Columbia were surveyed by the General Accounting Office. Data were collected for five fiscal years from 1984 to 1988 and reflected a total of 11,053 administrative hearings. In Illinois, data were reported on 314 due process hearings held in Illinois for a 27-month period-1978, 1979, and part of 1980 (Kammerlohr, Henderson and Rock, 1983). The frequency of hearings sought by exceptionality areas were: behavior disorders (21.3%), learning disabilities (13.7%), deaf (10.5%), and multiply handicapped (10.5%).

Because Massachusetts has taken an active role in special education mediation since the mid 1970's, mediation in this state has been studied in several comprehensive data based studies. Based on review of issues raised in 51 due process hearings in Massachusetts, Budoff, Orenstein and Abramson (1981) arrived at four categories: identification issues (9 cases), services (25 cases), placement (10 cases), and miscellaneous (6 cases). A 1982 Budoff and Orenstein study found that disputes between parents and school were based on three major issues: how to define the child's special needs, what types of services were required to meet the needs, and what degree of program intensity was necessary. The majority of parents in this study desired a private school placement. Moscovitch (1993), in his book Good Intentions Gone Awry, cited results of 59 hearings in Massachusetts during 1990-1991. Of the 59 cases heard, 32 involved the question of whether a child should be placed in a public or private school. No other single issue accounted for more than three cases.



One characteristic that distinguishes Massachusetts' special education from other is a requirement under Chapter 766 (state special education law) that programs provide "maximum possible development" to identified students. This requirement exceeds the federal requirement for free and appropriate public education and is the subject of controversy. This issue is currently being studied by the Massachusetts legislature (telephone conversation with Massachusetts Department of Education, April 1998).

### Evolution of Relationships

Much has been written about how to conduct successful parent-school conferences and establish good parent-school relationships (Fielder, 1986). Efforts to improve communication through written correspondence and providing training to teachers for conducting effective parent conferences was a focus of early literature. The more contemporary focus is on establishing partnerships that support the long-standing relationships that exist between parents and schools. In describing what the parent-professional relationship should be, a publication of the U.S. Department of Education (1994) states that mutual trust, respect, and open communication are essential elements. Partnership implies equal status and responsibility. Dunst and Padget (1991) cited in Wood (1997) define the parent-professional partnership as an association between a family and one or more professionals who agree to collaborate to pursue a joint interest and common goal. The partnership is based on a mutual desire to enter into a collaborative arrangement, an agreement to contribute resources and expertise, and display loyalty, trust, and honesty.

Conflict develops over time and is highly dependent on the quality of interpersonal interactions and the resulting relationship between the parties (Deutsch, 1973). A long history of erosion of some parent-school relationships is reported by Fish (1990). "By the time a due process hearing is held, the school and family have had not just one involvement with conflict, but a history of unsatisfactory interventions" (p. 73).

### Development of Expectations

Establishing substantial agreement between parent and school concerning a child's strengths, weaknesses, and educational needs determines whether parents will be satisfied with the "appropriateness" of their child's education (Fielder, 1986). Many due process hearings have resulted from disagreements over what constitutes an appropriate education for a particular child. Determining what is appropriate and what is expected for each child in special education must be decided collaboratively each time an individualized education plan (IEP) is written. Parents and school personnel often hold different views of children. Differences in defining a child's problems and different expectations about a child's needs, abilities, and future prospects often lead to disagreement and ultimately conflict (Budoff & Orenstein, 1982).

### Development of Trust

In a study of communication and understanding in relationships, Athos, Gabarro, and Holtz (1976) reported categories of character, competence and judgement as bases of

trust in relationships (See Table 3). Three significant findings of this study have implications for understanding trust in parent-school relationships :

1. People make assessments of trust based on relatively routine events that occur in daily interactions.
2. People demonstrate behaviors that test the ‘trustworthiness’ of relationships.
3. Some bases of trust may be more critical than others and may be situation specific.

Table 3

Bases of Trust

<b>Character</b>	<b>Competence</b>	<b>Judgment</b>
<ul style="list-style-type: none"> <li>• Trust in the other's integrity</li> <li>• Trust in the other's motives and intentions</li> <li>• Trust in the other's consistency of behavior</li> <li>• Trust in the other's openness and discreetness</li> </ul>	<ul style="list-style-type: none"> <li>• Trust in the other's functional or specific competence</li> <li>• Trust in the other's interpersonal competence</li> <li>• Trust in the other's general professional sense</li> </ul>	<ul style="list-style-type: none"> <li>• Trust in the other's ability to make good judgments in his work and behavior</li> </ul>

(Athos, Gabarro & Holtz, p. 295)

Data from this study suggest that an "evolution of trust" occurs over time and can be viewed as an interpersonal "contract". Given the long-term nature of relationships between parents of special needs students and schools, the development of trust is critical to successful long-term working relationships. Mutual trust is most likely to occur when

people are positively oriented to each other's welfare. Many parents interviewed by Budoff and Orenstein (1982) stated that they had not received promised services and that after attending a team meeting they received an educational plan that did not incorporate their requests. Unmet expectations and prolonged delays in school district responses led them to file for due process hearings. In addition, they found that the school's failure to follow up on unsuccessful planning meetings was an important factor in parental decisions to request a hearing. The development of a cooperative and problem-solving relationship between parent and school personnel will greatly depend on the establishment or re-establishment of trust (Fielder, 1986).

#### Methods of Handling Conflict

Communication competencies in relationships have been the subject of considerable study. The importance of effective and open communication between parents and school personnel in bringing about a cooperative working relationship is reported in several studies (Budoff & Orenstein, 1982; Fielding, 1990; Fish, 1990; Margolis & Brannigan, 1990; Strickland, 1982). Recent studies of parent-school communication emphasize the importance of communication responsibilities placed on parents and schools equally within their on-going partnership.

Collaboration between parents and school is mandated under IDEA, and collaboration forms the foundation of interactions when parents and schools attempt to determine the services or placement a particular child needs. It has been stated that it's not disagreement that creates anger and its dysfunctional side effects, but how

disagreement is handled" (Deutch, 1973). Strategies for empathic listening and understanding, exploration of critical concerns, summarizing points of agreement and disagreement, and achieving adequate understanding have been reported as beneficial. Successful problem solving steps can be effective after a sufficient level of trust has been established.

Guidelines to enhance parent-school cooperation in the face of disagreement are reported by Brock and Shanberg (1990): (a) treat persons with respect and courtesy, (b) know the statutes and regulations, (c) adopt a problem-solving attitude, (d) avoid posturing, (e) define the issues in precise, manageable terms, (f) consider provisional or interim solutions, and (g) distinguish between people and their positions. The importance of problem solving methods is highlighted in professional literature. Fisher and Ury (1981) made a significant contribution to the literature on collaborative problem solving with their model of principled negotiation. This approach involves four steps:

1. Separate the parties in the conflict from the problem.
2. Focus on their interests, not their positions.
3. Invent options for mutual gain.
4. Insist on using objective criteria to evaluate proposed solutions.

Conflict can be viewed as being resolved when all appropriate parties are satisfied with the outcome. In contrast, conflict remains unresolved as long as any party is dissatisfied with the outcome. Studies that document both parental and school satisfaction in conflict resolution reflect some of the effective problem solving methods.

What does the literature say about the problem solving ability of the mediation process? Mediation can reduce the adversarial nature of relationships by helping parties realize that their best interests are served through accurate communication and cooperation. It may help parties to resolve future disputes and avoid adjudicatory procedures. The mediation process seeks the common ground between parents and school personnel when conflict arises. It emphasizes the shared interest in the well being of the student. It can produce not only an appropriate program, but an atmosphere of cooperation and trust that can do much to make that program a success (Gallant, 1982).

Mediation nurtures rather than destroys the trust and cooperation that the framers of the governing statutes envisioned among people with an interest in the education of children with special needs (Singer & Nace, 1985). Mediation is presented as a nonadversarial collaborative process that can result in: (a) discovery of mutual interest, (b) joint problem solving with a flexible solution, and (c) respect for the sharing of different expertise by parents and professionals (Dobbs, Primm & Primm, 1991). Parents and school personnel have seen mediation as a way to deal with major concerns while minimizing the perceived likelihood of ending an on-going working relationship. When mediation conferences result in partial or total resolution of conflict and dispute between parents and school personnel, all parties tend to be potentially well served because they all were involved in the process and in drafting and appropriate terms of agreement. Thus, they have an investment in its successful implementation.

Mediation has been viewed as a practical, cost effective, and common sense approach to problem solving, though it may not be appropriate in all cases. Many states

saw the value in developing state managed mediation programs in special education, some as early as 1976. Since much of the support for mediation grew out of its acceptance as an alternative to adversarial hearings, much of the literature reflects professional opinions on special education mediation. Empirical studies are needed to: (a) reveal organizational or structural dynamics that may escalate or de-escalate parent-school conflict, (b) ascertain the strengths and limitations of the mediation process from actual participants, and (c) identify strategies that limit or expand problem-solving options for parents and schools.

#### Evolution of Mediation as a Pragmatic Response

Conflict resolution in recent years has been changing. The traditional legal system has been perceived as ill suited in some areas, prompting parties to choose an alternative form of dispute resolution. Interpersonal and domestic controversies, environmental protection issues, and all levels of labor-management relations have been effectively and efficiently handled using alternative dispute resolution procedures.

Legal philosophers have for centuries pondered the practical forms and theoretical justification of various alternative dispute resolution techniques (Lind, 1992). In eastern cultures, mediation has long been the preferred method of resolving disputes. In Japan, mediation has a rich history. In China, it is estimated that 35 times as many disputes are settled through mediation as through the courts; some 800,000 mediation panels operate at local and regional levels, with more than a million people trained as mediators (Lovenheim, 1989).

When one surveys the mediation literature, one finds that labor-management and international relations are the two most cited areas. The United States has a brief history with alternative dispute resolution compared to other countries. Much of the mediation work in the United States has been accomplished by the Federal Mediation and Conciliation Service, founded in 1947, as a part of the U.S. Department of Labor to handle disputes between industry and labor (Gallant, 1982). In 1964, the Justice Department formed the Community Relations Service to mediate racial disputes arising under the Civil Rights Act (Lovenheim, 1989). In 1965, a Presidential Commission on Law Enforcement and the Administration of Justice directed national attention to this country's overburdened judicial system and encouraged experimentation with alternatives both inside and outside the court system. In 1976, the American Bar Association established a special committee on Minor Disputes (now called the Standing Committee on Dispute Resolution). Additional leadership for exploring alternative dispute resolution options has come from the U.S. Department of Justice and the American Arbitration Association and even the Ford Foundation (Schrag, 1996).

In 1980, Congress passed the Dispute Resolution Act based on findings that "the inadequacy of dispute resolution mechanisms throughout the United States is contrary to general welfare of people". This law helped to establish local community mediation centers throughout the country. In 1982 five foundations and corporations established the National Institute for Dispute Resolution (NIDR) to serve as a resource for the development of innovative ways of resolving conflicts. Today there are more than 500



community mediation programs across the country to resolve minor interpersonal disputes between neighbors, co-workers, etc. (Schrag, 1996).

By the mid-1980's child custody mediation was widely used as an alternative to civil litigation to resolve contested divorces, custody, visitation, and support issues. Mediation has been found to be a successful method for resolving other educational disputes and peer programs have been established in many schools to work with minor arguments and some student disciplinary challenges (Ahearn, 1994; Schrag, 1996; Symington, 1996).

#### SEA Initiatives in Mediation

The evolution of mediation as a method of dispute resolution in special education resulted from State Education Agency (SEA) initiatives and program development at the state level. Prior to 1997, mediation in special education had been used for as long as twenty years in some states, but appeared only as a comment in the Code of Federal Regulations:

Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of disabled children, and the provision of a free appropriate public education to those children. Members of State educational agencies or local educational agency personnel who were not previously involved in the

particular case have conducted mediations. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart (C.F.R., 300.506).

Similarly, regulations under Part H of IDEA (now Part C under IDEA 1997) make a recommendation concerning mediation, adding the note that an infant or toddler's development is so rapid that undue delay could be potentially harmful (34 C.F.R. 303.420, Note 2).

Some states began as early as 1975 to use mediation to resolve special education disputes. Recognizing the deleterious effects of due process hearings and the fact that parties to a disagreement were often not prepared for or desirous of a formal hearing, Connecticut and Massachusetts introduced mediation as a voluntary option for parents and school districts (Symington, 1995).

By 1989, seventy percent of states reported active state mediation programs (Sykes, 1989) and by 1994, seventy-eight percent reported state-managed mediation systems (Ahearn, 1994). The real emphasis on mediation came in the 1980's after LEA's and SEA's had more experience with due process hearings. Table 4 shows the dates that various states implemented mediation programs.

Table 4

Implementation of State Mediation Systems

YEARS	STATES
1975-79	CT, MA, WY, AR, LA, IA
1980-85	CA, NJ, IL, NH, OH, AL, GA, OR, ND, RI, ME
1986-90	KY, MI, NV, OK, PA, TX, AZ, NY, TN, UT, HI, ID, IN, MD, SD, VT
1991-94	MT, CO, FL, MN, DE, SC

Source: Responses to Item 2 of *the Survey on Selected Features of State Due Process Procedures* conducted by the National Association of State Directors of special Education, 1994.

Although mediation programs grew rapidly, few states had collected comprehensive data on either the costs or efficacy of their mediation programs by 1994 (Ahearn, 1994). However, state department records and reports showed that many states attributed significant cost savings to their mediation system and most states reported a low percentage of mediations that did not result in signed agreements (Ahearn, 1994).

Special Education Mediation in Studies

In the most comprehensive data-based study of mediation, Budoff and Orenstein (1985) concluded that parents perceived mediation as fair, powerful, inexpensive, and time-efficient. The importance of early intervention through the use of informal negotiation at the school level was emphasized as inexpensive and efficient in terms of time requirements. Singer and Nace (1985) conducted a case study of mediation in two states-Massachusetts and California. They identified these positive features of the mediation process: (a) the continuing working relationship between disputants was

preserved, (b) there was a focus on the future rather than the past, and (c) the existence of advocacy groups provided helpful information to parents. Negative elements reported by parents were the large number of professional educators attending the mediation sessions and the perception of a power imbalance between parents and schools.

Several doctoral dissertations report special education mediation data. (See Table 5 for a summary of these studies). Data based studies in special education mediation have been conducted by Forbis, 1994; Lake, 1991; Regan, 1990; Turnbull and McGinley, 1987.

Dobbs, Primm and Primm (1991) conducted a follow-up study of parties involved in 58 special education mediations.<sup>1</sup> Sixty-six percent of parents and 72 percent of school personnel stated that the mediation conference either partially or completely resolved their dispute. Ninety-six percent of respondents in the study stated that they would recommend the use of mediation to others.

Common themes of the data-based studies were that mediation is a time-efficient, inexpensive, and emotionally comfortable process. Mediation was reported as a more favorable process than due process hearings in comparative studies. Rates of agreement appeared to increase as states gained more experience with mediation. Parents and school officials generally reported that they could communicate their concerns in mediation. Studies varied in relationship of socio-economic status to choice of dispute methods, prevailing opinion and satisfaction, and use of attorneys. One study

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<sup>1</sup> The Justice Center of Atlanta was selected in 1977 as a pilot project site to implement alternatives to litigation such as mediation. The Justice Center has provided numerous training sessions for school systems and mediators.

Table 5 - Summary of Data Based Mediation Studies

Author, Year	Study Purposes	Methodology/Sample	Findings
Ahearn, 1994	To assess state-managed mediation programs, qualifications of mediators, funding sources, collection of effectiveness data, no. of mediations held, % of signed agreements in each state, use of attorneys at mediations, timelines, and no. of due process hearings  To update the survey conducted by Sykes, 1989	Survey mailed to all states and 10 jurisdictions in 1994 (100% response rate for states and 30% for jurisdictions)	<ul style="list-style-type: none"> <li>• 78% of states had special education mediation systems</li> <li>• Mediation timelines - 50% of respondents stated timelines were separate from hearing timelines</li> <li>• Mediator affiliation - 22 states had written qualifications for mediators</li> <li>• Funding of mediation - Part B funds most often used</li> <li>• Involvement of attorneys - Case dependent - except in California - state law prohibits attorneys</li> <li>• States varied on number of mediations, signed agreements, and hearings</li> </ul>
Budoff & Orenstein, 1985	To evaluate state-managed special education mediation program	Researchers attended 42 special education mediation sessions in MA; participants were interviewed afterward	<ul style="list-style-type: none"> <li>• Emphasized the importance of early and timely interventions</li> <li>• Mediation is powerful, inexpensive, and time effective</li> </ul>
Dobbs, Primm & Primm, 1991	To evaluate parent and school system satisfaction with the mediation process	Follow-up mediation survey forms were completed by participants in 58 mediations at the Justice Center of Atlanta	<ul style="list-style-type: none"> <li>• 87% of parents thought that they may have future disputes with their school system</li> <li>• 66.5% of parents and 72% of school personnel stated mediation partially or completely resolved the dispute</li> <li>• 93% of parents and 96% of school systems would recommend the use of mediation</li> </ul>
Forbis, 1994 (doctoral dissertation)	To determine the fairness and satisfaction level of parents and administrators using special education mediation	Questionnaire was given to parent and school administrators for 155 special education mediations in Illinois	<ul style="list-style-type: none"> <li>• Favorable perceptions of the mediation process and outcomes by parents and administrators</li> <li>• No significant concerns over emotional, time, or financial costs of mediation</li> <li>• Each side could communicate their concerns fairly</li> <li>• No improved understanding of the IEP, school records, or rights</li> <li>• Some positive effect for the perception of prevailing (administrators rated process higher if they perceived they prevailed)</li> </ul>
Lake, 1991 (doctoral dissertation)	To compare due process hearings and mediation as methods of dispute resolutions	Telephone interviews were conducted with parents, school administrator, hearing officers, and mediators in Michigan	<ul style="list-style-type: none"> <li>• Parents reported dissatisfaction with hearings and mediation (parents lost 86% of hearings reported)</li> <li>• When the two processes were compared, parents participating in mediations reported more satisfaction in areas of cost, cooperation, fairness, settlement, and reoccurrence of conflict</li> </ul>
Regan, 1990 (doctoral dissertation)	To conduct a descriptive analysis of special education mediations and due process hearings	Analysis of mediation and hearing reports were conducted in New Jersey	<ul style="list-style-type: none"> <li>• 64% of disputes resulting in requests for hearing were resolved through mediation</li> <li>• Significant relationship was found between prevailing party at a hearing and attorney representation</li> <li>• Significant relationship found between SES and method of dispute resolution</li> </ul>

Table 5 (continued)

Author, Year	Study Purposes	Methodology/Sample	Findings
Singer & Nace, 1985	To study special education mediation in two states	Case study	<ul style="list-style-type: none"> <li>• Mediation can be used successfully in special education</li> <li>• Factors for successful mediation are: clear legal framework, availability of advocates, broad community support for resolution of special education disputes</li> <li>• Rates of successful resolution: CA (of cases in mediation) - 45.5% - 1981, 60% - 1982, 68% - 1983; MA - 51% of all cases filed for dispute were settled successfully by mediation</li> </ul>
Sykes, 1989	To assess state managed mediation programs throughout the United States	Survey was mailed to 50 states and 8 jurisdictions (86% response rate)	<ul style="list-style-type: none"> <li>• 70% of respondents had mediation systems in place</li> <li>• 20% of respondents were developing programs</li> <li>• 10% of respondents had no plans to develop a program</li> <li>• 50% of states reported that they implemented their mediation program in the late 1970's</li> <li>• The number of mediations conducted in the 1987-88 school year varied from zero (AK, ID) to a high of 1,100 (MA). The average was 10-40 mediations per year.</li> </ul>
Symington, 1995	To compare mediation models in 5 states	Telephone interviews were conducted with state department special education personnel and directors of state-managed mediation programs in CT, MA, NJ, NH, and PA	<ul style="list-style-type: none"> <li>• 5 separate mediation models were compared and contrasted</li> </ul>
Turnbull & McGinley, 1987	To examine the effectiveness of special education mediation (in comparison with due process hearings)	A Parent Satisfaction Survey was developed and mailed to parent respondents in 10 states, n = 82 (35 parents - mediation only, 29 parents - mediation prior to hearing, 18 - hearing only)	<ul style="list-style-type: none"> <li>• Parents who participated in mediations reported significant lower ratings of emotional costs</li> <li>• Re: nature of conflict, severity of disabling condition, child's age and SES, no significant differences between mediation and hearings</li> </ul>
Vitello, 1990	To determine whether some disputes are better suited to mediation than hearings and to determine parent and school satisfaction with mediation	Analysis of requests for hearings and questionnaires	<ul style="list-style-type: none"> <li>• The expectation that mediation would resolve particular types of cases more readily than others was not met</li> <li>• Lay advocates as effective as attorneys in assisting parents</li> <li>• School officials more satisfied with mediation than parents</li> <li>• Significant problems in implementation of agreements reported by parents</li> </ul>

(Vitello, 1990) reported that parents expressed significant problems in the implementation of mediated agreements. It is interesting to note that as early as 1989, seventy percent of states had mediation systems in place.

### Need for Evaluation of State-Managed Programs

Because special education mediation programs developed as state initiatives, programs differ in management, training requirements for mediators, and implementation procedures. At present there is no policy in place that requires the compilation of national data on the implementation and outcomes of special education mediation, nor is there any requirement that states evaluate their strategies for due process protection (Ahearn, 1994). Some states have made a start in compiling information about their dispute resolution programs, however there is agreement (Ahearn, 1994; Schrag, 1996; Symington, 1995) that empirical research is needed in the area of dispute resolution procedures in special education.

The short and long-term impact of mediation and other alternative dispute resolution procedures also needs to be studied (Schrag, 1996). Across the country states are implementing a broader continuum of alternative dispute resolution approaches and options including: peer mediation, use of ombudspersons, advocates and parent/educators to facilitate communication prior to and during the IEP process, mediation and other prehearing procedures such as conferences and arbitration options. There is significant emphasis on resolving differences as early as possible. At present there is no mechanism for states to pool information about successful practices or to share data with one another

to seek solutions to common problems. The opportunity to disseminate effective methods would reduce duplication from state to state and encourage adoption of effective conflict resolution methods (Ahearn, 1994). A look at the legal framework for dispute resolution highlights significant historical elements in special education.

### Legal Framework for Due Process Hearings in Special Education

References to the Individuals with disabilities Education Act (IDEA) will refer to Public Law 105-17 unless otherwise noted in this text. Four categories of dispute settlement mechanisms exist under IDEA and are written into statutory regulation: consultation and negotiation, administrative complaints, mediation, and due process hearings. Consultation and negotiation generally occur on an on-going basis between parents and schools and may involve phone calls, written correspondence, team meetings, or parent-teacher or parent-administrator conferences. Administrative complaints involve a formal allegation brought against an administrative body, such as a school, or school district, by individuals or other administrative organizations. Under IDEA, each state is required to have a designated person or persons at the state level to receive formally filed complaints. Mediation, a process to settle disputes with a neutral party attempting to facilitate consensus or agreement, is not legally binding to either party. Due process hearings are a formal mechanism for settling disputes between parents and schools and can be requested by either the parent or the school. An impartial hearing officer moderates the hearing. Both parties to the dispute present evidence and testimony under guidelines established by federal and state laws and regulations.



The Individuals with Disabilities Education Act has provided for an impartial due process hearing to resolve disputes between parents and schools since 1975. The due process hearing can be employed to resolve issues of disagreement over identification, evaluation, programming, placement, or the provision of a free and appropriate public education for a child with a disability. Under 20 U.S.C. 1415 (b) (2), 34 C.F.R. 300.506 parties are entitled to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at LEA's five days before the hearing.
4. Obtain a written or electronic verbatim record of the hearing.
5. Obtain written findings of fact and decisions.

The hearing officer issues findings and a decision within 45 days after a hearing is requested (34 C.F.R. 300.512). The results of a due process hearing are considered final unless either party appeals (34 C.F.R. 300.510). An appeal is made directly to civil court unless the state has a second tier of due process procedures (34 C.F.R. 300.510). If the state has a second tier of procedures, a hearing officer for the state educational agency (SEA) will conduct an impartial review and render a decision within 30 days of the request (34 C.F.R. 300.510, 300.512). If still dissatisfied, either party may bring civil

action (34 C.F.R. 300.511). However, before an aggrieved party may petition the court, most courts have required that all administrative remedies be exhausted.

### Adequacies and Inadequacies of Due Process Hearings

The due process provisions established in 1975 by P.L. 94-142 have been a controversial aspect of the law. The adequacies and inadequacies of due process are examined in this section. Courts have defined the application of the principles of equal protection and due process as delineated in the 14<sup>th</sup> Amendment, to educational programs, particularly with respect to provision of services to persons with disabilities (Fielder, 1986; Prasse, 1988; Zclin, 1993). Procedural due process is based on the belief that fair procedures tend to produce acceptable and fair results (Turnbull & Turnbull, 1978). The due process hearing has been used to secure accuracy in fact finding and to provide equitable treatment for those who seek (or have been denied) government benefits. By passing the Education of All Handicapped Children's Act (1975), Congress assumed that a policy of prescriptive procedures would result in appropriate educational programs for students with disabilities. Congress intended that parents and students would have a fair opportunity to advocate for the programs they sought (Goldberg, 1989).

Some of the most often cited reasons for using a due process hearing model were provided by Turnbull and Strickland (1981). These reasons are viewed as strengths of the hearing model and are viewed as being congruent with Congressional intent: (a) due process hearings provide an impartial, legally sanctioned means of settling disputes; (b) due process hearings provide a means of clarifying issues that lack legal interpretation;

(c) due process hearings provide a means by which issues may be brought to the attention of public and state agencies; and (d) due process hearings provide a sanctioning method in the event that the rights of any party are found to be abused.

The protection of rights afforded to students with disabilities and their families has been offered as a positive provision of due process hearings. Budoff & Orenstein (1982) recognized these positive aspects of due process appeals system: (a) the due process system can serve as an agent of change; (b) the due process system has legitimized parents' rights; (c) the due process system serves to pressure political and administrative organizations to become more responsive to exceptional children's needs; and (d) the due process system has led some school systems to reconsider their mode of operations and make appropriate changes where necessary.

In addition to protection, the due process hearing model invokes accountability into special education procedures and practices (Turnbull & Turnbull, 1978). Given that educational rights to students with disabilities had been denied, accountability appeared to be a strong congressional consideration.

Due process hearings raise important issues before the public and provide the potential for policy clarification of difficult issues (Goldberg, 1989; Strickland, 1982). Prasse (1988) noted that "a great deal of the progress in defining and making available equal educational opportunities for students with disabilities has been a direct result of litigation" (p. 306). There are obvious reasons for pursuing litigation. Courts ostensibly provide an impartial third party. Courts are a mechanism for seeking and reaching closure on a dispute and they act as a vehicle to force officials to carry out legislated

responsibilities. However, due process hearings can also pose a burden. For example, Prasse, 1988, noted the consequence of years of litigation covering sweeping issues affecting special education but also litigation involving what can be categorized as minutiae. Mattison and Hakola (1992) stated:

It is not considered to be an undue exercise of "micro-managing" educational policy, for example, to require the school to pay an impartial hearing officer to decide whether a student with a disability should be provided two sessions of physical therapy a week or just one (p. v).

While due process has been hailed as ensuring equitable and effective educational decisions (Kirp, Buss, & Kuriloff, 1974) its promise has not been totally fulfilled (Goldberg, 1989; Hehir, 1992; Kotin, 1976; Opuda, 1997; Prasse, 1988; Strickland, 1982; Zirkel, 1994). Tom Hehir (1992) in a study of "The Impact of Due Process on the Programmatic Decisions of Special Education Directors" concluded that perhaps the "promise of legalization" under P.L. 94-142 has not been fulfilled, however, due process has had some positive effect on services for students with disabilities. The study found that due process may have had some unintended negative influences on special education though nothing inherent in the procedures necessarily promotes negative results.

Acknowledging the historical significance of legal influence in special education, Prasse (1988) calls for using the courts in a manner that is constructive and facilitates providing and improving quality educational services. Special education has undergone many transformations in 20 years. Policy changes have been articulated from decisions in the courts and by acts of national and state legislative bodies. Despite every well

intended piece of legislation, many daily practices leave considerable room for improvement as intentions are translated into operation from one school district to another across the country (Siders and Walker, 1992).

An example of how the "intent" of procedures established under IDEA for dispute resolution did not match "reality" is provided by a Virginia case (1992). District Court Judge Ellis, presiding over the case *Lewis v. School Board of Loudon County* (808 F. Supp. 523, 1992) in U.S. District Court of the Eastern District of Virginia, Alexandria Division, was "struck with the speed with which the disagreement over (the student's) IEP was allowed to deteriorate into a wholly adversarial confrontation featuring entrenched, incompatible positions." Judge Ellis questioned "whether Virginia's procedures for resolving IEP disputes are wholly satisfactory" and noted in obiter dicta:

The special character of actions under the IDEA would seem to present enhanced opportunities for consensual and cooperative resolution. At least nominally, both the parents and the school board enter the IEP development process with the same goal: providing the child with a beneficial educational environment suited to his or her special needs. There is no doubt that in this case, both sides were committed to that goal. Given this shared goal, there should have been little reason why the parties could not reach an amicable settlement of this dispute. Yet this did not occur. Of course, there may have been many reasons for this failure, but two systemic flaws...merit mention as potential causes.

First, the existing system includes no institutionalized mediation process to take over once school administrators and parents have reached an impasse in the development of an IEP. Although parental input is solicited, as the IEP is prepared, once a disagreement develops, it appears that the parents are quickly thrust into an adversarial role.

Institutionalized mediation opportunities at this stage would help to reemphasize the parties' shared goal and thereby enhance settlement prospects.

A second related problem is that the existing procedures do not adequately focus the parents' objections to the IEP in a manner that would allow the school system to respond and perhaps accommodate the parents' concerns. In this case, no enumerated list of the plaintiffs' objections to the IEP was in existence until after the commencement of this trial, when the court asked that such a document be created. Many of the objections contained in the resulting document dealt with the matters that seemingly could have been resolved in the original IEP had the school system been made aware of the alleged shortcomings earlier in the process.

Quite possibly, therefore, Virginia's administrative hearing system may not promote compromise to the extent possible, given the special nature of the IEP disputes. In the interest of the children within the coverage of IDEA, the system should be modified to include

institutionalized mediation and procedures for the early identification of specific IEP concerns.

Though revisions of the due process hearings system have been requested, documented inadequacies exist in the areas of access to educational programs and services, policy clarification, precedent setting, and increasing accountability for students with disabilities. Unintended consequences of due process hearings have resulted in calls for revision and improvement in due process procedures for dispute resolution under IDEA.

### Reported Negative Aspects of Due Process Hearings

While hearings and litigation maintain a place in providing necessary procedural protections for students with disabilities, the literature is replete with support for the inadequacies of due process hearings and the overly "legalistic" approach to resolving parent school conflicts in special education. A relatively large body of literature reports the adversarial nature and the negative effects of due process hearings. This literature is divided into three categories for review: (a) suitability of hearings as a method of dispute resolution, (b) costs, and (c) damaging effects to the parent-school relationship.

#### Suitability as a Method of Dispute Resolution

The suitability of hearings as a method of resolving parental disputes in special education has been questioned by Budoff & Orenstein, 1982; Fielding, 1990; Goldberg, 1995; Goldberg & Kuriloff, 1991; Neal & Kirp, 1983; Prasse, 1988; Siders & Walker, 1992; and Zirkel, 1994. In their 1982 study of Massachusetts due process hearings,

Budoff and Orenstein reported that following a due process hearing, parents and school personnel were significantly less confident that the due process hearing was an effective means of settling disputes. In fact, the due process hearing system weakened support for public education among parents who once considered themselves advocates for public schools (Budoff & Orenstein, 1982).

Subjective justice may not always be achieved by due process hearings. As resolution moves from the informal steps of negotiation to formal due process hearings, greater emphasis falls upon legal technicality. Thus, findings, which meet the letter of the law, result, as opposed to findings which refine policy leading to appropriate education and the intent of the law (Neal & Kirp as cited in Siders & Walker, 1988).

The adversarial procedure may not be the best arena for handling special education's unique issues. The role of the courts in resolving scientific disputes and special education programmatic concerns was questioned by Prasse (1988). Though he concluded that a basis for judicial involvement in special education litigation exists, it should go beyond the two party adversarial confrontation. He recommended not proceeding to trial on its merits, but rather for the two parties to agree to settle through negotiated consent decrees.

The complexity of special education programming issues as well as the adversarial nature of due process hearings make formal hearings less than a satisfactory method of dispute resolution (Fielding, 1990). Some issues that apply to a broad spectrum of children with disabilities may require "authoritative interpretation" through hearings or court proceedings. However, the difficult question of what constitutes



appropriate education for a particular child cannot be answered just once, it must be answered every time an individualized education plan is written. Goldberg and Kuriloff (1991) support this concept.

There is no one best or most appropriate placement. It is likely a range of programs exist that can help a particular child. The degree to which they do depends on a complex mix of variables, ranging from the child's current status and personality to the personality and training of the particular teacher and the nature of the other children in the class. The ability to choose an appropriate program depends on the amount of knowledge the decision makers have about the child, what resources are available, and the art of matching them effectively (p. 547).

Participants in a Pennsylvania study reported that the hearing process was unsuitable for problem-solving. In an empirical data-based study, Goldberg and Kuriloff (1991) reviewed transcripts and interviewed participants in 50 of the 282 hearings held in Pennsylvania between 1980 and 1984. The authors found that 67 percent of the parents were dissatisfied with the hearing process. Participants reported that the hearing system was inaccurate and unfair and that the entire experience was negative. However, every parent and school official reported that the opportunity for due process hearings should be kept in place.

Parental threat of a hearing may result in "deal making" between parents and school systems to avoid the costly and time consuming process of a hearing. This is mentioned as a questionable strategy (Hehir, 1990) and may not result in appropriate

decision making regarding the choice of educational programs for students. It was reported that special education directors may abandon their programmatic or placement decisions in light of parental threats of hearings or lawsuits.

### Legalistic and Adversarial Nature

Researchers studying the implementation of Federal and State regulations designed to carry out due process procedures have reported dissatisfaction with the impartial hearing process. Results show that costs are excessive in terms of cash outlays (measured dollars) and human resources (staff costs). Researchers consistently report that inconsistencies in decisions and time delays reinforce resentment of school personnel and increase the bitterness of parents toward schools. Much of the professional literature has been devoted to the damaging effects and the adversarial nature of hearings.

The adversarial, legalistic and antagonistic nature of due process hearings has been documented in several studies: (Budoff & Orenstein, 1982; Fielding, 1990; Goldberg, 1994; Hehir, 1992; Kirp & Neal, 1986; Siders & Walker, 1992). Typically differences escalate into antagonism as a result of a process that demands that opposing parties highlight each other's every possible error (Fielding, 1990). Too often appropriate and meaningful educational interventions are reduced to legally refereed and arbitrated due process hearings. Consistency and quality of practice appears to have taken a back seat to technical legal proceedings that are characteristic of due process hearings (Siders and Walker, 1990).

Due process hearings can further exacerbate adversarial relationships between parents and schools. The "fact-finding" focus of a due process hearing is often unresponsive to the emotional aspects of conflict. Even though a due process hearing may result in a winning decision for one of the parties, experience has shown that one or both sides often harden their position as a result of the adversarial process. Due process focuses on credibility of claims rather than underlying issues and interests behind claims. Implementation of judgment may be carried out with hard feelings, intense emotion, and lack of real cooperation or agreement (Schrag, 1996).

The overly legalistic nature of due process proceedings has led to emotional costs for parents and school officials. The most comprehensive inquiry into the emotional costs of hearings came from the 1982 Budoff and Orenstein study. Of the parents who participated in the study, 56 percent found the hearing process "extremely upsetting" and 19 percent indicated they were "somewhat upset". Asked to agree or disagree with the statement that the "emotional costs of using the hearing system are high", 70 percent of the participants agreed.

Due process hearings have large personal and transactional costs (Goldberg, 1995). Goldberg stated that parents in his studies felt that the law was simply an arena for conflict. A parent who thought the legal procedures were fair, complained about the litigation, "It's like a war. You're the enemy. It's like walking into a war zone...The professionals come at you" (p. 235). Other parents, in the minority, felt that administrative litigation was empowering. Goldberg raised the question of whether parents should have to go through a destructive adversarial process to feel empowered.

### Financial Costs

Financial costs and staff time spent on preparing and attending hearings have been documented in the literature. Kammerlohr, Henderson, & Rock (1983) reported on 314 due process hearings held in Illinois for a 27-month period (1978-1980) and concluded that a typical hearing consumed 73 hours of school system staff time. The authors noted that local level hearing procedures occurred generally within the legislative timelines, but the appeals process was frequently delayed with decisions occurring over four months after a hearing officer's request. While earlier studies from the 1980's are not relevant for financial costs incurred, Schrag (1996) reported that a typical due process hearing lasts on the average of two to four days. Some may last for more than a week. Crowley, Smith, and David (as cited in Schrag, 1996) reported that due process hearings within Illinois can range from \$5,000 to \$30,000, when expenditures for the hearing officer, attorney's fees, court reporters, transcripts, staff time, and other costs are included. The case reported by Zirkel (1994) in Chapter One of this document accumulated expenses of approximately \$47,000. Other hearings have lasted as long as 25 days to over several months resulting in even higher costs (Schrag, 1996). One of the questionable and controversial issues related to expense has been the recovery of attorney's fees.

### Attorney's Fees for Due Process Proceedings

The Handicapped Children's Protection Act of 1986 (P.L. 99-372) authorized courts to award reasonable attorney fees to parents who prevail in administrative

proceedings or legal actions brought against state or local education agencies concerning education and related services for students with disabilities. Since passage of the Handicapped Children's Protection Act, parents have increased their use of attorneys in administrative hearings (Government Accounting Office, 1989).

The reported amount of attorney fees awarded in states that maintained such information more than doubled from the fiscal year 1987 to 1988 ( from about \$157,000 to \$387,000). Because a few state education agencies maintained records on the awarding of attorney fees, the Government Accounting Office (1989) reported that actual annual expenditures for attorney fees to parents were understated. The re-authorization of IDEA, Public Law 105-17 provides clarification on the payment of attorney's fees.

### Fairness of Hearings

Two components of "fairness" appear in the literature related to due process hearings. The fiscal burdens associated with due process might particularly abridge the due process rights of parents from lower socioeconomic backgrounds (Salend & Zirkel, 1984). Since there is a strong relationship between low socioeconomic status and placement in special education, the issues of heavy financial costs become important in evaluating the effectiveness and fairness of due process proceedings in special education. Likewise more affluent parents may "use" the system to obtain expensive private placements for their children. Parents with greater economic resources may push the limits of the law's legal protection to obtain costly educational services that educators believe are not necessary (Moscovitch, 1995). Kotin (1976) summarized the issues by

concluding that the financial status of parents may affect their ability to win or lose a case.

In their study of due process hearings, Goldberg and Kuriloff (1991) stated that while "objective justice" (adherence to procedures) may be achieved by due process hearings, participants have reported that an individual sense of fair treatment or "subjective justice" was undermined. Both parents and school officials reported this finding.

#### Loss of Control Over Outcomes

The due process hearing removes control over educational outcomes from the parties involved and vests this power in a hearing officer. Both parties must live with the decision rendered about a child's educational future. Dissatisfaction with the decision or with how decisions are implemented following hearings sometimes leads to repeated attempts to secure a more favorable decision (Fielding, 1990). Self-determined outcomes may be more favorable when parties are involved in long-term relationships. When adjustments and changes are needed in a student's educational program, some support the ability of the parties directly involved to craft a better program than an outside third party. The results of a hearing may be legally correct; but not what either party would consider appropriate using educational, not legal, criteria.

### Damaging Effects on Parent-School Relationships

The long-lasting, damaging effects of conflict on the parent-school relationship have been documented in several studies (Budoff & Orenstein, 1982; Fielder, 1986; Fish, 1990; Folberg & Taylor, 1984; Goldberg, 1994; Strickland, 1982). If parents and schools had no further dealings with one another after a conflict, an adversarial model might be more appropriate for resolution of conflict. Damage to the parent-school relationship weakens parents' confidence in schools and causes stress for families and school officials. Stress affecting immediate and extended family members, particularly the mother of the child with disabilities is reported in the literature. Parents have reported a feeling of being "overwhelmed" by the conflict, and this stress may be exacerbated in situations such as single-parent families, foster or adoptive homes, homeless families, or families with a large number of children (Fish, 1990). Parents have also reported that school conflicts affected their job performance and that they were required to take frequent time off from work.

Goldberg (1995) concludes that though civil rights litigation and legislation were and continue to be necessary, the "rights-based" adversarial process does not build a community of trust between parents and schools that is necessary for long-term educational success. Schools have the best chance to succeed when they are communities where teachers, parents, administrators, and children are free to do their work in an atmosphere of trust and inclusion, not fearful of being sanctioned or sued.

### Summary of the Inadequacies of Due Process Hearings

A summary of the inadequacies of due process hearings is offered by Zirkel (1994):

1. The process has become too time consuming and open-ended.
2. The process is overly adversarial.
3. Due process hearings and/or judicial costs (human and monetary) are excessive.
4. The majority of cases that reach the courts are either disputes over attorney's fees or fact-based determinations about a particular child's IEP.
5. Parents perceive the process as unfair.

Since the beginning of the implementation of procedural safeguards under IDEA, it was evident that special education due process hearings consumed inordinate amounts of time and money and were emotionally draining to parents and school personnel. It soon became apparent that the results of a hearing often did not satisfy either party and left great animosity in its wake. This usually fostered a breakdown in communication and often left parents vulnerable to future conflicts (Symington, 1995). It was in the spirit of a "kinder and gentler" approach to parent-school conflict that interest in alternative methods of conflict resolution in special education gained momentum.



## Legal Framework of Mediation in Special Education

Mediation is a process in which a neutral third party helps parents and school officials identify and discuss issues of concern. The goal of mediation is for the parties involved to explore options and find mutually acceptable solutions. The mediation process stresses dialogue and creative problem solving (Council for Exceptional Children, 1998). Mediation was written into federal law on June 4, 1997 as a result of the re-authorization of IDEA (P.L. 105-17). Prior to that time, many states were using mediation procedures as a State Educational Agency (SEA) option.

According to the most recent data collected (Ahearn, 1994) eleven states, including Virginia, did not have a state mediation system in place at the time of data collection. Both Nebraska and Washington were scheduled to begin in 1995. New Mexico was becoming more actively involved in mediation by offering state sponsored training for mediators (Ahearn, 1994).

Under P.L. 105-17, SEA's and Local Education Agencies (LEA's) must ensure that procedures are in place to provide mediation. The mediation process must be voluntary on the part of the parties, not used to deny or delay a parent's right to a due process hearing or any other rights. A qualified and impartial mediator must conduct the mediation sessions. The mediator may not be an employee of any LEA or SEA and may not be a person who has a personal or professional conflict of interest.

An agreement to a dispute in the mediation process must be set forth in a written mediation agreement. Provisions were added to the law to ensure that discussions that occur during the mediation must be confidential and not used as evidence in due process

hearings or civil proceedings (CEC, 1998). For details of the mediation requirement under IDEA 1997, refer to Section 615(e) of P.L. 105-17 in Appendix A.

A review of the legal framework for special education mediation requires a review of mediation requirements under current law (P.L. 105-17), rulings from the Office of Civil Rights, court determinations, and letters of finding from the United States Government, Office of Special Education Programs (OSEP). Issues that shape the legal framework of special education mediation are: non-mandatory requirement for participation, procedural safeguards, willingness (or non-willingness) to participate, representation by counsel at mediations, enforcement of mediation agreements, and recovery of attorney's fees. Since mediation has been part of federal law only since summer of 1997, one would expect that more court cases, OCR rulings, OSEP clarification letters will emerge and will continue to shape the legal framework of mediation's use in the expanded role of due process procedures in special education.

#### Adequacies and Inadequacies of the Legal Framework for Mediation

Aspects of special education mediation that are frequently discussed are The fact that mediation is a voluntary process, and that the willingness of parties to participate is critical. Representation by counsel and the recovery of attorney's fees have been controversial in the literature on special education mediation. Cases that highlight these aspects are presented for review.

### Non-Mandatory Requirement of Mediation

Mediation requires a willingness on the part of both parties to attempt to resolve their dispute. A basic tenet of mediation is the willingness of parties to participate. The mediation process must be voluntary on the part of both parties, not used to deny or delay a parent's right to a due process hearing or to deny any other rights.

Several LEA's and SEA's have been cited by the Office for Civil Rights (OCR) for failing to ensure a timely due process hearing. The Massachusetts Department of Education was found in violation of Section 504 by the Region I Office for Civil Rights for requiring that parents utilize mediation as a "first step" prior to a due process hearing (EHLR 352:313, 1986).

In Connecticut, the Office for Civil Rights found that the West Hartford Board of Education violated Reg. 104.36 of Section 504 of the Rehabilitation Act by distributing a parent guide and forms describing due process procedures as "including administrative review, mediation and a hearing" because they failed to advise parents of their right to bypass the administrative review or mediation and proceed directly to a hearing (EHLR 352:300, 1986).

The Office for Civil Rights determined that the Brockton (MA) School District violated the Section 504 regulations at 34 C.F.R. 104.36 by requiring that parents wait a mandatory 30-day period following their rejection of an IEP prior to requesting a due process hearing. This "cooling off period", which was designed to encourage mediation of disputes, was determined by the OCR to violate the parents' rights to a timely hearing (EHLR 311:114, 1987).

The Office for Civil Rights found that the Bristol-Plymouth (MA) Regional Vocational Technical School had violated Section 504 of the Rehabilitation Act by requiring that parents use a 30-day mediation period prior to initiating a due process hearing (EHLR 353:241, 1989).

The Office for Civil Rights in a complaint investigation against the Missouri Department of Elementary and Secondary Education, found that the state practice of administrative reviews by the chief administrative officer or the designee of the LEA prior to the provision of a due process hearing did not meet the standards for an impartial hearing required by the Section 504 Regulations at 34 C.F.R. 104.36. The Office for Civil Rights stated that an administrative review may not be substituted for an impartial hearing when one has been requested nor can it be used as a prerequisite to an impartial due process hearing if it denies effective and timely access to an impartial hearing. The agency noted that although mediation is not required by the Section 504 statute or regulations, a school may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and the provision of a free appropriate public education to those children. However, mediation may not be used to deny or delay a parent's rights under this subpart (EHLR 352:397, 1987).

### Procedural Safeguards

Prior written notice shall be given to the parents of the child when engaging in mediation (CEC, 1998). The mediation requirement under P.L. 105-17 shall not

supercede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties. The mediation parties may choose to enter into a confidentiality pledge or agreement prior to mediation.

### Willingness (or Non-Willingness) of Parties to Participate

Parents may not be compelled to participate in mediation. However, two courts have reviewed parental and school participation in mediation as an indicator of good faith efforts to resolve disputes. School districts would be well advised to document their efforts to mediate the dispute prior to the actual hearing. Under IDEA 1997, the LEA or SEA may establish procedures to require parents who are unwilling to participate in mediation to meet with a designated parent information or training center to encourage and explain the benefits of mediation (CEC, 1998). The law does not address schools' unwillingness to participate in mediation.

The U.S. District Court of New Jersey denied a parental request for reimbursement for a unilateral parent placement in an out-of-state residential facility. The court noted that the LEA was generally cooperative and open to a negotiated program. The parents' limited participation in the IEP process, disruption of the district's cooperative efforts, and the parents' refusal to use New Jersey's mediation process, justified the court's denial of reimbursement to the parent on "equitable" (basic fairness) grounds (B.G. v. Cranford Board of Education, 702 F. Supp. 1158, 1988).

Similarly the U.S. District Court of New Jersey in Terefenko v. Stafford Township Board of Education, 17 EHRLR 573, (1991), reduced the award of attorney fees by 20 percent noting that the failure of the parent and their attorney to participate in a mediation which was rescheduled at parental request some five times between July 14 and September 7 amounted to an unnecessary delay in resolving the dispute.

### Representation by Counsel

P.L. 105-17 neither supports nor prohibits the use of attorneys in mediation. Recognizing the controversial nature of this issue, the Senate Subcommittee offered these comments: "The Committee believes that in states where mediation is now offered, mediation is proving successful both with and without the use of attorneys" (CEC, p. 43).

Parents are typically represented by either advocates or attorneys at mediations, according to the survey conducted by Ahearn (1994). An exception is the state of California which, by law, prohibits attorneys from participating in a "pre-hearing request mediation." California does permit a parent's attorney to participate in mediation that occurs after a hearing request has been filed.

While the majority of states permit parental representation by counsel at mediations, parents are not entitled under the IDEA to be accompanied by an attorney or advocate at mediation according to Dr. Robert R. Davila, Assistant Secretary of the U.S. Department of Education. The IDEA permits parents to invite "other individuals (including an advocate or attorney) at the discretion of the parent..." to meetings which

develop the child's IEP (34 C.F.R. 300.344(a)(5)). Additionally, parents are entitled to be represented by counsel at due process hearings (34 C.F.R. 300.508(a)(1)).

Mr. Curt Decker, Executive Director of the National Association of Protection and Advocacy Systems (a federally mandated parent advocacy service which frequently represents parents in special education disputes) challenged the practice of "several SEA's which by policy prohibit parents from bringing an attorney or a professional advocate to the mediation meetings" (19 IDELR 279). In a letter to Dr. Robert Davila requesting policy clarification, Mr. Decker argued that parent representation was critical in securing the rights guaranteed under the IDEA.

Dr. Davila responded:

Since meetings for the purpose of mediation are not "IEP meetings" as defined under IDEA regulations, an SEA may use Part B funds to promote and implement a special education mediation system which bars parents from being accompanied by an attorney or advocate at mediation sessions.

The SEA may establish a mediation system which does not grant parents the right to be accompanied to the meeting by "persons of their choosing" (i.e. an attorney/advocate). However, parents must be informed that mediation is a voluntary step prior to a due process hearing, and that they may or may not decide to participate in a mediation meeting for any reason, including dissatisfaction with the participants in the meeting (19 IDELR 279, 1991).

According to Opuda (1997) there may be a number of reasons a state may elect to bar attorneys from participation at mediations including:

- a) to reduce the adversarial nature of the process;
- b) to limit district exposure to attorney fees;
- c) to maintain confidentiality of the settlement discussions; or
- d) to prevent the use of mediation as a "discovery" tool.

These reasons must be balanced with the recognition that the mediation process is voluntary and the parent who is denied the opportunity for representation may elect to proceed directly to a hearing. Another issue of concern has been the "sticking power" of mediation agreements, or their ability to be enforced once they are written.

#### Enforcement of Mediation Agreements

Since mediation is a voluntary process suggested but not required by the IDEA, there are no provisions under the IDEA to compel enforcement of mediation agreements. When agreement is achieved in the form of a written mediation agreement, it is understood that both parties will adhere to the agreement; if not, due process could follow (CEC, 1998). Parties may attempt to use the courts for enforcement of mediation agreements under a breach of contract argument (Opuda, 1997).

A district that attempted to use a settlement agreement to shield itself from continuing claims under the IDEA was unsuccessful (D.R. v. East Brunswick Board of Education, 838 F. Supp. 184 (D.N.J. 1993)). The parents and school entered into an agreement whereby the school agreed to pay for a unilateral parental placement of an 18



year old student in a residential treatment facility while the parents in turn absolved the board of any further costs. When the school refused to support the additional cost for a full-time one-to-one aide, the parents appealed. The court held that a school board could not contract out of its obligation to provide a student with a free appropriate public education as required by the IDEA.

#### Recovery of Attorneys' Fees in Mediation

Several federal district courts and one circuit court have ruled that attorney fees are recoverable for mediations. The involvement of attorney's and recovery of attorney's fees for mediation remains controversial.

In the case Rossi v. Gosling, 696 F. Supp. 1079 (1988), the U.S. District Court for the Eastern District of Virginia held that the Handicapped Children's Protection Act authorizes the award of attorney fees where the dispute is resolved without hearing. The court noted that:

Section 1415(e)(4)(D) implies that fees are recoverable for work performed before a settlement offer when that offer is made more than ten days before an administrative hearing. It is clear from the legislative history of HCPA that an award of fees for work done prior to a mandatory administrative hearing is consistent with Congressional intent.

One can easily envision a situation in which the parents' attorney, knowing that fees are not recoverable for prehearing work performed in the absence of a hearing, would reject negotiations and attempt to gain the desired relief through formal proceedings. On the other hand, if fees are

recoverable for prehearing work, the parents' attorney would have no incentive to resist settlement, and the school system would have an incentive to settle cases as early as possible to avoid further exposure (Opuda, 1997).

U.S. Court of Appeals in the Fifth Circuit in the case Shelly C. v. Venus Independent School District, 878 F.2d 862 (1989) built on the Rossi decision and rejected the school's argument that attorney fees are not recoverable for work done prior to a due process hearing when settlement is reached and no hearing is held. The Court noted:

(The) appellants contend that allowing an award of fees when a settlement is reached prior to the due process hearing provides no incentive for the appellants to settle prior to that time. This argument is not persuasive. It is just as likely that denying fees would protract litigation and thereby increase a school system's liability for fees.

The circuit court, while supporting the award of attorney fees, reversed the summary judgment of the district court awarding over \$30,000 in attorney fees and remanded the case to the district court for a determination of whether the fees were reasonable "in light of the prevailing rates in the community" and whether the award of fees was barred by the district's settlement offer more than ten days prior to the hearing.

In Masotti v. Tustin Unified Sch. District, 806 F. Supp. 221 (1992), the U.S. District Court for the Central District of California found that the resolution of a special education dispute by way of a state's mediation procedures cannot preclude recovery of

attorneys' fees under the IDEA. Of note is the fact that the parents had not yet filed a request for a due process hearing.

The Masotti decision appears to be inconsistent with the findings of the U.S. District Court in Maine, which held that the proceedings referenced in 20 U.S.C. 1415 (e) did not include participation in IEP meetings and were limited by the plain meaning of the statute to administrative due process hearings filed under 1415 (e), Fenneman v. Town of Gorham, 802 F. Supp. 542 (1992). In short, the clock on attorney fees does not start running until a parent has initiated a request for a hearing (Opuda, 1997).

In line with Masotti, the District Court in McCartney v. Herrin Community Unit School District No. 4, 20 IDELR 801 (S.D. III. 1993), held that parents who had settled with the school district as a result of a mediation conducted by the state level hearing officer were entitled to recovery of attorneys' fees as prevailing parties. In this case the state level hearing officer apparently abandoned the role of impartial adjudicator of facts and successfully assumed the role of mediator.

A Federal District Court in New Jersey in the case E.M. v. Millville Board of Education, 849 F. Supp. 312 (D.N.J. 1994), allowed the award of attorney fees for representation at mediations but reduced the award by 25 percent since the "mediation proceeding was not inherently legal in nature." An additional basis for the award was that the parent, while securing a regular first grade, inclusive placement for her daughter instead of a separate self contained placement, did not completely prevail in her dispute regarding her request for second grade regular education placement.

Congress recognized that the recovery of attorney's fees in mediation was an area that required SEA involvement and the Senate Subcommittee during reauthorization hearings offered these comments regarding attorney's fee and mediation:

The Committee believes that, in states where mediation is now offered, mediation is proving successful both with and without the use of attorneys. Thus, the Committee wishes to respect the individual state procedures with regard to attorney use in mediation, and therefore, neither request nor prohibits the use of attorneys in mediation.

#### Consolidation of Legal, Pragmatic, and Theoretical Issues - IDEA 1997

Public Law 105-17, IDEA 1997, affirms the basic principles of Public Law 94-142 established in 1975. One of the basic tenets of the re-authorized public law is to enhance the input of parents and children with disabilities in the decision making that affects their children's education (CEC, 1998). The expansion of parental involvement is evident throughout the Act.

P.L. 105-17 legitimized the role of mediation in an expanded view of due process rights by requiring that all states develop a state managed special education mediation program. Though mediation cannot be mandated, SEA's and LEA's are required to offer mediation and ensure that procedures are established and implemented to allow parties to use mediation. The mediation must be voluntary on the part of the parties, not used to deny or delay a parent's right to a due process hearing or to deny any other rights. Mediation must be conducted by a qualified and impartial mediator trained in effective

mediation techniques. Comments from the Senate Committee during the re-authorization testimony highlight support for the inclusion of mediation in the federal law:

The Committee is aware that, in states where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the Committee's strong preference that mediation become the norm for resolving disputes under IDEA. The Committee believes that far fewer conflicts will proceed to the next procedural steps, formal due process and litigation, outcomes that the Committee believes should be avoided when possible (CEC, p. 42).

Provisions were added to the law to ensure that discussions that occur during mediation must be confidential and not used as evidence in due process hearings or civil proceedings, and the parties may be required to sign a confidentiality pledge. Prior written notice of procedural safeguards must be given to parents prior to engaging in mediation.

States are responsible for the costs of mediation and funds are available through IDEA Part B, Sec. 611 (f)(c), where 25 percent of funds designated by the SEA can be used to establish and implement the mediation process, including the costs of mediators and support personnel (CEC, 1998).

Now that all states are required to develop and maintain state managed mediation programs, implications for research and data collection are more critical. Project FORUM reports have consistently documented the need for more research in the area of

conflict resolution strategies in special education (Ahearn, 1994; Schrag, 1996; Symington, 1995). Research into factors that escalate and de-escalate conflict in special education is needed; such research can assist in developing early response models for resolving special education conflicts. Securing the perceptions of mediation participants may serve to strengthen mediation programs by documenting efficacy of the processes involved. Outcomes of mediation sessions need to be examined; what occurs in the mediation session and the actions subsequent to the mediation conference have an influence on whether a working relationship exists and whether it translates to educational benefit for the child in question. Increased empirical research on conflict management can result in strategies that empower parents and schools to collaborate more effectively in problem solving and to build a caring school community.

## Chapter 3

### Methodology

To examine factors that escalate or de-escalate parent school conflict and to identify strengths and limitations of special education mediation, I decided to conduct telephone interviews with parents, school officials and special education mediators as a method of inquiry in this study. I used a grounded theory approach (Strauss & Corbin, 1990) to analyze data and followed systematic procedures to identify key factors and relationships in parent- school conflicts. I used open, axial, and selective coding strategies and present those strategies for review. This chapter identifies and explains the strategies used in the process of data collection, data analysis, and the conceptual theorizing related to interpretation of data. The specific procedures that were followed for selecting participants, collecting data and applying data analysis techniques are described. Assurances of anonymity and confidentiality of participants are explained.

### Sample Selection

In the design of this research project, I determined that multiple case sampling was important. In reviewing previous studies of mediation, I found that parents and school officials were two groups most likely to be interviewed and that special education mediators were often not included as study participants. The sampling frame was guided by the research questions and the conceptual framework of the study. I chose

Massachusetts as an appropriate site to conduct a study of parent-school conflict and special education mediation for these reasons:

1. Massachusetts was one of the first states to implement a state managed mediation program (1976). Coordinators of the Massachusetts special education mediation program have assisted other states in the development and implementation of state managed mediation programs.
2. Massachusetts has been aggressive in its approach to mediation. By conducting a large number of mediations yearly, Massachusetts provided access to a larger number of mediation participants than did other states.
3. Massachusetts' special education mediators have extensive experience in special education mediation. They mediate a large number of cases per year and the mediators collectively have a variety of mediation experience. In addition to actual mediation experience, Massachusetts' mediators have provided training in negotiation and mediation for schools, attorneys, state departments of education, and other agencies (See Appendix B).
4. Massachusetts is active in pursuing other alternative resolution options. The Bureau of Special Education Appeals (BSEA) offers an advisory opinion process, which is a case assessment positioned between mediation and due process hearings on a continuum of dispute resolution procedures. This process allows parents and school districts to present their case to a hearing officer in a limited time frame presenting documents and calling witnesses. At the end of the session, the hearing officer issues an oral,



non-binding advisory opinion. Based on the advisory opinion, the parties may elect to settle their differences, go to mediation, or proceed to a full hearing with a different hearing officer. One of the concerns that prompted this option was the need for access to due process hearings for families with limited financial resources.

5. I served as an administrative intern at the Bureau of Special Education Appeals, Massachusetts Department of Education during the summer of 1995. During that time, I observed mediations, participated in post mediation conferences with the coordinator of mediation, and observed administrative procedures related to the management a state special education mediation program.

#### Participant Selection and Procedures for Data Collection

Parents, school officials, and special education mediators from the Commonwealth of Massachusetts were participants in this study (n=44). All parents had participated in a special education appeals process under Chapter 766 (state special education law), and had experienced either mediation or a due process hearing. School official participants were either principals or directors of special education programs. Mediators were from the Bureau of Special Education Appeals (BSEA), located in Malden, Massachusetts. . The bureau has authority to resolve educational disputes under Section 603 of the Code of Massachusetts Regulations (C.M.R. 28.00). Mediators are located in Malden, but serve all cities and towns in Massachusetts. At the request of

either party in the dispute, they travel to specific school locations and conduct mediations on site.

With assistance from BSEA, individuals were contacted and given an opportunity to become a participant in the study. I had no access to parent's names or student records at any time during the study. To retain anonymity and confidentiality, parents were notified of the study by the Bureau of Special Education Appeals. Letters were sent by the bureau inviting parents to voluntarily participate. I wrote a letter describing the study and giving my address and telephone number so that persons could call collect to seek information or volunteer as participants. Parent selection and mailings were conducted by the BSEA (See Appendix C).

A systematic selection process was employed by BSEA to obtain a parent sample. To locate parents to interview, letters were sent to 438 parents in two separate mailings. Each parent who received a letter had rejected their child's educational plan and had filed an appeal with BSEA. The first mailing did not yield a sufficient number of responses, thus a second mailing was conducted. Parents from the 1995-1996 and the 1996-1997 school years received letters.<sup>1</sup> The total number of mediations held during those two school years was 900 (474 mediations were held in 1995-1996 school year and 426 mediations were held in 1996-1997 school year). Thirty-nine parents made inquiry about the study. I interviewed 22 parents, and concluded parental interviews when I did not

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<sup>1</sup> Initially, I planned to conduct focus group interviews; however, due to the geographic dispersion of participants across the state, I decided to revise the method of data collection and conduct individual telephone interviews.

hear new information related to critical incidents, factors that escalate conflict, or the strengths and limitations of mediation.

I accessed school officials' names from publicly available Massachusetts Department of Education directories. A systematic selection process was used to invite school principals to be interviewed. I sent a letter to every fifth principal in the directory of Massachusetts schools, for a total of 370 principal letters sent. The number of letters returned for improper address was 18. The number of school officials who inquired about the study was 20. I attempted to interview all school personnel who replied, but was successful in securing a commitment from 16 school officials who actually participated in the study.

I sent a letter to all the mediators at BSEA inviting them to participate in the telephone interviews. I mailed these letters to a student intern at BSEA who hand delivered each letter and explained the study individually to each mediator. Six of the eight employed mediators participated in the interview process. The number of participants in the study included 22 parents, 16 school officials, and 6 mediators (n=44).

When interested potential interviewees called me collect, I explained the research process to them. If they agreed to participate, I sent them a mailing that explained the procedures and gave specific assurances. They voluntarily gave me their home addresses and work telephone or fax numbers. I later contacted each volunteer participant and scheduled an interview time that was agreeable to them. I made an appointment calendar and proceeded to call each volunteer participant at the agreed upon date and time. On occasion, I had to re-schedule appointment times for the telephone interviews, as work or

family interference prevented the telephone interview from occurring at the designated time. When this occurred, we re-scheduled an interview time and I called again at the new date and time.

### Demographic Data

Demographic data were collected at the beginning of each interview before in-depth questioning about conflict issues began. Of the participants in this study, 21 of the 22 parents interviewed were mothers. One father volunteered and was interviewed. Most of the parent participants were the child's biological parent, compared to one foster parent and one surrogate parent in the parent sample. The majority of parents (82%) were currently living in two-parent families (n=18) and four parents were single parents. Parents were asked to give their towns and name of their school systems; however, to retain anonymity, only regions of the state are given for data reporting. Of the parents interviewed, 59% were from the eastern part of Massachusetts, 18% were from central Massachusetts, and 23% were from the western part of the state. Educational attainment and occupations varied. Of the parents involved (both mother's and father's education and occupation were reported in two-parent families) 65% of parents completed high school, one parent finished through the eleventh grade (2.5%) and 32.5% of parents completed 1-6 years of college. (See Appendix B for complete Demographic Data Tables).

The majority of parents (67%) had experienced one special education mediation; seven parents had been through mediation more than once. Of the total number of

mediations discussed in this study 25 of 33 mediations (76 %) resulted in signed mediation agreements. Parents who reported they either currently belonged to a parent support group or had previously been active in a parent support group were 64 % of the parent sample.

Of the 28 children described by parents, the ages ranged from 4 years old to 20 years old ( $\bar{x}$ =13years old), and 64% of children were male. The range of years the children had received special education services was from one year to eleven years ( $\bar{x}$ =6.9 years). The type of schools children were attending were reported: 67.9% of children were currently attending public schools, 10.7% were attending private schools, 10.7%were attending school of choice, and 10.7% were in college. Of the disability categories reported, the most frequent disability was learning disabilities (60.7% of children).

School officials interviewed were predominantly special education directors (81%); only three were school principals. Of school officials interviewed ( $n=16$ ), 44% were from the eastern part of the state, 37% were from central Massachusetts, and 19% were from the western part of the state. The size of each school or school system, student population, and disability population are reported in Appendix B. School officials' administrative experience ranged from one year to fourteen years ( $\bar{x}$ =6.6 years). When school officials were asked if they had received training in conflict resolution 69% stated they had been involved in formal or informal training in conflict resolution.

Six of the eight special education mediators currently employed in Massachusetts participated in this study. The average length of their mediation work experience was

11.2 years. When mediators were asked about the training required for their job, most reported a variety of training experiences that prepared them to work as mediators in special education. They also reported that most of the mediators (67%) had provided training for others. See descriptions of training and complete Table of Demographic Data provided in Appendix B.

### Procedure

In this section, I explain assurances of confidentiality that were granted to study participants. The development of interview guides, procedures for data collection and data analysis are presented. Steps taken to confirm data analysis are explained.

### Assurances

I mailed or faxed a copy of an Informed Consent for Participants of Investigative Projects (See Appendix C) to all participants. The purposes, risks, benefits, and actual telephone interview procedures were explained both in the initial telephone call and again through written informed consent. Efforts to maintain anonymity and confidentiality were discussed and opportunities were given for participants to have their questions answered. Participants were told of their eligibility to receive a copy of research results upon completion of the study. Participants were sent a stamped; self-addressed envelope to return the signed consent forms. Some participants chose to fax the signed form to me. Interview times were agreed upon either by telephone or in writing at the time consent

agreement was completed. Interviews were conducted during a four-month period between January and April of 1998.

### Development of Telephone Interview Guides

I designed telephone interview guides for four groups of participants: (a) parents who had been mediation participants, (b) parents who had been due process hearing participants, (c) school officials who had been both mediation and hearing participants, and (d) mediators. (See Appendix D to review each protocol.) I developed interview guides to bring focus to the exact issues I chose to explore, and to make the interview process more systematic across time. I remained free to expand conversations within particular subject areas, and to listen to individual perspectives and experiences. I asked clarifying questions when I felt it was necessary to probe specific responses.

I asked the same questions to each participant within a group. The necessity for interviewer judgment was reduced and data analysis was made easier by being able to locate answers to the same questions in cross case analysis. Telephone interview guides were field tested with a select group of parents and advocates in Virginia and Tennessee. The content and sequence of questions were revised with input from these individuals, from the Director of Mediation-Bureau of Special Education Appeals, and from my doctoral committee chairperson.

After I collected demographic data, I focused the remainder of each interview on in-depth, process-oriented questions. I asked participants to reflect on their actual experiences in attempting to resolve special education conflicts, and to discuss the

consequences of their experiences. Open-ended questions were designed to gain an understanding of the communications, events, and actions involved in a variety of special education conflicts.

### Data Collection

Individual telephone interviews were conducted with participants. These interviews ranged from 30 to 90 minutes. The average interview was 40-45 minutes in length. I made hand written notes throughout the interview session and each interview session was audio-taped. All audio interview tapes were transcribed verbatim. Interview questions were adjusted for parents who had experienced more than one mediation, and for parents who serve as professional special education advocates. Since advocates, school officials and mediators had experienced mediation with different cases over various time periods, I gave them opportunities to reflect on individual cases (with advocates, their own children were their individual case) as well as make observations and draw conclusions from their multiple experiences with special education mediations.

### Data Analysis

Data were coded and categorized using grounded theory strategies proposed by Strauss and Corbin (1990). I used open coding techniques to fracture the data and to develop categories of factors that escalate or de-escalate special education conflict. After reading the verbatim transcripts several times and carefully re-examining the data, I broke the data down by applying conceptual labels to actions, events and responses described in



the interviews. After I applied conceptual labels to the data, I grouped related events, issues, or actions into categories. These categories became “groups” of concepts that pertained to a similar phenomenon.

After continuing to ask questions and search for similarities and differences, I attempted to give each category a provisional name. I provisionally identified ten categories, but upon refinement, realized that two categories were redundant and these were collapsed into existing categories. A total of eight categories remained for factors that escalate and de-escalate conflict. A similar process was followed to analyze the strengths, limitations and educational decisions that resulted from mediation.

I applied axial coding techniques to make connections between categories. As provisional categories were developed, sub-categories were linked to each category by following a systematic procedure. After each category was provisionally identified, I tried to uncover potential properties and dimensions of each category or subcategory. I used a coding paradigm that required asking questions about conditions, contexts, actions, strategies and consequences (Strauss and Corbin, 1990, pp. 99-115). Constantly, during the development of properties and dimensions, labels were verified back to the data and re-checked for consistency.

Selective coding was the last stage of coding I applied to the data. I used this procedure to begin the integration process so that a story line could be developed. I first wrote a general descriptive overview of the “story” of this research. I described the elements and processes that were the most striking and informative. In doing this, I made attempts to systematically relate categories and validate relationships. Cases that did not

seem to 'fit' systematically were examined closely. I first wrote a descriptive story from the data, then I developed the story analytically. To accomplish this, I chose a core category around which the remaining seven categories were organized. I developed a visual matrix to better understand factors and category relationships. Throughout the study, visual matrices were developed to depict conceptualizations as they occurred. This process helped me to "see" the processes more clearly and to link levels of conditions and consequences that would eventually establish theoretical relevance. For all categories of factors, I conditionally established relationships and continually checked back to the actual interview transcripts to validate the provisional relationships.

By applying this process to the examination and understanding of data (256 pages of typed transcripts) and my research notes, I developed mini theories about conflict development and parent-school relationships. I maintained code notes, theoretical notes and operational notes throughout all stages of data collection and analysis. I compared and contrasted cases through building cross case displays. I found it helpful to work with large (18 x 24 in.) sheets of paper taped together so that I could examine the responses to interview questions by looking across all cases in each group. Examination of comparative and contrasting cases through cross case displays assisted the analysis and description of findings. As pattern codes and propositions were created, mini-theories were generated to explain meanings of the conflict interactions. Emerging theoretical understandings were enhanced by visual displays and matrix building as I attempted to integrate mini-theories into an explanatory framework which is described in Chapter 4.

### Steps Taken to Confirm Data Analysis

I made several efforts at getting feedback and confirming various processes in the data analysis procedures. The rigorous working and re-working of the data using stringent coding procedures resulted in making provisional assumptions and then looking for evidence to support or dismiss conclusions. The data were hand coded, which resulted in constant reading and re-examination of interview transcripts. An inter-reliability check was applied in two ways. An independent third party read the cross cases synopsis of all 44 cases (presented graphically in large print chart format), and discussed cases after I did the initial coding. In the initial stages of open coding, the reader and I discussed rationale for coding decisions. The discussions assisted me by allowing another person's interpretations to be considered. Some of the open category codes were changed as a result of this process.

A more formal inter-rater reliability process was applied by having a separate rater randomly choose 25% of the interview transcripts for coding. She applied open coding techniques after the rater and I tested their coding techniques on three sample interviews. Discussions followed after the three sample interviews were coded. Inter-rater reliability was determined by using the formula:  $\frac{\text{Number of Coding Agreements} + \text{Number of Coding Disagreements}}{\text{The Number of Agreements}}$ . The inter-rater reliability figure of 91% for this study was based on the coding of 25% of randomly chosen interviews. After inter-rater reliability checks were completed, it was determined that it was appropriate to use a single coder throughout the study.

## Chapter 4

### Analysis

#### Introduction

In this study, questions were asked about critical incidents that preceded mediation requests and about what actions can be taken to prevent or decrease conflict between parents and schools. Participants suggested recommendations that they would make to others who may consider using special education mediation in the future.

This chapter first explains factors that may escalate or de-escalate special education conflicts. The conceptualizations that resulted from the analysis of data are presented. The second section of this chapter identifies perceived strengths and limitations of special education mediation. The perceptions of three groups - parents, school officials, and mediators are provided. A discussion of strengths, limitations, and educational decisions resulting from mediation conclude the chapter.

#### Factors that Escalate and De-escalate Special Education Conflict

##### Conflict as a Complex Process

Much has been written about the complex and interactive nature of conflict (Deutch, 1973; Filley, 1975; Pruitt & Rubin, 1986; Putnam & Folger, 1988). An assumption of this study is that conflict is composed of cognitive, affective and behavioral components that are closely interwoven and interactive. These interactive

processes lay the groundwork for theoretical understanding of conflict and the development and refinement of conflict theories. Understanding the interactive nature of special education conflict assists educational practitioners in administrative problem solving efforts.

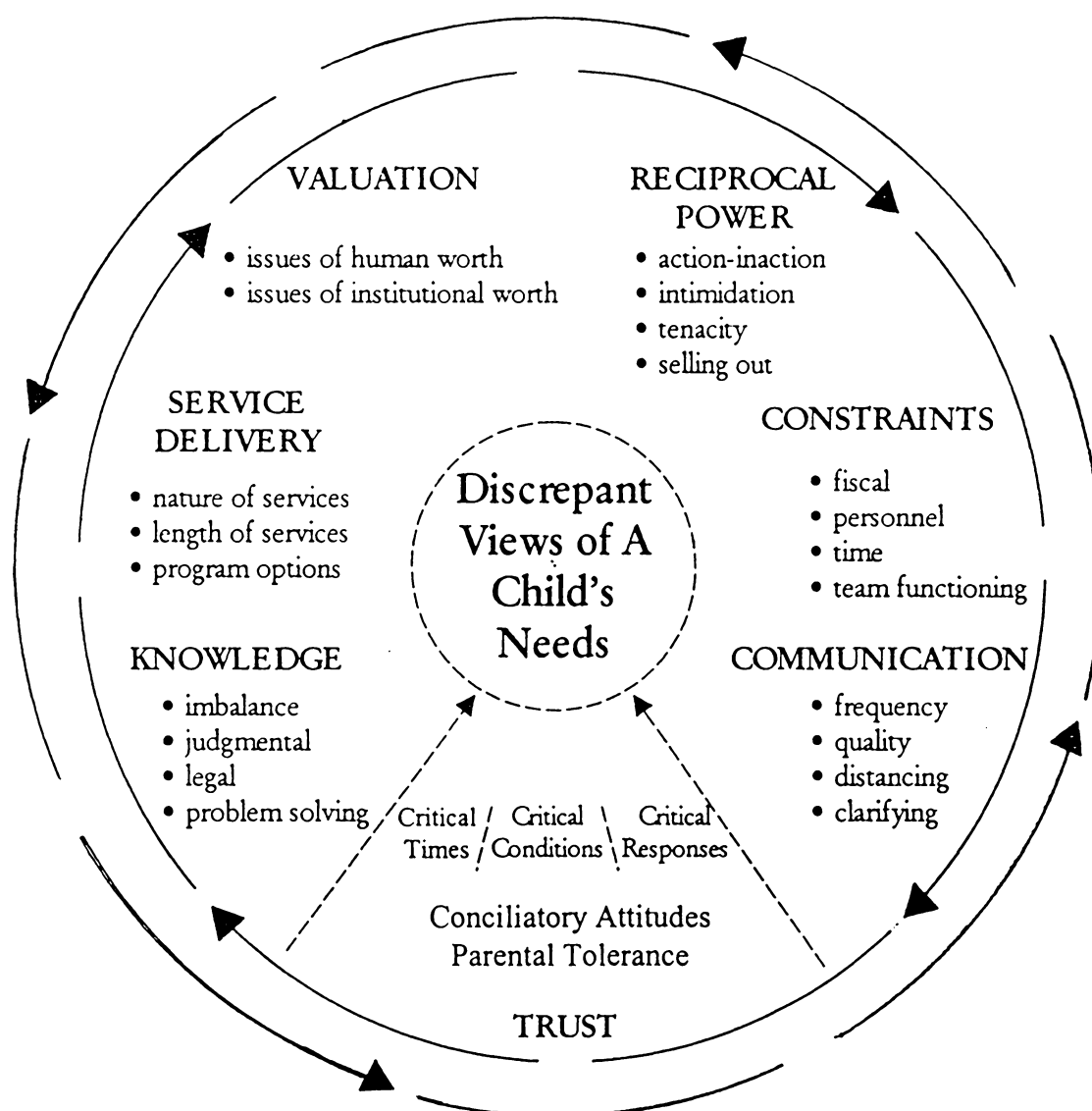
Throughout the stages of conflict development differences in values, goals, and predispositions are realized through communication. The recognition that many factors may be contributing to a conflict is critical in managing the emotional conflict that accompanies conflict. The aftermath of conflict involves the recognition of interactive factors as disputing parties adjust to the changes that conflict produces, attempt to make sense of experiences and assess the impact on future relationships.

To provide pragmatic understanding and clarity of this complex process, factors identified in this study that escalate or de-escalate conflict are grouped into eight categories: (a) Discrepant Views of a Child or a Child's Needs, (b) Knowledge, (c) Service Delivery, (d) Issues of Valuation, (e) Use of Reciprocal Power, (f) Constraints, (g) Communication, and (h) Trust. It is important to understand that the identified categories are not mutually exclusive; in any given conflict situation many factors from various categories may be operating simultaneously to escalate, de-escalate, or contain conflict.

Figure 4 demonstrates the interactive and dynamic nature of the identified categories, indicating that trust or lack of trust can be viewed as a foundational element in many issues involving conflict between parties.

Figure 4

## Factors that Escalate or De-escalate Parent School Conflict



Model Developed From Research Data

### Discrepant Views of a Child's Needs

Discrepant views of a child or a child's needs were identified as a category of factors that initiate or escalate conflict in 90% of participant interviews. School officials and mediators also identified discrepant views as contributory factors to conflict to the extent that this category is identified as a core category around which seven other categories are linked. When parents spoke of differences between their view of their own child and a school's view, they offered two conclusions that might explain how a parent and a school could see a child differently. The first conclusion was a perception that one's child was not seen as an individual with unique strengths and abilities. The second was that school personnel described one's child from a "deficit model" perspective. If a parent believed that one's child was not being viewed as a unique individual, or was viewed from a "deficit perspective" by school personnel, conflict tended to escalate. If parents viewed their child as "deserving of" or "entitled to" services and resources beyond the capacity of the school to provide, school officials reported that conflict generally escalated.

Parents expressed concern that seeing one's child, as an individual was critical to arriving at agreement over services. One parent stated, "The most important thing is to find a school that will recognize your child as an individual over a long period of time". The parent of a four-year-old child spoke of difficulty with school personnel who did not demonstrate sensitivity to the unique and individual needs of her child. She said:

I think they could have looked at the whole picture, the whole child and taken the child into consideration as an individual, instead of ...I got

the impression that they were just looking at children as a group and we could just put all these kids together, and studies show that kids like this benefit, but not taking the individual child and saying, well, how would this work and how would that work?

This parent described the school's view of her child in comparison to other students, not based on his individual educational needs. She stated:

Because he wasn't a behavior problem and he wasn't abused, they didn't feel he needed the help as much as some of the other kids. We had been through that for years. He is kind of a cooperative student and tries to learn. When we go to his meetings, the first thing they say is that he's the best kid they have, and it's wonderful to have a kid who actually tries. That's what makes me so angry. I mean he was doing homework for four hours a day in second grade and the teachers, their comments would be there's just something not right. But because he's such a good boy...And you know, I mean he went through a lot and it would have been better to test him then.

One parent recognized the unique and individual nature of her daughter's learning disabilities and stated:

I think in fairness to the teachers, she (her daughter) has phenomenal strengths and incredible disabilities. In testing, in math she tested in the second percentile. And in language she tests in the 99<sup>th</sup> percentile. And they would say, gee there's been kids in this classroom far



worse than her. And I'm sure there probably were. But she has an ed plan and she had services that were supposed to be given to her. Yeah, there were times that I almost wish she was a behavior problem. Because she would have gotten more.

A parent recounted her diligence in keeping a watchful eye over her son because of knowledge that her ex-husband had learning disabilities.. She watched him carefully during the preschool years and in first grade felt that an evaluation should be done. She recounts her story:

I knew that my first husband had dyslexia and he had a very difficult time in school. So of course I was watching to see if my kids displayed any of those sorts of things. And sure enough my son did. So I finally go the evaluation. And the school did the evaluation and said there was no problem with him; that he didn't require special education services. And I just knew by my own observation as a parent, that was not true.

Parent concerns were often about safety (both physical and emotional) and a child's basic needs being met at school. A parent relayed a story that represented parental views about meeting children's "basic" needs:

I'm sitting there and observing and watching it. All the kids were sitting on the floor watching a movie and having snack. And I watched her (daughter) struggle and struggle to get the plastic off the juice box. And no one noticed. By the end of the snack, she hadn't got the juice

open. But the teacher never even looked to see. When everybody in the school knew she had fine motor problems and she was in that school since she was three. And that little tiny thing pulling that plastic off the straw, they never even looked. My heart was broken. I'm like, if you're never even making sure she gets the juice box open, what the heck is happening the rest of the day?

One parent expressed her disappointment that school personnel had limited understanding of her son's needs and wished "they would have had a really good grasp of the difficulties that he had day to day, getting up in the morning, getting himself ready, you know, there's so much more to it than just the educational piece."

Parents and mediators expressed strong opinions about how schools and parents justifiably viewed children differently. Though the differences were understandable, often the "lens" chosen to look through by school personnel was quite different than the "lens" chosen by parents. Since the lens chosen determines what is seen as problematic and what receives attention through school programming, this becomes challenging. Parents viewed their children through actions at home, in the family, and in the community. Parents reported that schools focused too often on a child's weaknesses and did not seem to take into account what the "whole child" was like. School personnel reported that parents became single-minded and sometimes selected "one right thing" and excluded acceptable program offerings.

Another set of conclusions that parents identified within the category of discrepant views was having one's child viewed by school personnel from the "deficit

perspective”. This was captured by re-occurring descriptions offered by parents. They expressed their feelings of frustration and sadness when school personnel described in detail what their child could *not* do. One parent stated, “Every time I went to a team meeting, you know everything was negative. There was never anything good to say about my daughter, I mean she never did anything good.”

In describing a critical incident that led to a request for mediation, one parent said:

The sped director asked me did I ever think she (her daughter) could learn to read and why didn't I move? She said well, how long do you think we're going to tutor her anyway, and I said until she can learn to read, or until she turns 22, which ever happens first. She said you know she wanted to stop doing it at all (tutoring) and she didn't think it was appropriate, and was she really able to learn to read? I said please, I don't want to hear that again, I'm going to get upset if I hear that again.

Another parent described her frustration at repeatedly being told what her child could not do. She stated,

I often think if they could do one-on-one instead of they all came with five people, telling me Susie can't do this, and Susie can't do that, and Susie can't this, and Susie can't that. And I am like, What about - Susie *can* do this and Susie *can* do that.

A parent offers a summarizing statement of the importance of viewing a child from each child's individual strengths and abilities:

He needs to be recognized as an individual with individual strengths and abilities. I wanted him to make his own decisions, to advocate for himself, to protect himself in social instances, you know. To be able to problem solve, to work efficiently, manage his own time and take care of himself. There was only room for what they wanted to provide and what they felt was adequate. It wasn't adequate for him. He was crying and upset almost everyday he went to school. He would come home crying because he wanted to learn something. He was being ignored and brushed aside. I was tired of hearing him cry. I felt so bad for him. One of the things that was said by a therapist at a meeting, she looked at him and she said well that part of your brain is broken and can't be fixed. And when she said that, that was it. I realized these people had no ability to look at him as an individual, and help him as an individual strive for what he wanted to get. They were interested in keeping him where they thought he belonged. So that was the point where I decided that I couldn't work with them any more.

School officials were more likely to discuss discrepant views as different views of the child's need for services and the role and function of the public schools in providing services. One school official stated her views concerning discrepancies between parents' and schools' views:

One thing I see often happening is often parents are at a level, denial is a harsh word, but they are not necessarily seeing their child in the

same manner in which the professionals in a public school system are seeing the child and their capabilities and weaknesses. The parents often will feel that the school could and should be doing more, if we only did more, then their child would be a typical child. And when that happens, it really doesn't matter how much we can do to provide for services. It is not going to be enough.

Another administrator describes how a parent and a school might interpret the needs for special education services differently:

A critical incident that often leads to mediation is a misunderstanding of the services either that are available or need to be provided, or and many times from the school perspective, a seeming, I don't want to use the word demand, a seeming request for services that may not be in harmonious agreement with what the school system sees.

School officials generally perceived that most parents were able to reach a compromised position after continued team meetings, but expressed concern over the few cases that "no matter how hard they worked", they couldn't satisfy parental requests. In the course of an on-going parent-school partnership, parties strive to be in agreement to such an extent that it can become difficult for parents to determine (a) exactly *where* the discrepant views are, and (b) exactly *how* discrepant are the views? A sense of good faith effort sometimes made it more difficult for a parent to accurately assess the extent of discrepancy between their views and the school's views. Clarification of discrepant views was viewed as critical to getting to the "bottom" of an issue. One parent expressed

a sense of gratitude and relief to finally know that what she thought should be provided for her child simply could not be provided. She stated:

I think that by the time the third one rolled around (mediation), we really did feel we could say what we wanted to. Everyone said precisely what was on their minds. They thought we were being unreasonable. That the system didn't have the capacity to do what we wanted them to do. And that was what we needed to hear (from the school). We've been trying to do it and we can't do it. So we finally understood that they (the school) just couldn't do it.

An intervening factor that was identified in the category of discrepant views was the impact of independent educational evaluations (IEE's) and under what conditions the IEE affected the views of parents and school. Parents viewed the independent evaluation as a means of garnering support for their view of a child or a child's needs. School officials and mediators had mixed opinions about independent educational evaluations (IEE's). School officials reported that independent evaluations were sometimes helpful to provide additional diagnostic information, but far too often were "misused" by parents to continue waging a "battle" against the school. The expense of independent evaluations was addressed by parents and schools as being too costly and both parties wished that the money spent on IEE's could be spent on instructional materials and program development. Yet IEE's appeared to be used as a "tool" for waging battle in some parent-school conflicts.

A mediator offered this viewpoint on a way of thinking about differences between a parent's and a school's view of a child. He said:

I wish that parent's could feel they are really full members of the team. Parents may have observed stuff in working with their child that's going to be very important news to the school. I see this happen every once in a while where the school says, the kid doesn't know his colors or numbers, and you know, is that pre-readiness. The parent says, no, he *can* do this. And the fact is, both statements may be true. But, they are situation dependent. The parent's report of the child's ability has to do with a one-on-one setting, maybe at the table, with food reinforcement, and they (the parent) is full attentive at all times. That's not the classroom circumstance. So the teachers observation, which is equally correct, has to do with the circumstances under which he knows the child. We have to get past thinking that those are mutually exclusive observations. And to come to realize, that like us, kids are different in different circumstances. And people's observations are what they know. And they *can* and *should* inform each other.

The degree of discrepancy, nature of discrepancy, and impact of discrepant views are properties that can be viewed visually as presented in Figure 5. Parents described that regardless of whether they disagreed over needs, programs, educational priorities or future plans, they attempted to evaluate how different their views were from the school's views. Sometimes a slight discrepancy occurred, but it was about an extremely important aspect of a child's education. When events were viewed by parents as having great impact (issues such as literacy), conflict tended to escalate. One way that parents sought to narrow discrepant views was to seek more information from other parents or professionals.

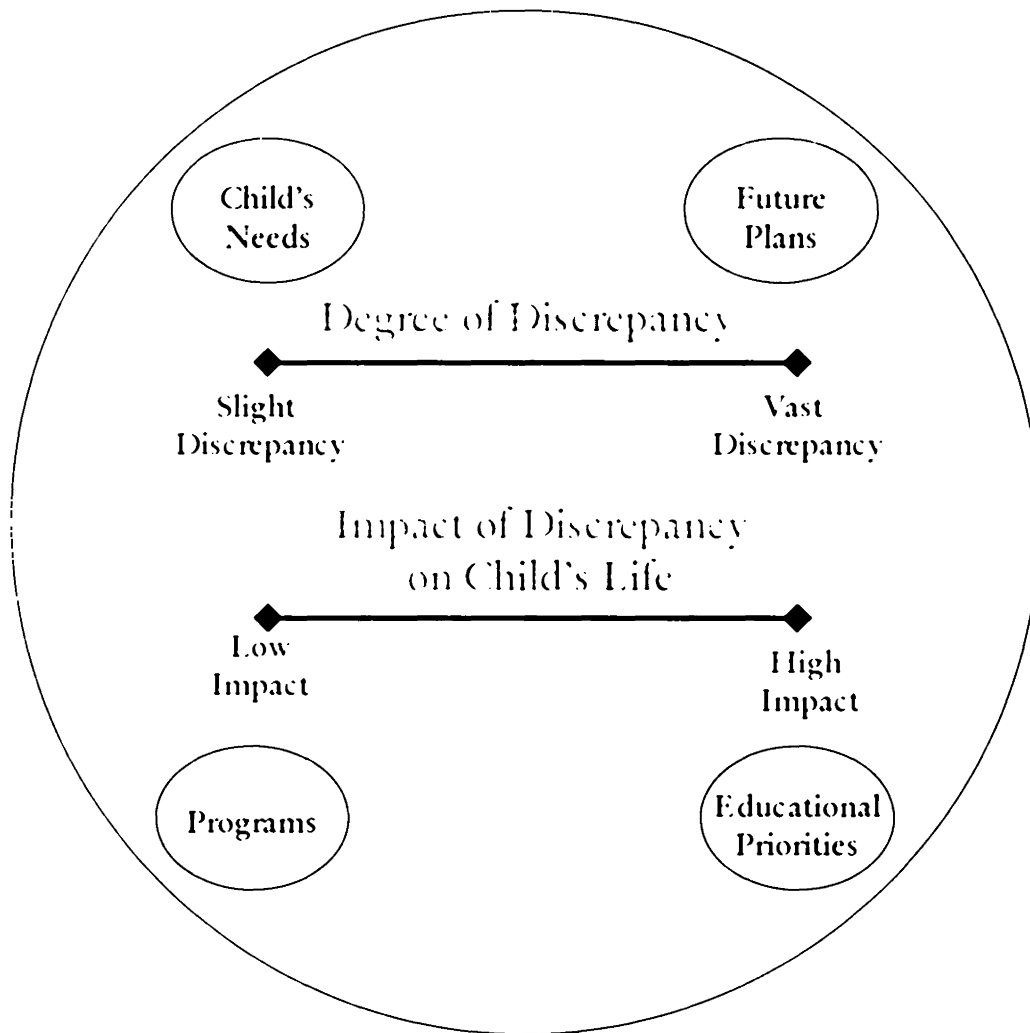
### Knowledge

Lack of knowledge was a category of factors identified by parents, school officials, and mediators that often escalated special education conflict. Parents and school officials strongly agreed that lack of parental knowledge placed them in a disadvantageous position and often escalated conflicts. Advocates, who were interviewed, reported that lack of knowledge among school personnel contributed to the escalation of special education conflicts. Mediators indicated that lack of problem solving knowledge and lack of strategies for communication among school officials and parents escalated conflicts. All groups interviewed expressed that if parents, teachers, school officials were more knowledgeable, conflicts could be prevented or contained.



Figure 5

## Discrepant View of a Child's Needs



The need for knowledge was expressed repeatedly by parents when asked what actions could be taken to improve conflict resolution practices. A parent offered:

I think there probably should be far more parent education when kids are initially brought into the system. That, you're sort of left out there hanging. It's all new to you and unless you happen to hit on the right people to help you out, you're just lost. Just lost. Because you don't have a clue as to why your child is having a problem generally. You don't have a clue where to go, you don't know what they need. There needs to be far more parent education early on.

The types of knowledge identified in this study were labeled as (a) Organizational Knowledge, (b) Disability Knowledge, (c) Judgmental Knowledge, (d) Legal Knowledge, and (e) Conflict Management Knowledge. How do parents gain knowledge to advocate for their children? Parents reported that they gained knowledge by visiting schools, discussing programs with administrators, joining parent advocacy groups, attending educational workshops, and working with advocates. Parents described that they learned about school services by comparison with other districts, other school programs or by comparison to how a previous teacher may have provided services. They gained information by word of mouth from other parents, by hearing the reputation of school employees, by having prior experience with other teachers, and by evaluating the training of special education personnel. Prior history with a particular teacher or a particular principal or special education director was stated to escalate conflict in some cases, but to de-escalate conflict in other cases. For example, if parents had had a negative experience

with a teacher, or school official, they felt they had been educated on what to avoid in the future. However, if parents had positive experiences in past dealings, they felt they had learned a lot about “how things should be done” when it came to teaching or solving issues of service delivery for children. School officials also reported that prior experiences with particular parents or situations tended to be educational in that they better understood how to proceed in the future with particular cases.

A school official mentioned the fact that special education directors and school personnel have a responsibility to help provide education and knowledge to parents, and if that’s not available, parents will seek help elsewhere. She states:

I think we hurt ourselves, the public school systems hurt themselves in the sense that sometimes we are just not there for the parent. Either just there to be listening, and not necessarily to provide additional services, but just there to be supportive to the parent who doesn’t know what to do with this child that is difficult to deal with, or has a difficult disability that they don’t understand. Sometimes when we are not there, when we get so tied up with our own day and we are not providing the support that the parent needs, then the parent ends up looking elsewhere. When they connect up with an outside agency or another parent who has a child out of the district, then we are looking, we have failed.

A middle school principal acknowledged her professional responsibility in getting information to parents and encouraged on-site visits and frequent contact with school personnel. She stated:

I think sometimes a parent thinks of school as when they went to school, as opposed to what school looks like now. And I think one of the things parents can do is to come in and do an observation, not necessarily in the child's classroom only, although that is beneficial, but just across the board, because there are so many things that are really different, and I don't think they (parents) have a clear understanding of that. But I have found that where parents got more involved in terms of coming in, and doing an every other month conference, or came in and actually spent some time observing in a couple of classes, they had a much clearer understanding of what the teachers were saying.

This middle school principal required guidance counselors to be responsible for working exclusively with parents, students, and teachers. She removed all responsibilities from them that required burdensome paperwork and administrative office details. She allowed them to be present to work with the "human issues" needing attention. These counselors spent much time assisting parents in understanding programs and IEP issues, and empowering parents to successfully advocate for their children.

An "imbalance of knowledge" was mentioned by parents as a source of frustration when attempting to advocate for their children. One parent stated:

What is really hard is we go in there and you have the special education director and she knows the rules and regulations, everybody else knows the rules and regulations. And unless I can pay somebody to get myself an advocate at \$35.00 an hour, I don't have that kind of money, so I had no one but myself and my little Chapter 766 law book to help me. You know, I think at that point there should be something, at least to help. On the parent side, this is the law, kind of thing and a lot of people don't have \$35.00 per hour to get an advocate. It puts you at a disadvantage.

Other parents expressed similar feelings:

And I think there should be help because most parents don't know, don't know what you're doing and you feel uncomfortable and so a lot of times you think that they, that the school, you can't tell them or you can't change it and I think parents should have some help. The school has people that help them like school psychologists, and I think the parents should too.

An advocate who addressed the component of knowledge and understanding needed by those working in school positions described another aspect of how lack of

knowledge might escalate conflicts. Having attended team meetings and mediations in various school systems, she said:

Generally, I would like to see people that work in the school systems understand more about special education. Right now as it stands, mostly the sped director and the special education teachers know, but not even some of them understand how the regulations work and what parents are entitled to. Regular ed teachers and principals by and large, I have found principals to be ignorant of how special education works, I find it very, very difficult sometimes to go to meetings where you've got regular ed teachers and a principal who is saying no we're not going to do this, and special ed people who are saying yes, but you need to do this based on the regulations. So, I feel if they understood if special ed teachers and the principals, the principals more than anything understood how special ed worked. What the entitlement to parents, what the responsibility was from the school system, that would be a very helpful first step. Because out of ignorance, they create problems.

She spoke further about parental responsibility in the attainment of knowledge and the need for application of knowledge:

And the other piece that would be very, very helpful is that parents need to understand more about what's out there for them and how to get it. And there's just not a good system of disseminating information to parents. When they get an IEP or request a core evaluation, then the

information flow kind of kicks in. But there's not a lot of it, it's not one of the things that all parents know about when their kids start school. That there's this special education process out there and that your child may need these services and you should be looking to see if there is any of these things that your child may absolutely need. So, its, that's the other piece of it which makes the communication and everything else break down is that in a sense, nobody knows what they're doing. The principals aren't sure what they're doing. The parents don't know what they're doing, what they are entitled to. And then you have these two entities on opposite sides and they're both getting angry about it and that's what I think leads to the breakdown. There's just not enough information. The parents, the administrators, the principals, and the school people. Or frankly, on both sides, I've got to say this, it's not just the principals, sometimes, many, you know, many of the parents, they just don't, just aren't going to do it. They're not, they don't care. They're not going to read it, they don't want to know about it. They just want the school to do what they want them to do, and they don't want to be as informed as they should be. Some of it is apathy, unfortunately.

A parent who is a school system employee had this to say about the need for knowledge and understanding:

Well, besides, I work in a school now too, so when I work I'm in special ed classes and from what I see, not a whole lot of people know a

lot about special ed or know a lot about learning disabilities. A lot of teachers are really very biased toward special ed children. So I think until people start changing and looking at it differently, I don't think anything is going to change. Because every child's learning disabilities are different, but I really don't think that the majority of teachers understand. And parents too. Parents don't understand. And the politicians don't understand. I mean we have a big thing going on up here that, you know, they think the legislature is trying to do away with, taking away some of the money, jobs, a lot of money is going into special ed. They want to do cutbacks because they think that special ed is a big joke. I mean that's the way they put it. And these kids are lazy, and the parents are nothing but a bunch of fanatics. I mean a politician at the state house said this. So until people understand, and unless you're a parent who really fights for your child, your child's not going to get help. It's really sad.

Parents seek knowledge to guide the practical actions that constitute advocacy for their own children. Parents, advocates and school officials spoke of "judgmental knowledge" that is how does a parent know enough to make a good judgment about evaluations, or any area of service delivery? Advocates and parents report that parents are affected by the "lack of a barometer", they have difficulty telling whether knowledge is reputable or not.

A parent articulated a source of knowledge not previously mentioned in interviews. She reports the knowledge that comes to you from your kids. She reported



her realization of knowing when to stop advocating for what you (the parent) think is best, and when to listen to what your child may be telling you:

Those are the lessons that life teaches you. Because we all want the best for our children. So, if we think that outside placement is best, that is what we want. Then our children teach us differently. They teach us that they are happy, they teach us that they are well adjusted, they teach us they can survive. Then all of a sudden you are fighting for the wrong thing. If you stop, and you just observe, and you listen, that is where the common sense comes in. Outside placement isn't always the best.

Parents reported that they first became aware that their knowledge was insufficient to accomplish what needed to be done when they found themselves facing adversity. Prior to the first conflicting situation with a school system, parents have gone along with the program and their knowledge appeared sufficient. It was only when a "crisis" hit, that their knowledge was unable to serve them effectively. The first real test of a parent's knowledge often came with their first parent-school conflict. A type of false sense of security surrounded some parents in that they felt they knew their child's disability well, and the school should know what to do. When they incurred opposing views parents report receiving "false" help by being advised in a way that seemed reasonable, but upon closer examination, proved of little utilitarian value.

Experience was the best teacher and gave parents a better barometer. Parents felt empowered as they gained more knowledge through experience in parent-school conflicts. Prior history helped to de-escalate conflicts in that parents felt they had a better

sense of vigilance and knew the pitfalls to avoid. They stated that the more experience they had in special education, the better equipped they were to know what to expect.

### Service Delivery

How students received special education services, the nature and extent of those services and location of services were often mentioned when asked the critical incidents that preceded requests for mediation. When schools did not meet parental expectations of how special education should be given to their children, conflict arose. There were multiple sources of disagreement over service delivery issues between parents and schools. Some were reported as minor misunderstandings, usually about how an IEP would be implemented and some were more substantive indicating real disagreement over the nature or quality of special education services proposed in the IEP. This category of factors that escalate conflict was mentioned more frequently than any other category when parents were asked what critical incidents preceded their request for mediation.

Parents indicated that service delivery “difficulties” were problematic because (a) they impacted the daily experience of each child and each family, and (b) delivery of services had to be continually evaluated by parents. Services may need to be adjusted and were subject to sudden changes, i.e. if personnel leave during the school year, or proposed activities that “sounded good” on paper in reality did not translate to valuable learning experiences for their children. Accessibility to services, onset of delivery of services, length of services, and location of services, were framed as relatively concrete

and dichotomous factors. That is, either a child can access a service or he can't, the service either begins at a certain time or it doesn't. A service is provided in either one physical setting or another, and the service lasts a measurable length of time. These more concrete and dichotomous types of service delivery issues would appear to be more easily solvable than others, but that was not reported to be true. It appears that teams felt strongly about service delivery issues, and if a team held a view different from parents, these factors were the focus of considerable conflict.

Parents reported the involvement of independent evaluators and advocates to assist with the "gray" areas of disagreements over quality of services, definition of inclusive services, instructional programs, and case management of integrated services. Parents stated that a school's inability to substantiate and sufficiently answer their questions about services was an indicator that "something was amiss" with how services were actually being given to a child.

An area of confusion that escalated conflict was the issue of how non-signed IEP's were handled. Parents reported expectations that were not met, and questions that were unanswered regarding what would happen after they did not sign an IEP. If they did not pursue mediation, it appears the issue was sometimes dropped and parents continued to be unclear about what services would or would not be delivered. The uncertainty about what plan of action would be taken once the new school year began with an unsigned IEP escalated conflict in reported cases.

Flexibility of service delivery and choices of program options were stated as factors that can and do escalate or de-escalate conflict. For example, one parent described

the satisfaction she felt to know that her school was going to start up a language based learning disability classroom for the coming year and that her daughter had been selected to be a part of the program. She was pleased with the management of the program, the qualifications and personalities of teachers involved, and the instructional content. She was frustrated to learn that conflict arose when she was told that the program was “all or nothing”. She desired that her child participate in content area subjects in a general education classroom. She was told this could not happen if the child was to be part of the language-based classroom. She resisted the special educator’s decision and fought to secure a more flexible form of service delivery, with her child being allowed to participate in the special education program and receive content area instruction in a general education classroom.

Lack of program options was discussed fully by parents, school personnel, and mediators. Shortsightedness in the planning of programs and not recognizing children’s needs prior to the time that services were needed was discussed in several interviews. Two mediators gave their thoughts on the issue of service delivery from the perspective of planning in advance and continuously re-assessing the school system’s options for service delivery. One mediator stated:

If you think about it, who should be designing programs? Should it be the school administrator sitting in his office with the door closed designing programs? Or should, I mean its no secret who the kids are coming up each year. We know who they are before they’re three and get some early idea of who they are before they’re five. That cohort is going

to go up through the public schools. Now there's movement in and out as we know but generally, you have some lead time to know who you're designing programs for every year. So there's a possibility of planning occurring early and shouldn't the planning involve those parents? I mean if you have a parent whose been involved in designing a program for this year's fourth and next year's fifth grade, how likely is she to walk away from it? So I think program planning and design could involve parents at an early stage. That would create less dissatisfaction and get some actual new ideas from whatever they brought to the table.

Another mediator referenced the need for school personnel to be creatively planning at all times. She said:

Well, I think that schools actually do this, but to pay extra attention to the continually reviewing of their program options. You know, know what the program looks like that the parent wants. Review within their system, you know really is there another option we could consider here?

Along the same lines of thinking, one mediator suggested that when a parent desires a private placement that it would be advisable for the school to enter into a dialogue about the desired program. He said:

Ask questions. If a parent comes in and says I found this new program down, you know, down the road 50 miles, and I want that for my child, it's an error to say we don't do that or we're not going to provide that. The best response is come in have a cup of coffee. Tell me about it.

What did you like about the program? You went and saw it, did your son see it? What did he like? What did you like? How were you treated?

What did you see there that particularly impressed you? Because it's the answer to those questions that reveal a person's needs and interests. And when you know that, then you can think about well, is that anything we can do here? Is that anything we could replicate? So trying to think of your negotiation without walls, without artificial boundaries between what you can do and what you can't do, I think is a helpful approach. You'll find, I mean, sometimes, you know, as an administrator, you'll find there are things that you in fact, can't do when it comes to it. But not setting up that barrier immediately, I think is helpful. Because there is a lot more flexibility than we sometimes think we are able to do.

Intervening factors in the service delivery category were (a) the role of key players, and (b) evidence of shortsighted planning. Parents indicated that in some circumstances, a key player, either teacher, principal or special education director entered a conflictual situation and fulfilled the role as a "key player" who turned the conflict around. The inclusion of a different perspective sometimes resulted in changing the course of conflict. One parent specifically described that an on-going conflict over how services would be given to her child was drastically altered to her satisfaction when a new principal came on the scene and responded to her requests differently than the previous principal. On several occasions, parents described how the skill of a particular teacher resulted in persons changing their views to become more favorable towards problem

solving. The role of key players resulted in de-escalation of conflict in sudden and unexpected ways as described by parents.

Some parents indicated instances in which they believed that school administrators exhibited shortsighted vision in not planning specific programs or planning ahead to meet individual children's needs. One parent described shortsighted program planning as her school system was "spending a quarter to save a dime." Parents stated that if more careful program planning had been undertaken earlier, conflicts could have been prevented. A feeling of resentment accompanied parent's description of perceived shortsighted program planning.

Disputes over how special education services are delivered, what should constitute those services, and where the services will be provided comprised the most often mentioned factors that escalated special education conflict in this study. The resolution of service delivery issues was important in preventing and escalating parent-school conflict in special education matters.

### Valuation

For the purpose of this analysis, the valuation category of factors that escalate and de-escalate conflict is defined as "who and what people care for and about." In the analysis of valuation factors, two broad categories emerged from the data: Issues of Human Worth and Issues of Institutional Worth. When parents felt that they were valued by the school system and that their child was valued as a unique human being with definite strengths, conflict tended to be prevented or better able to be managed. When

parents reported feeling de-valued in the parent-school process or when they gave examples of perceived de-valuation of their children, conflict escalated. Parents and school officials reported feelings of de-valuation, and the consequences of feeling de-valued emotionally impacted both parents and school officials.

Being valued as a partner in the parent-school relationship and valuing a child with disabilities are presented as examples of issues of Human Worth. Within the category of Institutional Worth, valuing the public school as an institution and society's valuing individuals with disabilities are issues that are presented and discussed. Being valued as a partner in the parent-school relationship was important to both parents and school administrators. When either party held a perception of having been lied to, felt that information was withheld, felt that they were not welcomed, or not allowed to present their views, conflicts tended to escalate. Parents mentioned the perception that they were being lied to and the feeling that information was not fully disclosed to them. They offered examples of times when they asked school personnel to substantiate events, or actions, and they could not get sufficient answers. At times parents reported a feeling that they were not welcomed in their child's school and that led them to wonder what was being "covered up" or withheld from them. A parent stated:

Since my son went into the program at a time when they were just getting this thing going and they were very hush-hush about a lot of things. Like I said, they wouldn't let you go into the school to observe or they made sure that you were there at a certain time, and it wasn't like open where you could, like the collaborative. Well, my wife volunteered



at the collaborative and so she knew everybody, and she just walked into the school, and they let her come into the class, to see what was going on. You could see over there, firsthand. Well, in the other program, it was almost like a prison system, everything was hush-hush. You can't come in, that kind of thing, trying to hide things all the time.

Another parent describes the feeling that she was treated in a condescending manner and recounts those feelings:

Instead of making accommodations for him, it was just a lot of deception, a lot of manipulation and a lot of head patting. I felt like I was constantly being, you know, just patted on the head and told to go home and everything would be fine. And they hardly ever listened to the concerns with any open ear at all. It was just go away, you're bothering me. I think they were trying to humor me and they wanted me to just be happy with what they wanted to give.

Another parent believed that her parental input and that of other parents meant little and was met with little appreciation, as reflected in her comments:

Do they ever want to hear parents and parents' views? No. You can stand on your head for them, and you can give them ideas and you could tell them that you want to work with them, and you can be involved, as I mean I used to hear them saying, well, parents aren't involved. Well, in my case and a few cases that I do know, there's a lot of parent involvement. Do they really want to hear it? No.

The parent of a four year old with severe disabilities spoke of an encounter on the first day she visited a proposed pre-school program. She left the program with little conviction that her parental input was valued:

The first day I visited the pre-school I sort of made up my mind, what they had done and they had taken my child from me, and she is spastic quadraplegic, that is her area of cerebral palsy. In order to get her to do anything you have to get her to relax or else she is just literally stiff as a board, and she remained stiff as a board the whole time we were visiting. They were taking her to different activities and all the activities, except one, she couldn't even attempt. The one that really rubbed me the wrong way is they pried her fingers open 'cause she was fisted and they stuck her hand into a bucket of rice. They told me she needed sensory input. Well when they let her hand go immediately she fisted it. As that was happening, I was saying 'you shouldn't pry her fingers open, there is a way to get her to open her hand, just lightly rub her knuckles and she will open her hand'. It was like I never spoke. So from day one, it was not off to a great start.

Another parent remembers being intimidated and struggling with feelings of inadequacy when she opposed school personnel and was convinced a program was not right for her daughter:

They could have listened to what I was asking for. And they could have worked with me, I think more than telling me they had a program in

place. And they really didn't. And I kept asking them to show me her progress, and they couldn't but said they were doing everything they could for my daughter and she was where she belonged. They would just intimidate me into thinking that I was a wacko. That why couldn't I see that this was a wonderful school system?

School officials, likewise, reported that certain actions of parents made them feel de-valued in the parent-school partnership. This special education director stated:

Many, many times, if I had known what the parent had been going up against, I might have been able to intervene, before they got to the point of breaking. And unfortunately, it's hard not to personalize when a parent goes immediately to a hearing without having spoken to me, to not personalize it, to me any way, because it is important to me to keep lines of communication with parents open. I really value my relationship with my parents. So if a parent goes to hearing without ever having spoken to me, it tells me something was wrong there. So I personalize it, you know, I try not to, but that is the type of person I am. I think one of the most important things they can do is somehow contact the sped director and say, this is my problem, this is what I am looking for as a resolution, and what do you see?

Special education directors spoke of feelings of injustice when they were hit with issues suddenly, by a parent, with no warning. Three different special education directors commented:

It's been part of my experience that so many of the requests for mediation have come about because of rejected IEP's that hit us out of the blue. Whereas, if we had an opportunity to really address them before they got to that point, I think we could.

Parents may not be happy with something but they don't tell us. And then it's, you know, they show up with their lawyer or their advocate and it's like wow. And so I guess, just getting parents to talk to the school system. And explain what they're unhappy with and seeing if we can work it out before the lawyers and advocates come along, because that sometimes causes a lot of stress.

Parents coming to the school district with advocates before they have even worked with the school district immediately sets up adversarial relationships. If you haven't had a chance to work with your school district and trust them, and you walk in with an advocate or lawyer before you start, you have set up the situation so that ultimately you are going to end up in conflict and have a need for mediation.

Self respect and respect for one's position in the life of another was represented by these special education directors who expressed an appeal to those involved to maintain sight of the "human" issues in trying to deal with each situation:

I think if parents are willing to talk with the special education director, if they are willing to remember that people are human beings and that the situation that their child may be in right now may not be perfect, but if they can label what the problem is and give people a chance, I think that is helpful. To give people another chance if they have been disappointed, to try again. But I know there is a limit to that.

If we can convince parents we're not trying to hurt children, if there's a perception - us against them. We give parents a report to bring in to the team meeting, that they have filled out and can share about their child. We look to parents as professionals. They know their kids best. We try to help them see us as parents.

I think if I can remind myself, that is the place where we are coming from. Parents have visions of their child, they have some expectations about what it's going to take to educate their child. If I can listen to it and take it from there, I think and even if we disagree, at least they feel that I've been, I've tried to put myself in their position.

Some comments by mediators reflected the sense of recognition and validation that parents seem to need from schools. One mediator stated:

I think that when parties on the school side make some acknowledgement about the important contributions parents have made, that goes a long way with parents. I've seen that have a very positive outcome.

And likewise, mediators recognized the unfortunate plight of some special education directors in some cases. The same mediator had this to say in support of directors who sometimes take the heat for events they didn't cause and did not intend to happen:

And sometimes through no fault of their own, they (special education directors) are the enemy as far as the parent is concerned, and there's not a lot they (directors) can do in a case like that.

Mediators elaborated on the value of being able to "take on the view of another" and the opportunity that mediation could offer to see each other in a different light. The need for mutual validation and recognition was sometimes granted through the mediation process.

Parents spoke of feeling that their child was not valued as a human being with unique strengths and abilities. A parent recounted a personal devaluing experience by relating an encounter he had with a special education director:

I guess he's retired now, he's not there any more, but he was very belligerent and insulting and when you tried to talk to him one on one,

when there was no other witnesses, he would say things like, well, your son is retarded. There is nothing else we can do for him. You had better accept the fact and all kinds of insults like this, which you know, put parents, as myself on the defensive. He does have a job too as far as the budget, and I explained to him that I understood that. You know we are talking about people's lives here, you know, special education. The kids need a jump-start a lot more than a normal kid to get going in life and succeed.

Parents spoke of schools setting a ceiling, de-valuing the child in a way that imposed limitations on what they perceived as reasonable aspirations for an individual child. This most often was described in the area of literacy. Parents believe that their children can, and will, learn to read with the proper assistance. There were cases of parents perceiving that the school either did not believe that the child would learn to read, or they perceived the school demonstrated a weak commitment to improving the opportunities for learning to read. Another area that parents perceived that ceilings were set, thus de-valuing their child's abilities, was transition planning. Parents expressed great concern for the future of their children. They spoke of what would happen later in life, if interventions were not taken now? In some cases parents illustrated what they called "shortsighted vision" of the school system in not proposing "preventive" instruction particularly in the areas of reading instruction, behavioral support, and transition planning.

One parent expressed her dismay in that she felt that school did not “value” children like her son enough to help them prepare to reach their goals in life. In contrast she demonstrated the personal value of her aspirations for her children:

I see a lot of hope for my kids. I’m not ever going to kiss my kids’ hopes and dreams away like they want me to. I certainly would never do that. My daughter has hopes of going to college. One of my sons wants to own his own bakery one day. They don’t want him to go to vo-tech next year. They don’t want to put the language component in there for him. Is that right? I mean, this is what he needs. You know, it’s almost like they want to wash their hands of these kids. Teach them how to bag a grocery bag, and that’s fine, and go down and get a little minimum wage job and that’s a living. That’s it. And I’m not saying that’s wrong for people that have to do that. But I don’t think that when you have dyslexia, that it can’t be worked out, to the level that you can at least go to a vocational school and learn a trade.

The value of children in parents' lives was expressed in different ways throughout the interviews. This parent described the essence of children occupying “center stage” in the lives of parents. She stated:

Me and my husband are so close and we’ve worked with these kids (three children). He even works two jobs, he works nights. And he changed this a long time ago, when we found out that they had their learning disabilities, so he could be here as a family to have our meals.



We work with the kids every night after dinner. Everything is structured here. We wanted these children. And it's like this *is* our life. We're a very close knit family. A very happy family. And the school system knows this. They've even referred to the fact, you know, you're an exemplary family. Kids are great, even with all their issues. How are you turning them out so well? And their social skills are on top of the world. I mean everybody thinks they're great kids. And they are, I mean, not because they're mine, but I have no problems with these children. I just wish things could turn around for them. As far as their learning goes.

Parents relayed information suggesting the importance of school in one's life and community. An interesting finding of this study was that no matter how intense or costly the parent-school conflict had become, each parent interviewed expressed concern for the "health" of their individual neighborhood school and respect for teachers and school administrators. This was reflected in what is termed "institutional respect". Even parents, whose children were in private placements, expressed hopes that schools can continue to improve, and that other children can receive the necessary services in their home schools. Removal of a child from their neighborhood school was stated as a very serious decision for parents. Tradeoffs were recognized, and parents expressed the desire that their children remain a part of the community in which they lived. One parent

points to the failing physical condition of school buildings in her town and the desire of her parent group to support their neighborhood school. She stated:

If things haven't been done then that's because it's neglect. And do you blame teachers? I can't truly blame teachers. Their books are outdated. They don't have paper, they don't have pencils, they don't you know, everything is crumbling. Even our schools. Now they're trying to get new schools put in here. It's like well until that's done, here's a whole school here off and on with no heat. You know another school the pipes are bursting or there's stuff falling down from the walls and so it's like now everything's been in neglect. Now they're trying to rectify it all.

The value of school as a "provider of hope" was suggested in several interviews. Parents reported looking to their school as "the experts" and the people who should know what to do. After experiencing conflicts and accepting that one's school might not be able to provide appropriately for one's child, parents expressed disappointment more than anger. This parent articulated her feelings about the importance of public schools to the parent of a child with disabilities:

It also can be very disappointing and a big let down when you realize the limitations of the public school system. It's more disappointing than learning about the limitations of your child. When your child is diagnosed with special needs or whatever, you know, you go through a grief process. Well, you also go through a grief process when you realize the special ed system has a disorder. And it's very sad.

An advocate spoke of the “institutional health” of a school system in this manner:

The best advice was to get out, but there wasn't a way out. We have a large family, limited income, and before schools of choice there was no way out of the system. We made a name for it; this was a dysfunctional system. It is like an alcoholic parent, abusive parent. This was literally a dysfunctional system, but it wasn't a dysfunctional system, for all people. If there was a doctor's wife or a lawyer's wife and they came into the area, the school system sometimes did not mess with them and would give them the accommodations they needed. We have this very poor section of town, we have projects. Kids from those sections would maybe not even be considered for special education because they didn't think anybody would fight it or question it. If they did, a team would put it down so that it almost became a social thing, a poverty thing, and a race thing.

I feel there's a lot of manipulation going on. To keep things in a way that is acceptable to the powers that be. And acceptable to the general public too. Instead of being leaders, you know, having a leadership role and trying to teach the general public about the rights of disabled, I think the special ed system is content with keeping the status quo. And kind of hold the special community back, and not recognize that they have a place in society. And it's just a systematic thing. I think it's systematic throughout society and the special ed system at school is not, they're not

trying to promote the rights, the abilities, the promise of special ed students. I think the general public feels that way too. They're not recognizing the value to everyone. And changing the educational system to be accommodating. Because everyone has special needs, everyone needs accommodations. Needs to be recognized as an individual with individual strengths and abilities. Unless that happens, the educational system is failing in every way.

### Reciprocal Power

An imbalance of power has been addressed in the professional literature (pp.164). This study portrays some of the power issues between parents and schools at the time of conflict. Data from this study support the concept that power is used intermittently by both parents and schools during the course of attempting to resolve conflicts. A "reciprocity of power" was communicated in this study, contradicting previous conclusions that school systems maintain all the power, and that parents are at a disadvantage in the power arena. Power issues were revealed by participants in a dynamic exchange of events, activities, and outcomes that either escalated, de-escalated, or ended conflicts. Parents and school employees revealed bases of power and tactical maneuvers that were employed either consciously or unconsciously in an attempt to "get what they wanted" or put an end to a conflictual situation. Power was described as being used both constructively which tended to de-escalate conflicts, and destructively, which

resulted in displays of coercion, intimidation and retaliation, and consequently escalated conflicts to the next level.

Data from this study depict the use of power as a reciprocal "dance" that often occurred once the struggle had begun between parents and schools. A school official describes the process as "a back and forth" process. When asked about the strengths of mediation, she responded:

It (mediation) can help a process that has been stuck move on.

Sometimes helping to put away an ongoing kind of negative situation.

You know, in one of the situations that has been going on for a few years, before I came here, the mediation was able to put together an agreement that people were able to live with and stopped the back and forth, back and forth, so I think that was positive.

A parent described the interactive "power play" between the school system and herself in this manner:

You know, it's just like no matter how angry I got, the more angry they got back. The angrier I got, the worse the response was. I'm sure I was very annoying to them. It was a huge file because I was so active, but they're very good at wearing you down. And I was worn down a number of times. It was like fighting, all the time. It was like pushing back the water. No matter where you pushed, I mean you were met with resistance everywhere.

Another parent described the use of reciprocal threats:

The fact of the matter is, I didn't want everything that happened. And I stressed this to people that I was dealing with. The administrators, the principal of the school and she actually threatened to take me and my husband to court, if we didn't take him out of her school.

This parent banded together with a group of neighborhood parents and she had this to say:

We did a lot of comparing of our children. We gave all the information to my advocate. She was going to go forward on behalf of the children. We were going to do a class action suit. But one of the mothers took the information and used it for her benefit, and the whole thing just fell apart.

Another parent describes a reciprocal display of power and emotion and described a meeting with the special education director:

We tried not to get anything personal about it, but then the personal attacks came. I had to say to them well you know, we are going to have to bring this to a lawyer and stuff, and as soon as he heard that, you know, all of a sudden he started going a little off the wall. I mean violent, yelling, and stuff like that type of thing. He was just being spiteful, or his budget, he didn't want to spend money. That was the big thing.

A parent described that her tenacity was powerful enough to turn a situation to her favor after she demonstrated that she was not going to back down:

I don't know what I could have done to decrease the conflict.

They obviously weren't going to. I think she (special education director) wanted to see how far she could push before I would relent and whether it was going to be worth her while to fight me. After leaving a meeting with my advocate, we walked out shaking our heads, saying the same thing saying, "what was that all about?" and I said, "you don't know?" Well, I said. It was all about power. I guess she has decided that it's not worth her while to fight because so far she hasn't given me any more grief. So it's like she's done a complete turn around. I should have gone to mediation the first time. There was never any doubt in my mind that I was right and they were wrong.

Another parent whose tenacity resulted in getting the services she desired described the process that resulted in a superintendent granting her wish after she had been unsuccessful in team meetings and mediation. She offered the following:

I wonder if she (special education director) thought in one sense that I wouldn't take it any further. That it was a challenge on her part, that it was her position to say no...to see how far I would take it, and then once I got to the next level, she knew that I wasn't going to go home. My thought process on it was realistically, the head of the special ed

department is the “pit bull” to keep parents away from the superintendent.

Once you get past the pit bull, then something can happen.

An advocate describes her perception of the use of power by a particular special education director:

Sometimes it was money, or the appearance of setting a precedent. We can't do that because... But in the end it was more the attitude. The longer they didn't do it (provide services) I think the idea was the more money they saved. And the harder it was for parents. It was like punishing parents for trying to get service. If you had to go through mediation, wait on an appointment, and that didn't work, you had to wait and go through a hearing, it became like jumping through hoops. It was almost like, depending on the attitude of the attorney for the school system, whether it be one who really wanted to service kids and do the best at a limited cost, or whether, it got to be a personal thing - like we're not going to do it and you can't make us. And you literally had to do all the steps to go to hearings, right up to hearings, to get them to do it. That meant file violations, non-compliance, write letters to congressmen, the whole nine yards, to get to where you should have gotten at the beginning, just because the child was disabled. I think he (sped director) learned somewhere along with a lawyer, that you don't have to do it - that is, listen to a mediator or a hearing officer, you can delay two or three years before anything really happens.



Regardless of how the dynamics of power played out in individual cases, parents, school officials, and mediators, recognized the “human costs” of the consequences of such conflicts, and uses of power. A parent, who went through hearing and later became an educational advocate, described the impact of her experience:

Oh it was an absolute nightmare. It was torture, I’m sure it was torture for them too, because I made it miserable. You know, their misery increased every time mine did. Every time they made me more miserable, I made them more miserable. It was an absolute nightmare. And I look back on the whole process, it took two years, and it was, actually, I went past hearing through the court. Actually it was settled right before, a week before the hearing, and they (the school) did everything that they were supposed to do. But it took two years. And for that two years, I look back, and I wonder how I ever lived through it. It’s right there in your face at the forefront of everything. All day, everyday. And sleeping at night and the whole thing. It just, just takes over your life.

She continued to offer perspectives gained from working with other families:

Frankly, I don’t feel that I’m the only person who felt that way because every client I’ve ever spoken to has told me the exact same thing. It just goes right to the forefront of your entire existence, fighting with the school. And everything else, your other kids at home don’t get as much attention as they should. Everything takes a back seat to it - personal relationships. I have many clients who become divorced during the time

they are arguing with the school over services, because it is so difficult. I mean nightmare is probably the best word.

### Constraints

When asked what additional actions could be taken to decrease conflict between parents and schools, easing of fiscal constraints was given as a predominant response. Constraints, in this study, were categorized as constraints on resources of time, money, personnel, and materials. Team functioning constraints and political constraints were identified as factors that escalate conflict.

In an ideal world, there would be enough money to provide all persons with everything they need. Participants in this study recognized the role that constraints played in escalating conflicts. Parents, special education directors, and mediators all mentioned the constraint of financial resources as a source of escalating conflicts. As a “gatekeeper” of funds, school officials are keenly aware of the position they are required to perform to successfully manage budgets. One special education director presented her concerns in this manner:

My biggest concern right now in Massachusetts, Chapter 766 is the only game in town when it comes to mandated services. It is the only place, we have no choice but to provide the service if it is needed. And the changes in health insurance, they have eliminated the Office for Children and cut social service budgets. There is no funding help. I am looking at a budget in two towns right now where anywhere between \$50,000 and

\$150,000, and for a small town, that is a lot of money. If we have two students move in, it just kills us if they need an out of district placement. I went to school to teach and work with people with special needs; I didn't go to fight about the costs of education. Our funding structure - that's a big issue.

Special education directors, principals, and parents viewed constraints as an issue at the center of some special education conflicts. Through their reported interviews, it was recognized that fiscal constraints not only prompted conflict, but they generated two kind of turf battles mentioned in the interviews. Some parents of students with severe disabilities stated that the special education budgets were being taken up by over identification of too many students with mild disabilities, thus not leaving enough funds to students with more severe needs. Some parents of children with mild to moderate disabilities, expressed that kids with severe needs used up a large percent of the special education budget, leaving little money for serving those kids with mild disabilities. A similar scenario was portrayed among discussions with principals, only the turf battle for dollars was expressed to be between general education and special education funding. A parent expressed concern and embarrassment that she found herself in the middle of such turf battles and stated:

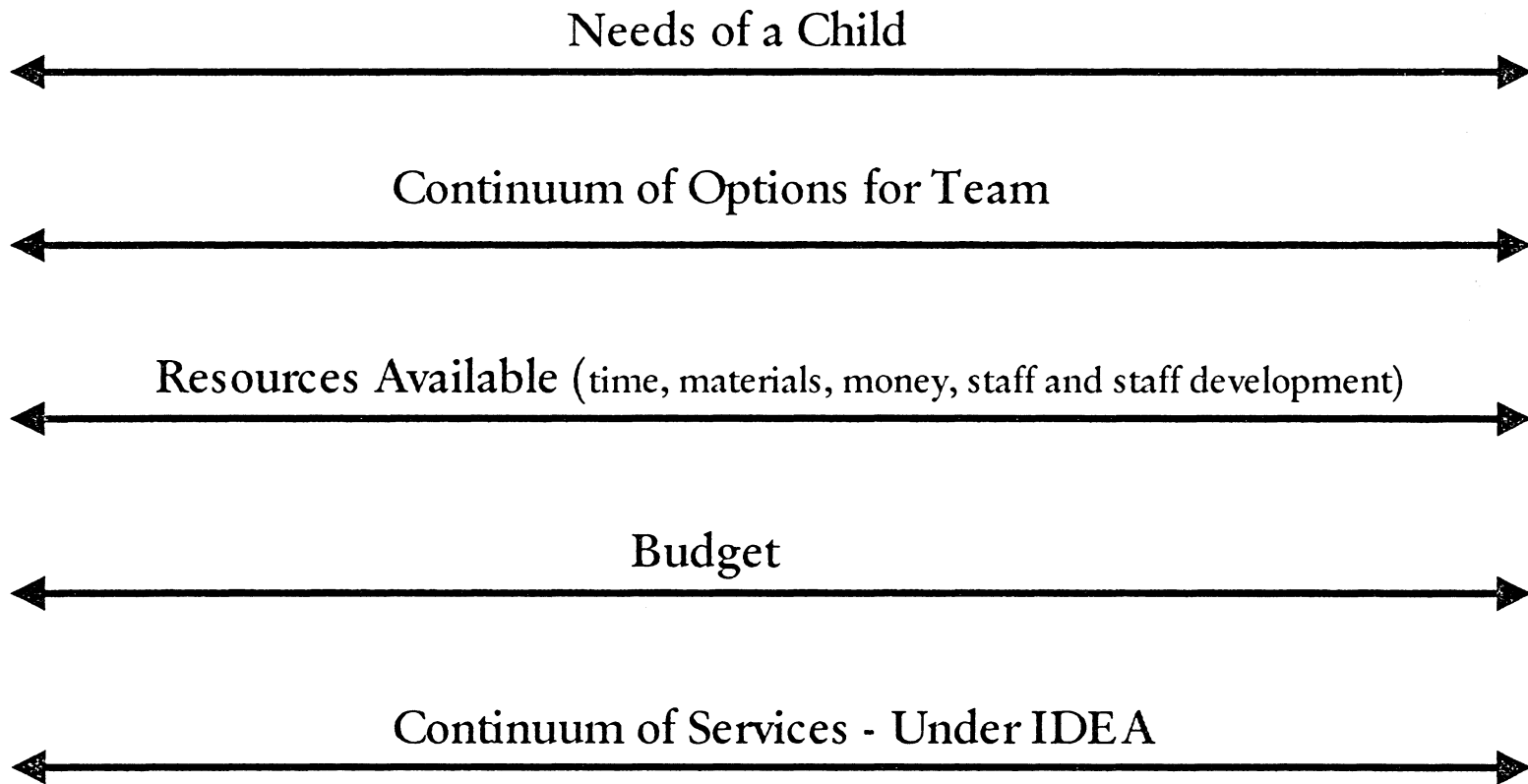
I think we need more money to equalize services in different districts. Money is an issue in that someone always has to foot the bill. But it shouldn't be the issue in whether this particular child gets his services in this system today. Parents should never be made to feel that if

they move to a certain area, they will get crosses burned on their lawn if their child is identified as a child costing, say - \$30,000 a year or something like that. A parent should not be made to feel guilty because their child needs services, or that he is costly, or more costly than another child in the community. Somehow we have to equalize the responsibility to service all children.

An advocate reported that “masked issues” often hid fiscal constraints. When asked to explain further, she described being in team meetings when parents were confused about why services couldn’t be provided. School officials were not able to use lack of funds as a reason to deny services, but parents strongly felt that money was the underlying reason. Since no one could “truthfully” state it was due to lack of funds, other excuses were offered to parents. This and other examples provided from advocates addressed an issue labeled “constraints on team functioning”. Several situations were described in which an IEP team was not able to continue functioning as a team once requests for services exceeded a certain amount of money. The team, under these circumstances, would generally disperse and the decision making was then turned over to a special education mediator. One advocate stated this as a critical factor that escalates parent-school conflict. See Figure 6 to examine the nature of multiple factors in special education decision making.

Figure 6

## Multiple Factors in Special Education Decision Making



### Communication

Frequency of communication, lack of communication, lack of follow up, misunderstood communications, and timing of clarifying attempts were given as factors that escalate conflicts between parents and schools. Lack of communication was employed as a tactic to purposefully distance oneself from conflict. Unwillingness to engage in communication could be used as a distancing factor by both parties. The perception of withholding information was a factor identified that escalated conflicts. The communication process described by some participants involved actions that led to non- actions or unexpected actions. See Figure 7. When expectations and assumptions were not met in the areas of communication, conflicts escalated.

The number of persons involved in team meetings was reported as a deterrent to full expression. Not only was a large number of meeting participants intimidating to parents, it served as a block to parental full expression. It appeared that school officials brought in “everyone” who knew about the child to help clarify difficult issues at team meetings. Parents reported that this was absolutely intimidating and did not allow them to discuss or communicate their feelings. Some parents perceived this was not a tactic aimed at “clarifying communication”, but instead was an intimidation tactic used by schools.

Simply not listening or being heard was a communication factor that escalated conflicts. Communication perceived as untrue or deceitful was a factor that escalated conflicts. What do we know about communication that de-escalates conflicts? Data indicated that communication issues could be divided into two areas: Mechanical Aspects

Figure 7

Generation of Conflict

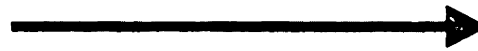
Parent

School

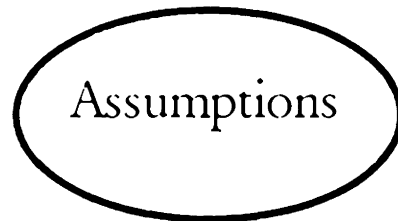
Action



Action



Non-Action



Non-Action

of Communication (non-returned phone calls, oversights, non-intentional neglect, etc.) and the Process of Communication viewed as an exchange of persons' deeply held beliefs and the revelation of persons' individual needs.

Much of what was revealed about the process of communication as a revelation of one's beliefs and needs in this study was discovered by careful analysis what participants said about communication during the mediation sessions. During the mediation sessions, most respondents stated that they could fully express the issues that were meaningful to them. Some expressed that this was the first time, they felt that they could really get out the compelling issues, feelings, and needs they were experiencing throughout the conflict. Due to the nature of conflictual situations, parents and school officials pointed to mediation as, sometimes, the first real ability to communicate after unsuccessful tries at having authentic communication. In the presence of a neutral third party, they felt safe enough to really reveal their innermost needs and were able to describe the importance of their deeply held positions. Advantages to full expression of feelings, ideas, and needs are documented in a later section of this analysis (See Strengths of Mediation , pp. 144-147 of this study).

### Trust

Neither parents or school personnel use the word "trust" often in their responses to questions when they described behaviors, feelings, and attitudes that reflected degrees of confidence or lack of confidence in their ongoing parent-school relationships. For parents, trust of school personnel appeared to be either intact or broken. If trust was



intact, parents felt a certain amount of predictability and security about the actions of school personnel. They were able to tolerate negative events periodically without attaching too much importance to any one single event. They generally could verbalize that school personnel were professionally capable and were considerate of their child's needs. These parents appeared willing to give school personnel the benefit of the doubt when minor events became problematic in the course of their child's school week. An occasional misunderstanding of negative experience was not viewed as a lack of caring or a lack of capability on the part of the school. In essence, trust was still intact.

Conversely parents in broken trust relationships with schools described difficulty accepting suggestions from school personnel. Parents in this group reported they were less satisfied and less inclined to see their parent-school relationship as one of mutual giving or mutual benefit. They expected less positive outcomes from their schools and viewed personnel as uncaring, unresponsive, or detrimental to their child's well being. Regardless of positive actions that school personnel took, parents in broken trust relationships found it easy to explain away school's positive actions. It appeared that to be "fooled again" would just hurt too much. They were not willing to risk trusting the school again if wronged once. Every effort made by school personnel was described as one more piece of evidence indicating that the schools efforts toward problem solving or reconciliation were just a sham and that nothing really had changed. Parents retained lingering doubts about the trustworthiness of particular individuals or their school in general. They lacked the confidence and assurances that could allow them to fully accept school personnel's demonstration of good faith efforts. After a point, they no longer

maintained hope that the parent-school relationship had value in and of itself or provided benefit to their child. Parents reported turning points in their ability to trust and remembered the point at which they were no longer willing to risk the hurt and disappointment that may come if they took the risk of trusting again. It was at this point that parents requested out of district placements, changes of schools, mediation, or due process hearings.

To compound an already complex issue, school officials rarely were made aware that these feelings were so predominant in a parent's mind until they were hit with requests for mediation or due process hearings. From a pragmatic perspective, schools continued working through issues and making attempts toward additional problem solving or reconciliation. It was as if the school were "in the dark" about knowing the point at which a parent had simply decided not to work with the school. School officials even by parent report often continued vigilance and made efforts to clear up signs of confusion long after the parent felt the situation was hopeless. It was reported by parents and school officials that a request for mediation was on occasion the revelation by a parent that "I can't or I won't work with you any more".

Cross case analysis resulted in the development of a sequential mini-theory about the essence of trust between parents of children with disabilities and the professionals that work with these children. The age range of children in this study was 4 years to 20 years old. Parents, when asked to reflect on critical incidents that preceded requests for mediations or hearings, sometimes chose to provide early information that provided a historical perspective of their conflict situations. This information resulted in being able

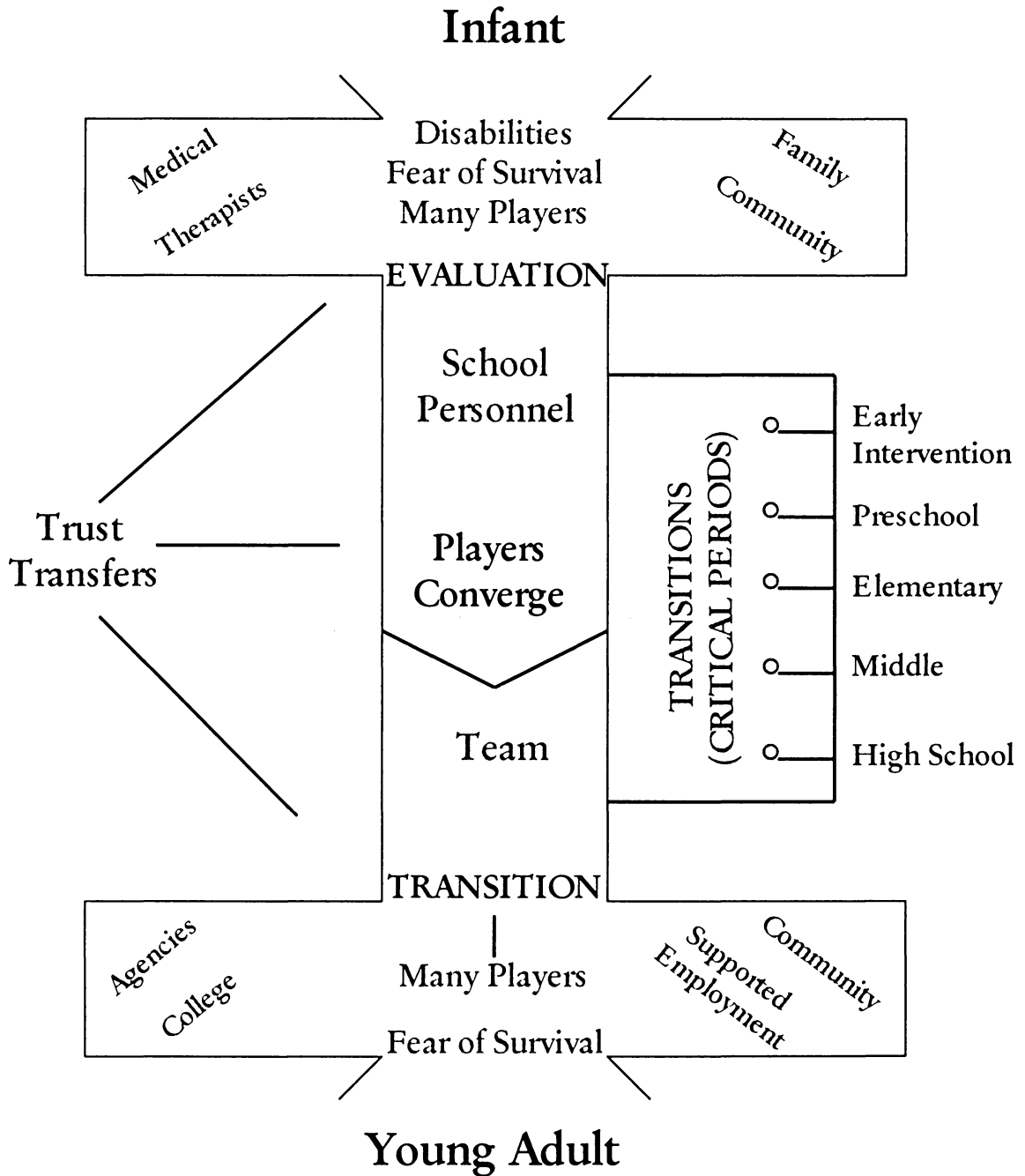
to look across cases and develop ideas about some common trust issues. The issues of trust reported resulted in this proposed theory about the importance of trust in parent-school relationships.

When a young child is identified with disabilities, parents place their trust in the medical professionals and therapists who provide early medical and therapeutic intervention for their children. Parents report this time period in their lives as being one of intense confusion, emotions, and a time at which they felt vulnerable. For some parents, the predominant fear was “fear of survival”. Much of their energy went into simply desiring their child to live. As parents worked through early “trying” periods with their young children and dealt with preschool issues, their hopes and trust shifted somewhat away from the medical community toward therapists and early intervention specialists.

When a child attended a preschool program, parents were asked to make their first major “trust transfer” away from the medical/therapeutic community to the educational community with continuing support from therapeutic professionals. This was a difficult time for most parents who experienced this process (see Figure 8). Throughout a parent’s and child’s life, they were required to make many trust transfers and at these junctures, parents reported their most intense fears and vulnerabilities. Cross case analysis revealed that even the “experienced” parents had concerns about the transitions to elementary school from preschool, from elementary to middle school, and to high school. Transitions remained “critical periods” in a child’s and parent’s life and times at which communication with school personnel became the most important. Critical periods

Figure 8

Trust and Transfers of Trust



required sensitive and vigilant understanding from school personnel to smoothly transition children *and parents*. Parents reported needing certain responses from special education director and principals that would have given them the confidence and assurance that these transitions could be accomplished safely and successfully. When these assurances were lacking, conflict tended to escalate.

Parents are required to transfer trust in order that their children move through the levels of public schooling and become able to conclude their programs. Transition planning was reported as critical whenever each transition was required, but of great importance when children were preparing for the time that they would no longer be under the umbrella of public school services. Parents reported a fear similar to the fear that was present when they first learned of their child's disability. There was once again the fear of survival; only this time, survival was in the adult world. Again, many professionals had to become involved in their child's life and the situation was much like the preschool years with various community agencies and therapeutic support personnel in place. This was reported as a critical period in the life of families, and one that necessitated careful handling by school personnel who assisted with transition planning. When this thoughtful handling was not perceived by parents, it became a time of predictable parent-school conflict and a time of intense emotional pain for parents. As for all students, graduation or program completion signals the culmination of years of hard work and uncertainties about the future.

The consequences of broken trust resulted in widening discrepant views between parents and schools, and resulted in an unwillingness to take the risks necessary to

continue communicating about the needs of children. It appears that conciliatory attitudes could be maintained as long as trust was intact. Once broken, parents felt they could not continue to work with or try to understand school officials' positions. School officials were, in many cases, unaware of the point at which a parent chose to stop trusting or believing in the power of schools to make things right for children.

### Strengths of Mediation

The strengths of mediation are presented in this section. It is important to recognize that participants' responses were coded and categorized, however, there is overlap among the designated categories. For example, when discussing communication issues, a mediation participant might connect to thoughts for relationship building that resulted from open and honest communication. The interaction between categories is apparent in participants' comments.

#### Allowing People to be Heard

The value of being open to disclosing facts and feelings was discussed by a mediator who shared his viewpoint about persons remaining open, not shutting down in the process of handling conflict:

And it has to do, it has to do more with human nature than it does with, I mean you know, we're talking about school conflict but it's a human nature kind of thing. So what I wish they would do is, when someone shows their concern or their disagreement, or anger, or

frustration, to not let that build a wall. That they would be able to feel feedback, listen even though they are in conflict. Because I think too early the conversation gets shut down. And I know it's understandable, people are tired, they're stressed, they've only got a half an hour, teachers feel for instance that they're doing the best they can. But I think if somebody there can play the role of always being the one who's going to, no matter what the rest of the team is doing, be the one who is not shutting down but keeping open. Trying to reflect back on what they've heard the other side say. Just like what we do in mediation.

Parents, school officials, and mediators valued mediation as a method of full disclosure of facts and feelings for the parties involved. Participants stated that in the course of conflict, parents often reached a point that they did not wish to continue a dialogue with the school. When this occurred, mediation became an opportunity to re-open communication, or as one school official stated "it's an opportunity to unstick a process that has become stuck". Under the direction and presence of a mediator, parties expressed that they felt it was safe to openly and honestly disclose their underlying needs and interests. Parties expressed that through the re-opening of dialogue in the presence of a neutral third party, they were better able to understand their differences. Mediation participants shared these thoughts about being able to disclose information and feelings:

- "We could put all our cards on the table."
- "You get to see the school's position clearly."
- "It helps to 'unstick' a process that's stuck."

- "You can look at issues and sort through them."
- "It gets people talking and everyone knows what the problem is right up front."
- "You can state your feelings and your case."

The mediation process starts by providing voice, allowing people to tell their story in their own way. The mediator listens for values and interests and summarizes the story in those terms. "This process is unique in that it allows parties to view each others' contexts and perceptions as well as facts" (Stewart, 1995).

Another participant stated:

I guess I would say that it is a process that helps to clarify situations and if you are feeling stuck or boxed in, not able to do what you feel is appropriate for a child, that this is a method whereby both parties can get on the same page, so to speak, and work together.

Mediation participants had more to say about the communication opportunities that mediation provides:

- "It opens lines of communication."
- "It takes the stress of the two parties."
- "It pays attention to peoples' basic needs."
- "It gets people talking again."
- "Both parties can get their story told."
- "It's a neutral environment where both can feel safe."



A part of the communication process that was identified as helpful was that mediation was able to “take the stress off” the two parties. It allowed for lament; emotions as well as issues could be put openly on the table. Communication could then occur in what participants described as an "emotionally safe" setting under the calming influence of a skilled mediator. One mediator described this strength of mediation by saying "it's not a heavy handed procedure; it's a forum for getting the human side of issues heard." He described how this might be accomplished by stating:

The mediator depersonalizes and rationalizes the issues in disputes by breaking down antagonisms through neutral language and reinstatement. The mediator removes the emotional "loading" of a statement or question and rephrases it, capturing the substance in a form intended to enlist receptivity from the listener.

### Empowerment

Mediated negotiations reduce the effect of raw power, politics, or "negotiation game playing." The mediator temporarily suspends the effect that the distribution of power among relationships would normally favor. The mediator can then use a process-based authority to break up any deadlocks which authority patterns may have contributed to the conflict (Stewart, 1995). The end result is that participants can feel empowered.

Participants shared these reflections on a sense of empowerment that may be present in mediation:

- "It makes the school sit up and listen.
- "You can fashion your own agreement with participation in the outcome you form."
- "You feel more like a participant in your child's education."
- "It's my protection to hear what they have to say."
- "It allows the people most directly involved to self-direct."

### Relationship Issues

Every dispute has two kinds of interests: substantive and relationship. The relationship tends to become tangled in the problem and held hostage to it (Stewart, 1995). In the area of relationship building, participants mentioned the "transformative ability" of mediations. One parent said that a strength of mediation was it allowed each party to see the other in a different light. Some participants stated it allowed them to start talking again and to salvage their relationship. More than one parent said that mediation improved their relationship with their special education director and that they felt more comfortable going to their special education director after their mediation. Some described mediation as an opportunity to resolve problems and go a step further towards rebuilding relationships in which trust had been broken:

- "It salvages relationships."
- "It can enhance a sense of community."
- "It can strengthen and rebuild relationships."

- "You can start over; start to rebuild trust."
- "Now I get along with the special education director."
- "It gets people in conflict seeing each other differently."
- "It informs you what can occur (possibilities)."

A mediator offered this summary of the possibility that mediation can start to build stronger partnerships:

Mediators really pay attention to the whole thing. In part because the relationship is important and if there's a way to get people looking at each other a little bit differently then maybe in the middle of conflict, then you can help position them so that they have new eyes about how to solve it. And also they can look at the next issue that comes down the pike a little differently. Because they're not in an adversarial pose that the conflict may have drawn them into. So it's paying attention to the relationship and paying attention to ways people can understand each other. While the mediators listening hard for: Where is common ground? Where is understanding possible? It has a transformative effect for the parties sometimes. Doesn't always happen that way. Sometimes people walk away as bound up in the dispute and their hard feelings about each other as they started. But there is the possibility of their walking away having in some way changed their view of each other, and their view of the possibilities, as a result of what the mediator has tried to do.

## Practicality

Another strength of mediation offered by participants was that it is a practical, time efficient, and relatively inexpensive tool for problem solving. Participants viewed mediation as less emotionally and financially costly than hearings and appreciated the fact that attorneys did not need to be involved, in many cases. Those who favored not involving attorneys liked the process of self-directing and having a say in how the problems were going to be resolved. Because of the practicality of mediation, most participants stated that mediation should almost always be the starting point for formal resolution of special education conflicts. Even if mediation was not successful in resolving the issues, it was described as being a helpful first step toward getting resolution. These statements about practicality were offered:

- "It's more expedient."
- "It need not involve attorneys."
- "There's no travel, the mediator comes to you."
- "The mediator is in touch with both parties right away."
- "It's a common sense approach."
- "It saves money."

## Mediation Outcomes

Many participants, not only respected the practical aspects of mediation, they were pleased with the outcomes of mediation experiences. Some parents said they got all they wanted from their mediation experience and it prevented a due process hearing.

Participants stated they believed that mediation had a high success rate and that it usually resulted in positive outcomes. Even those who were not totally satisfied with the outcome of their mediations expressed belief that mediation was a productive and helpful process.

A mediator talked about the outcomes of mediation by saying:

The outcome, the decisions are made by the participants and not by the mediator, and so that they still have control of their situation, and what the outcome is. If it goes on to a hearing, no they are not going to be able to shape that outcome as well, and so that if that is important to them, then mediation would be something that would be very helpful and it would help maintain the relationship much better than going the more legalistic route, and that does happen.

Parents, school officials, and mediators had these comments:

- "It's strong enough to get the program your child needs."
- "90% of rejected IEP's are resolved."
- "I got all I wanted from mediation."
- "It prevented a hearing."
- "It's an opportunity to reach a compromise."
- "If a mediation agreement breaks down, it can be fixed."

By bringing teachers and therapists to the mediation, people who work with the child can share information and the mediator can keep the focus centered on the child and

the child's needs. Mediation works, in part, because it returns the focus of discussion to the common ground of the parties - the child's needs and experiences.

A mediator summarized the mediation process this way when he was asked, what would you tell someone who was considering using special education mediation for the first time?

There's nothing there to frighten you. That, and there's nothing important that you'll give up. This is a process where you'll have a chance to explore some possibilities. The mediator will try to put you at your ease, at your best. In the end if you decide to do anything different than when you walked in, it'll be because you decided to and you decided to make a commitment. And you also felt that that would be a good step to take. The mediator is not going to pose anything to you. And it's not going to be a highly formal sort of an encounter. It's going to be talking things over and seeing if agreement is possible. And then committing that to paper if you find that it is. It's an easy thing. And it's also, it's a highly successful thing. If you set down at that table, the open secret is when you get people talking together agreement is likely. You'll stand about an 85% chance of getting an agreement.

Previous studies of due process hearings found that parents tended to rate their satisfaction with the hearing process based on the outcome of the hearing and whether or not they considered they *won* in the hearing process. Parents in this study described the pros and cons of mediation in a manner that did not reflect that their *satisfaction* with the

mediation process was directly tied to the *outcome*. Parents and school officials willingly shared that though they may not have gotten all they wanted from a mediation, most would use the process again and saw value in the process regardless of whether or not they got exactly what they wished. The next section discusses some reported limitations of special education mediation.

### Limitations of Mediation

Some parents expressed concern that mediation did not have enough power. When questioned further about the meaning of these statements, parents described that they wanted the mediator to have “judgmental power” to tell the school system they were wrong, and to make them “fix” the situation. They expected that the mediator could “force the school “ to do things differently. When I reminded them that the basis of mediation was that the parties craft their own solution, parents generally said I know that, but I still wanted them to “make” the school fix the situation for my child. Following this kind of thinking process, some parents said that mediation gave them “false hope”. Since they wanted the mediator to fix things and they didn’t, they were disappointed in the process of mediation.

Some school officials stated that perhaps parents didn’t sometimes really understand that the mediator was not going to function like a judge or hearing officer. In my analysis of this situation, I interpreted the situation to be: Parents most often *cognitively* understood the role of the mediator, but *emotionally* wanted someone to just “fix it now”. Parents also wanted the school to be somewhat “punished” for causing them

so much misery. Parents stated that they wanted an admission of wrong doing by the school and were hurt that they never got that. It was difficult for some parents to acknowledge that a resolution through mediation meant an agreement would occur only if both parties themselves could craft it together.

### Lack of Power

Comments concerning the perceived lack of power or enforcement ability of mediation are presented below:

- "The school has the upper hand ultimately."
- "Mediation should have more power."
- "There's no ability to enforce an agreement."
- "I would like to see more finality to it."
- "It didn't seem the mediator had the authority to resolve."
- "It may give false hope."

### Questionable Use or Misuse of Mediation

A limitation of mediation expressed by school officials and mediators was identified as "how the process might be used". For example, some described that mediation was not able to be effective, if one of the parties entered into the mediation for the wrong reasons. Participants described that if one party used mediation "as a fishing expedition" or a fact-finding mission to identify what the other party would reveal before a hearing, the mediation process was compromised. It was mentioned that if either party



used the mediation process “just to look good” before a hearing, and to say “see we tried mediation and it didn’t work”, mediation was being used improperly. Some recognized that perhaps not every case may be suitable for mediation and if one wants “a pound of flesh or the glory of a resounding victory”, mediation may not be the proper choice. Some persons prefer authority based solutions, and mediation is not that process. Some participants mentioned that in cases where civil rights may be violated or legal precedents were needed, there may be a more appropriate forum for dealing with such a case.

All participant groups expressed some concern that mediation can be used for the wrong reasons:

- "Some don't understand mediation."
- "Some go through the motions without really committing themselves - fishing expeditions."
- "It can get too long and lose its effectiveness."
- "If a mediator doesn't understand their role and wants to advocate for one side or another, it's not good."
- "If a mediator is just interested in coming to an agreement, neither side is really satisfied."
- "If someone goes through the process just to 'look good' before a hearing, that's not right."
- "Maybe it's not right for cases that need a legal precedent set."
- "It's not a right choice if a person wants a 'pound of flesh or a resounding victory."

It is important to note that the possible "misuse of mediation" was viewed as a limitation that had little to do with the inherent efficacy of the mediation process itself.

### Educational Decisions Resulting from Mediation

Of 22 parents interviewed, and a total of 33 mediations in which they had participated, 78.7% resulted in signed mediation agreements. In an attempt to determine what actions are taken following special education mediations, it became important to assess what educational decisions resulted from mediations and hearings. Parents shared the educational decisions that resulted for their children as a result of going through mediation. Some parents (n= 7) experienced mediation more than once. Advocates (n=3) shared educational decisions resulting for their own children. Below are educational decisions that resulted for students:

- "There were only a few minor changes in the IEP."
- "My child did not get dismissed from special education as proposed. Actually he got a better IEP."
- "My child received out of district placement."
- "After the third mediation, an advocate negotiated an individual tutor. Three days before a hearing date, I got a private placement."
- "My child was given a full-time aide."
- "I received direct instruction and weekly progress reports on my child."
- "My child received an L.D. Specialist, teaching materials, a behavioral consultant, psychologist involvement, and OT."
- "My child was placed in the Wilson Reading Program."

### Actions Following Mediations

One of the reported limitations of mediation was that since mediation is not able to be "legally" enforced, it may not have "sticking power". After sessions are concluded, the agreements signed may not be honored by both parties. Though this was reported as a concern by several parents and school officials, the majority of participant groups did not report this as a concern. It appeared that most mediation agreements were signed in good faith, and most were honored after the mediation session concluded. There were some reports of "misunderstandings" or technical follow-up difficulties, but if this occurred, it generally was remedied. School officials reported that if they had difficulties with follow-up after agreements, they contacted the mediator and the mediator facilitated the process by clearing up misunderstandings, or informing the other party of difficulties encountered. The consensus of opinion was that enforcement of agreements generally was not problematic for parents or school officials.

Parents and some school officials stated that occasionally after leaving a mediation session, they felt uncomfortable with the degree to which they compromised in the mediation session. Sometimes participants felt that a mediator was pushing for agreement, and though both sides concurred, afterwards they had regrets. This was not reported to be a problem, necessarily, just an uncomfortable feeling that some participants described.

Parents and school officials reported that even if some dissatisfaction occurred after the mediation, that generally they felt that mediation diminished the conflict and both parties were able to go forward in their continuing parent-school relationship. Of

the three parents who experienced hearings, two had also experienced mediations. Each reported that the mediation process was more user-friendly, more humanistic, and much less adversarial than what they experienced in hearings.

## Chapter 5

### Research Findings, Conclusions, and Discussion

#### Introduction

I began this research because I was interested in studying factors that contribute to conflict between parents and schools and I wanted to examine the special education mediation process. A summary of my research findings is presented followed by discussion and recommendations for future research in the area of conflict resolution.

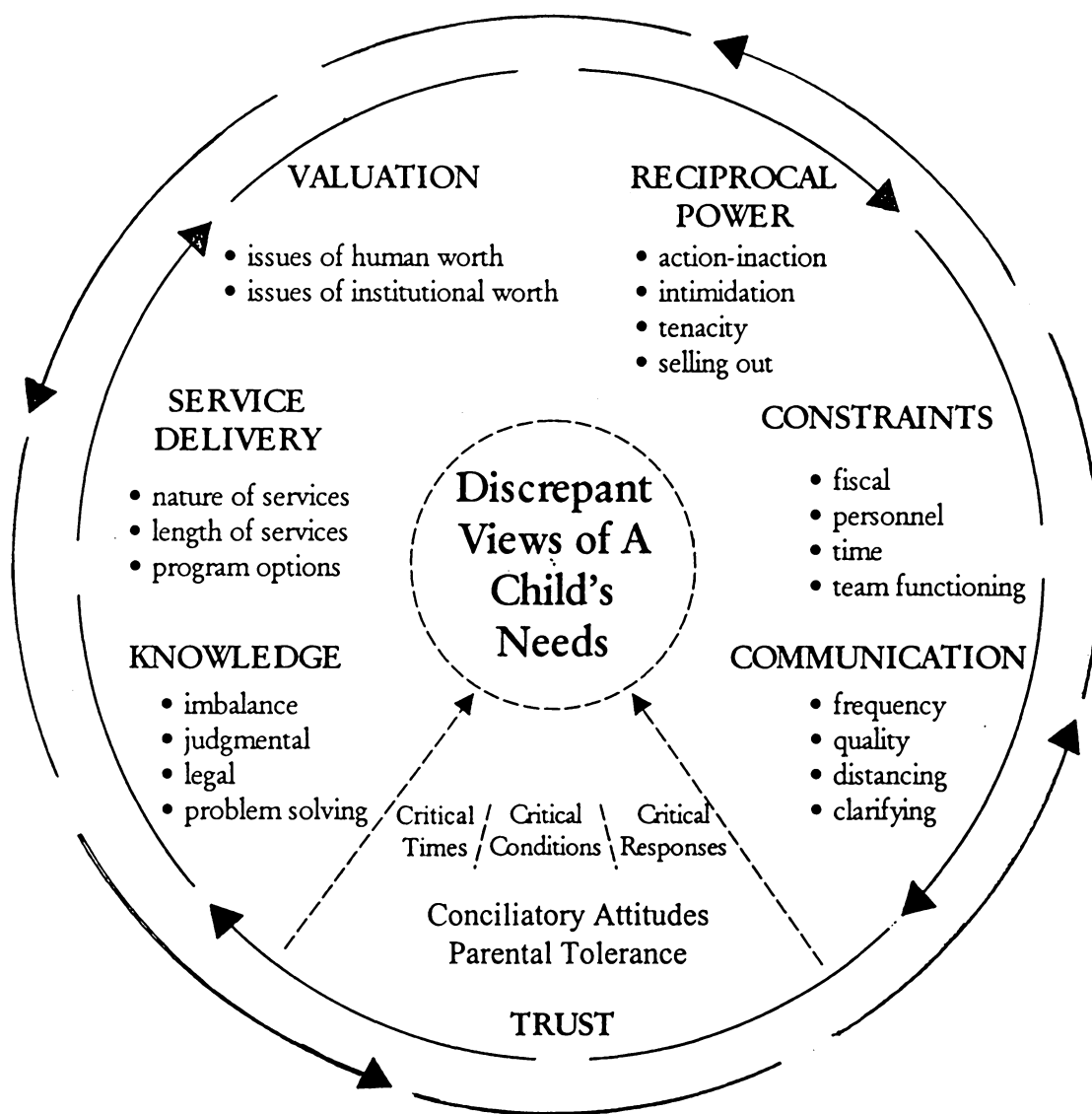
#### Summary of Factors that Escalate & De-escalate Conflict

This study provides a conceptual framework of factors that contribute to conflict between parents and schools. These interrelated categories are: (a) Discrepant Views, (b) Knowledge, (c) Service Delivery, (d) Issues of Valuation, (e) Use of Reciprocal Power, (f) Constraints, (g) Communication, and (h) Trust. Figure 4, pg. 160 visually presents separate categories of conflict factors that are linked together in a conceptual framework. Arrows indicate that the issues and events involved in the conflict process are interrelated and may operate simultaneously.

The identification of these factors provides a broader understanding of what contributes to parent-school conflict. Conflict is perceived as an abstract process that is accompanied by unexplained actions and at times, intense emotion. A value of this study is that it makes conflict more understandable by categorizing factors concretely. An

Figure 4

Factors that Escalate or De-escalate Parent School Conflict



Model Developed From Research Data

understanding of how these factors operate provides insights that may assist practitioners in handling the inevitable conflicts that arise in special education. Establishing substantial agreement between parents and schools determines whether parents will be satisfied with the “appropriateness” of their child’s education.

### Discrepant Views

Discrepant views between parents and schools undergrid many areas of parent-school conflict. When parents and schools have different views of a child or a child's needs, conflict tends to escalate until the discrepancies are reduced or eliminated. Conflict is generated when IEP’s are offered that are not congruent with parental assessment of one’s child's "problems". Parents perceive that too often schools rush in to offer assistance, proposing an IEP *before* seeking parental appraisal of their child's difficulties and needs. Interviews reveal that trying to narrow discrepant views at team meetings is difficult. Too many people attending team meetings and mediations make it difficult to problem solve because parents report that they feel overwhelmed and outnumbered. Conflict generally continues until discrepant views of a child’s needs are reduced.

### Knowledge

Parents critically need more knowledge about special education law and services. When faced with the adverse circumstances generated by special education conflict, parents state that they need more knowledge and more help. Parents question their ability to successfully advocate for their children without professional help and wish more help

were available free of charge. They report not having a “barometer” to judge whether outside help is reputable, or whether services really *are* appropriate.

Parents rely on school professionals to assist them and state that they place their trust in schools. If trust is broken or school professionals don’t seem to understand their case, they look to outside evaluators, advocates, and attorneys for guidance. Well-trained advocates and outside professionals are capable of de-escalating conflict according to school officials. Conflict is compounded and more difficult to manage when unprofessional or poorly -trained personnel outside the school system become involved in cases.

Poor conflict handling skills by principals and administrators escalate conflict. Mediators express a desire that special education administrators and principals acquire skills in improved communication and negotiation. Key players such as highly skilled teachers, who develop authentic relationships with children and parents and who exhibit excellent communication skills, often are successful at preventing or de-escalating conflict. A theme that is evident throughout this research is the importance of a teacher’s affective behavior. The wide range of insight, skills and self-knowledge a skilled teacher might bring to a situation can prevent or contain conflicts, according to participant interviews.



### Service Delivery

Conflict over service delivery issues is pervasive. Details of exactly how children will receive special education need to be completely understood by parents. Details of children's individual programs need to be clarified to decrease misunderstandings of IEP's. When programs are to begin, where services are offered, which children are involved, and how staff absences will be handled, are examples of some areas of confusion for parents. When these confusions are not clarified promptly, conflict arises over whether or not children are getting the services they are supposed to be receiving. This is a communication issue as well, and when parents are confused over service delivery issues they seek affirmation that the IEP is being implemented as written.

### Valuation

Valuing the parent-school relationship involves commitment from parents and schools. When persons on either side feel de-valued, their relationship is at risk. Preserving and strengthening this relationship de-escalates conflict and demonstrates respect. Learning to disagree without de-valuing the opposing party is essential if working relationships are to survive. Viewing children from a deficit perspective is a problem; parents do not wish to focus on children's deficits. When parents perceive their children are valued and school personnel celebrate their strengths while acknowledging their limitations, parents are likely to express satisfaction with school personnel.

Respect for healthy schools was reported in participant interviews. Despite their involvement in conflict with local schools, parents in this study expressed two deeply held convictions:

1. They prefer above other options that their children be educated in their neighborhood schools. To remove a child from their neighborhood school is perceived as an emotionally difficult and undesirable decision. When programs were not available, parents chose to send their children elsewhere; but their *first choice* was to keep their child in their neighborhood school. Parents whose children went to expensive private placements support this position.
2. Parents want to place their trust in their local schools.

### Reciprocal Power

Past studies have identified an imbalance of power between schools and parents suggesting that parents are over powered by school systems (Fish, 1990; Goldberg, 1984; Strickland, 1982). Results of this study reframe the “imbalance of power” issue as a “reciprocity of power”. Recognizing that there are underpowered groups and individuals in society, and that economic resources, social status, and influence affect one’s position of power, this study presents a different interpretation of the power issues between schools and parents. This study suggests that bases of power exist *within* individuals and that power shifts back and forth between parents and school officials in a cyclic fashion. Parents reported using power to get what they wanted. As stated by a special

education mediator, “a parent who will take you to the cleaners at any cost is in a very powerful position.” Special education administrators supported this statement. The tenacity of a parent with a single-minded view of getting what they believe a child needs is a powerful force. Income and social status may be less effective determiners of power than tenacity and willingness to take an issue as far as possible in search of parental satisfaction.

### Constraints

The manner that special education services are delivered to children is affected by constraints on fiscal resources, personnel, and program development. Parents may recognize the multiple factors in special education decision making (see Figure 6, pg.135) but report they believe that “lack of funding” is responsible for most of children’s unmet educational needs. Parents compare different school districts and services and question why services are more easily available in one district than another. Parents perceive that special education directors are deliberately withholding fiscal resources. Parents sometimes think that if they can “get past” the special education director, they have a chance at persuading a superintendent to relinquish fiscal constraints and grant desired services.

A constraint that was identified in this study that appears to be under- identified in the professional literature is that of constraints on team functioning. IEP teams are empowered to make decisions regarding children’s education, but *only to a certain financial level*. When costly programs or services are recommended, the team ceases to

function as a team and generally an administrator then becomes the chief decision-maker. This was identified as a critical incident that precedes requests for mediation. How can IEP teams continue to function as a team under such circumstances? This is a question outside the range of this study, but a question worthy of additional investigation.

### Communication

Parents and school officials generally are aware that their methods of communication are critical to their on-going relationships. Those engaged in conflict report having awareness that they need to monitor and adjust methods of communication throughout the stages of conflict. When conflicts escalate, communication may shut down. Mediators observe that ‘shutting down’ is a common method persons employ when fear and distrust escalate. Parents report that they do not feel free to communicate their needs when they are outnumbered by school personnel at meetings. For some, mediation provides an opportunity to express one’s underlying needs and reinstate communication.

### Trust

Assurances that children are safe, happy, and well cared for in schools strengthen parental trust and de-escalate conflicts. It becomes difficult for parents to continue trusting relationships in the midst of conflict. Continued unresolved conflict leads to parental distrust of school personnel and the services they provide.

Parents “test” the strength of their trust for special education personnel at certain periods and during certain conditions in a child’s life. Transitions are critical periods that require parents to “transfer” their trust to new school personnel. During these critical times parents need additional assurances of their children’s safety and well being.

### Discussion of Findings about Factors that Escalate or De-escalate Conflict

#### Abandoning Deficit Thinking

Parents want schools to recognize and celebrate their children’s strengths while acknowledging their limitations. Parents report feelings of hurt and disappointment when schools do not celebrate their children’s strengths. In special education a deficit model has been adhered to, a view that disability is located within the individual. Historically, educators who focused on the etiology of learning problems from a deficit perspective did so with the hope of developing interventions to ameliorate or minimize these problems (Trent, Artiles & Englert, 1998). The deficit model may have served its purpose in that specific instructional strategies and methods were developed and tested for specific disorders. In a parent’s view, a child’s disabilities are only one part, often a small part, of *who* that child is. To comprehend the specific impact of a child’s disabilities, it is helpful to consider the complete context of student’s lives.

#### Redefining Competence and Disability.

Children hold center stage in parents’ lives and are parents’ greatest source of satisfaction according to the National Commission on Children (as cited in Turnbull et.

al., 1991). Evidence provided by parents in this study documents that some children who display moderate to extreme disabilities in school can and do display incredible strengths in families, churches, and neighborhoods. Competence, ability, and disability can be situated in sociocultural contexts. It is time that educators develop a more positive and fluid working definition of disability that applauds strengths.

Job success and personal satisfaction for persons with disabilities are likely to be the result of looking at persons' abilities (not their disabilities) within specific sociocultural contexts. As we redefine the definitions of competence and disability, a helpful approach is to focus on developing a coordinated view of the whole child. During the 20th century, researchers have made great progress in the areas of understanding child development. This has made it possible for us to view more parts of the whole child and look for the full range of developmental issues a child presents.

It is important to involve students in defining their competencies. As parents and professionals it is often easier to suggest solutions than to wait for students to assist in the process. Students are in need of our cooperative help in making choices that are important to them, but most importantly they need to be respected as individuals. *Their* self assessments and motivations need to be appreciated. We are preparing students for life, for acceptance into society, and for acceptance of self as a unique and special person. We accept the whole person by taking the extra time to build relationships that allow students a voice. As Reed Martin states, "Parents may not be able to diagnose their children's learning problems, but in the end, they ultimately decide whether the prescription is working or workable." I would agree, and would adjust his view to

parents *and* students ultimately are the ones who decide what solutions are working or workable.

### Narrowing Discrepant Views

It is important to examine where discrepant views of a child's needs originate and to learn how to narrow the gap between a parent's view and a school's view. Taking constructive steps to reduce discrepant views involves identifying the underlying needs of parents and separating needs from positions. In planning IEP's it is helpful if schools consider family routines, what may be problematic about those routines, childcare tasks, sources of family support, use of services, and the roles of parents. Listening and incorporating parents' perceptions of long and short-term goals for their children help to narrow the gap between opposing views. It is important for educators to explain the goals they want for children but to be careful not to *overshadow* parental or student goals.

### Understanding Trust

This study proposes a framework for viewing the importance of trust in special education parent-school relationships. If school officials pay attention to the critical times and critical conditions in children's lives and parents recognize this, the likelihood that trusting relationships can be maintained is increased. The critical understanding about trust that this study reveals is its link to an early response to conflict. Recent reports (Ahearn, 1994; Schrag, 1996; Symington, 1995) call for early response to conflict. There are obvious reasons to respond early to conflictual situations. However,

existing literature, to date has not made the association between early response to conflict and the ability to maintain trust between parents and schools. This study suggests that early response to conflict is critical because *it can salvage a key ingredient in workable parent-school relationships-trust*. This study reveals that once parents decide to cross the line and decide not to trust schools, the parent-school relationship experiences “broken” trust. Parents report that when trust is broken, actions on the part of the school to remedy the situation are perceived as “too little, too late”. It is important that trust be maintained and one effort that school systems can take in this behalf, is to respond to conflicts early before trust is broken.

Trust is a foundation of satisfying, lasting, human relationships. Trust between parents and service providers for children with disabilities is either intact or broken. Efforts that parents and schools undertake to work together in relationship building provide a payoff to both sides in that trust, *if carefully guarded*, can remain intact. If trust has been broken, the “therapeutic” aspects of mediation may open doors to a reinstatement of communication between parents and schools. A continual responsibility of parents and educators is to protect the trusting relationship, so that students can maximize their opportunities for learning.

### Collaboration in the Midst of Conflict

IDEA 1997 has a lot to say about parental involvement and enhancing the roles of parents in the provision of education services. The expansion of parental involvement is evident throughout the act: in eligibility meetings, in discipline, in re-evaluation, in



progress-reporting and in procedural safeguards. The involvement of general education teachers in IEP meetings enhances the involvement of professionals in the team process. Much has been written about parent-school partnerships and collaboration, but professionally, little is written about how to maintain collaboration in the face of adversity. A challenge to parents and educators is to maintain an attitude of conciliation and collaboration when disagreements arise. This study supports a previous finding of Athos, et. al. (1976).

The ways that people work through stages of conflict determine whether they develop effective relationships. The relationships that are described by parties as being effective and satisfying tend to be ones in which general expectations are clarified early on, specific expectations are explored in detail, differences are surfaced and negotiated, and the bases and limits of trust have been worked through.

### Institutional Change

Changing schools to become more skilled in preventing handling school conflicts is needed. This may require reconfiguring roles and changing governance systems to allow for early detection and prevention of conflicts at the school level. IDEA 1997 has significantly enhanced the role of parents in the special education process. Strengthening the role of families in an effort that emphasizes the promotion of competence, respect, and collaborative problem solving, conveys a sense of joint responsibility and participatory decision making. It is an opportunity for parent-school

partners to feel valued, important, and equal. Placing an emphasis on resolving conflicts requires planned change and conscious effort.

An infrastructure has begun to be built in some schools and school districts that involves peer mediation and school based conflict resolution. Some schools are changing their climates concerning conflict handling by instituting peer mediation programs.

Preventive measures and timely interventions can be undertaken by all parties involved in parent-school conflicts. Conflict can escalate as a direct result of actions taken, or de-escalate as a direct result of actions taken. Sound communication, negotiation, and problem solving skills can be taught in a structured fashion. Dispute resolution strategies and early prevention programs can positively impact the culture of the school and the community and result in more frequent resolution of differences.

School principals and special education directors report that they spend a considerable amount of time managing parent school conflicts, but training in negotiation, communication and structured problem solving is not generally a part of administrator training. Some Massachusetts school officials in this study reported that they received training, however, these administrators may not be representative of administrators in general. Massachusetts is a state with a long history of emphasis, training programs, and information dissemination in the area of negotiation and conflict resolution. The geographic area is influenced by strong programs at the University of Massachusetts and the Program on Negotiation at Harvard Law School. Many school officials in this country are not located in geographic proximity to such educational

opportunities. Preservice and in-service education would equip school decision makers to more confidently settle disputes involving students, teachers, or parents.

### Using Conflict Constructively

Some researchers in the area of conflict have considered conflict to be destructive if the parties involved are dissatisfied with the outcomes they feel that they have lost as a result of the conflict (Deutsch, 1973). Constructive conflict, on the other hand, exists if the involved parties are satisfied with the outcomes and feel they have gained as a result of the conflict.

Most persons view conflict in negative terms. But a number of important and positive effects have been attributed to conflict, among them are: (a) preventing stagnation, (b) stimulating creative problem solving, (c) contributing to self-assessment and skill testing, and (d) engendering personal, organizational, and societal change (Filley, 1975). A goal of parent-school relationships is to view conflict positively. Without conflict there would be no growth, no learning, no change. Functional conflicts can serve a purpose and can result in improved services to students.

### Findings and Discussion about Strengths, Limitations, and Outcomes of Mediation

The second research question of this study answers what are the strengths and limitations of special education mediation according to participants and what actions occur following mediation. Findings of this study confirm previous mediation study findings in most respects. Parents, school officials, and mediators reported favorable perceptions of

the mediation process and its outcomes. Other studies (Forbis, 1994; Goldberg & Kuriloff, 1991) have linked participant satisfaction to outcome of the dispute resolution process. Parents and school officials, however, in this study report one divergence from some previous studies. Their satisfaction with the mediation process was not linked to a favorable outcome. Those who were dissatisfied with the results of mediation continued to express value in the mediation process.

Mediation has been applauded as a process that helps parties use problem solving skills and allows persons to retain control over their own outcomes while working on solutions to problems. This study of mediation in Massachusetts confirms previous literature findings that mediation is cost effective, promotes positive relationships, and can be an effective problem solving tool. Results confirmed that even when mediation did not result in a parent's or school system's originally desired outcome, participants reported *value* in the process. It was viewed as a productive "first step" even when both parties stated that mediation did not completely resolve all issues. Both parents and school officials were able to credit the mediation process as being informative and helpful in clarifying issues and positions related to the conflict. Mediation was reported to be less stressful, less expensive, and takes less time to complete than a hearing. Mediators helped parents and schools understand each other's points of view.

Mediation can have transforming effects; it can begin to strengthen relationships between disputing parties. Some mediation participants saw value in mediation helping to "pave the way" for a better working relationship should a future conflict occur. Given the long-standing relationship between parents and schools and the requirement to serve

students to age 21 if appropriate, this “transformative” aspect of mediation could prove of great value to parents and schools.

A limitation of mediation expressed by participants was identified as “misuse” of the mediation process. Mediation was perceived to be used improperly if either party entered into mediation as a fact-finding mission without real intent to work on problem solving. Some participants expressed dissatisfaction that mediation was not “powerful” enough. When questioned what was meant, participants said that the mediator could not “make” the other party comply with their wishes. While stated as a limitation of mediation by some, the non-authoritarian, collaborative approach offered by mediation is perceived as an inherent strength. For persons who wish to have an authority- based decision rendered, mediation may not be the right choice.

Some study participants reported partial satisfaction with the mediation process. Parents who reported this tended to be less satisfied with their children’s current educational situation than parents who signed agreements with acceptable satisfaction. When questioned further about why one would sign if not completely satisfied, most felt that they were compromising in a good faith effort and they did not want to leave the mediation session without a signed agreement. An interesting follow-up from these interviews would be to interview these marginally satisfied parents in the future to assess their subsequent educational satisfaction, actions, and decisions regarding their children’s programs.

Educational decisions for students that resulted from mediation varied from simple IEP changes to out of district placements. This tended to support the notion that any

dispute might be “fair game” for mediation at some point in the process, if both parties desire to use mediation. Reservations were expressed that mediation might not be the ultimate appropriate process in matters of questionable civil rights violations or precedent setting cases. In those situations, mediation may serve as an appropriate beginning step in a more comprehensive conflict resolution process.

Data from this study confirm four major theses: (a) Most people want to act responsibly and to be treated with compassion and respect, (b) People who become involved in parent-school conflict are generally not experienced negotiators, (c) Even in the midst of perceived crisis situations, people can be taught to make rational decisions and desire help in doing so, and (d) Families and schools benefit emotionally and financially from cooperative settlements of their conflicts.

#### Need for Future Research

This research was undertaken because there is a distinct absence of research about conflict in education and consequently limited professional discussion of the subject. Anecdotal information confirms that teachers and administrators spend considerable time and energy in resolving conflicts in schools. More can be learned about what precipitates conflicts, what escalates, de-escalates, or contains conflicts between parents and schools. Most school administrators have little training (either formal or informal) in strategies for problem solving and conflict resolution.

This study was limited to a small population in one state. Future research is needed and might focus on the problem-solving component of mediation, the efficacy of

mediation in other states, conflict prevention programs, training for special education mediators, and programs encouraging early response to conflict identification and resolution. Site-based responses to conflict are being examined and implemented in some states. The early intervention and response to conflict work that is being implemented in specific states needs to be shared. Establishing evaluation methods for those site-based programs is an appropriate and needed research endeavor. Sharing of evaluative information between states would assist states in developing programs focused on early response to conflict.

#### My Perspective on an Ethic of Caring

Perhaps more important than the need for future research is the need for an ethic of caring. Trust is a foundation of satisfying, lasting human relationships. Those who work to preserve trust in significant relationships demonstrate an ethic of caring. Trust between parents and service providers is either intact to a satisfactory level or broken. Efforts that parents and school undertake to work together in relationship building provide a payoff to both sides in that trust, if cautiously guarded, can remain intact. If trust has been broken, mediation and other problem solving approaches may open the doors to a reinstatement of communication between parents and schools. In an attempt to repair broken relationships, knowledge and understanding may not be adequate. They may need to be accompanied by forgiveness. Then relationships may have a chance to be rebuilt. A continual responsibility of parents and educators is to protect the trusting relationship, so that students are allowed to exceed their limitations and become lifelong learners.

As parents and educators we have learned a lot as a result of our involvement with special education law. As a result, most school districts accept their responsibility to educate *all* children. The legal mechanisms that may have been necessary to bring children into schools are no longer needed for that purpose (Moscovitch, 1995). Legal rights were intended as a means, not an end in themselves. Though legislation can accomplish specific goals, the burdensome and regulatory environment of special education may perpetuate the belief that we can mandate proper treatment of human beings.

IDEA 1997 has significantly enhanced the role of parents in the special education process. Strengthening the role of families in an effort that emphasizes the promotion of competence, respect, and collaborative problem solving, conveys a sense of joint responsibility and participatory decision making. It is an opportunity for parent-school partners to feel valued, important, and equal. Resolving conflicts between parents and schools requires planned change and conscious effort.

Caring attitudes and behaviors can be developed and embraced in a sense of school community. Institutions that work with youth demonstrate their basic beliefs and assumptions about caring by their day-to-day interactions. Caring professionals who assist parents and students in overcoming obstacles, who respond flexibly and sensitively to the changing needs of students and families, accomplish what legislation cannot. Caring professionals who bring compassion, ethical judgment, and creative vision to the lives of children may succeed in implementing the *intent* of civil rights and disability legislation.



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## Appendix A

Section 615(e) Public Law 105-17--June 4, 1997

"(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 described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

"(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) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process 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 682 or 683; or

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

"(C) 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) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) 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) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

"(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

## Appendix B

**Demographic Information – Parent Mediation Participants**

Case Number	Area of State	Education		Occupation		Child's Disability	Sex	Age of Child	Length Time in Sp. Ed.	Type of School	Number of Mediations	Signed Agreement	Parent Support Group
		Mother	Father	Mother	Father								
1	Central	H.S.	H.S.	Teacher's Aide	Truck Driver	Multiple Disabilities	M	14	11 yrs.	Public	1	Yes	Yes
3	Eastern	H.S. + 1	H.S.	Homemaker	Security Guard	Multiple Disabilities	F	4	1 yr.	Public Preschool Out of District	1	Yes	No
4	Eastern	H.S.	College B.S.	Court Clerk	Civil Engineer	Learning Disability	F	11	7 yrs	Public	1	Yes	Yes
5	East	H.S.	College 2 yr. 1 yr. Technical School	Teacher's Aide	Heavy Rail	Learning Disability	M	15	10 yrs.	Private	3	Yes (3x)	No
7	West	11 yr.	H.S.	Homemaker	Carpenter	Learning Disability	M	15	4 yrs.	Public	1	Yes	No
8	East	College B.S.	College M.S.	Nurse	Financial Consultant	Multiple Disabilities	F	13	10 yrs.	Private	3	Yes (3x)	Yes
9	East	H.S.	College B.S.	Laboratory Outreach Liaison	Elevator Constructor	Learning Disability	F	13	7 yrs.	Public	1	Yes	No
10	East	College 1 yr.	College 2 yrs.	Purchasing Agent	Assistant Staff Manager	Learning Disability/ ADD	F	20	12yrs.	College	2	No (2x)	No
11	West	H.S.	H.S.	Landfill Gatekeeper	College Custodian	OHI	F	9	3 yrs.	Public	1	Yes	Yes
13	East	H.S.	H.S.	Homemaker	Machine Shop	Learning Disability	M	9	1 yr.	Public	1	Yes	No
14	Central	H.S.	H.S.	Educational Advocate	Machinist	Learning Disability	M	13	7 yrs.	Public	2	Yes (2x)	Yes
15	Central	H.S.	H.S.	Homemaker	Construction Worker	Learning Disability/ Emotional Disturbed	M	18	11	Public	1	Yes	Yes
16	East	College 3 years	_____	Registered Nurse	_____	Learning Disability/ ADD	F	12	6 years	Public	1	Yes	Yes
17	West	H.S.	_____	Homemaker	_____	LD/AD/HD	M	8	2 yrs.	Public	1	Yes	No

Case Number	Area of State	Education		Occupation		Child's Disability	Sex	Age of Child	Length Time in Sp. Ed.	Type of School	Number of Mediations	Signed Agreement	Parent Support Group
		Mother	Father	Mother	Father								
18	East	College - 2 yrs.	H.S.	Homemaker	Self-Employed Commercial Fishing	Hearing Impaired	M	6	3 yrs.	Private	1	No	Yes
19	East	H.S.	H.S.	Homemaker	Boat Yard Manager	Learning Disability	M	12	3	Public	2	Yes (2x)	Yes
20	Central	H.S.	H.S.	Homemaker	Graphic Artist	Learning Disability	M	14	8 yrs.	Public	1	No	Yes
21 (3 children in Sp. Ed.)	East	H.S.	HS + 2 yr. trade school	Homemaker	Maintenance Mechanic	Learning Disability	F	15	9 yrs.	Public	2	Yes (2x)	Yes
						Learning Disability	M	14	11 yrs.	Public	_____	_____	_____
						Learning Disability	M	12	6 yrs.	Public	_____	_____	_____
22	West	H.S.	_____	CAD Drafter	_____	Learning Disability	M	12	5 yrs.	Public	1	No	No



**Demographic Information – Parent Due Process Hearing Participants**

Case Number	Area of State	Education		Occupation		Child's Disability	Sex	Age of Child	Length Time in Sp. Ed.	Mediation Prior to Hearing	Type of School	Parent Support Group
		Mother	Father	Mother	Father							
2	East	H.S.	_____	Homemaker	_____	Autism	M	20	15 yrs.	No	College	Yes
6 (5 children in Sp. Ed.)	West	College B.S.	College B.S.	Homemaker & Shop Owner	Administrator	Autism	F	7	4 yrs.	Yes	Charter School	Yes
						Autism	M	7	4 yrs.	Yes	Charter School	Yes
						Emotionally Disturbed	M	14	9 yrs.	Yes	Charter School	Yes
						Visually Impaired	F	16	9 yrs.	Yes	Public H.S.	Yes
						Learning Disability	M	20	9 yrs.	Yes	College	Yes
12	East	H.S. + Paralegal Certificate	College – MSW	Paralegal Educational Advocate	LSW Clinical Supervisor	Learning Disability	M	13	6 yrs.	Yes	Public	Yes

**Demographic Information – School Official Mediation Participants**

Case Number	Title	Location of School System	Student Population	Number of Students with Disabilities	Years of Administrative Experience	Educational Level	Training in Conflict Resolution	Type of Training
23	Pupil Personnel Administrator	East	1500	230	4	MS	Yes	In the late 70's trained by American Arbitration Association and in affiliation with training of trainers
24	Special Education Administrator	Central	6100	1204	6	MS	No	
25	Director of Special Education	East	2982	523	4	MS	Yes	In graduate school Wesley – Professor from Harvard – peer tutoring Student Mediation
26	Pupil Personnel Services Director	East	1100	264	3	Ed.D.	No	Have participated in a number of conflict resolution processes
27	Principal	West	650	120	3	MS +15 hrs.	Yes	Participated in peer mediation training within the city system.
28	Director of Special Education & Transition Bilingual Education (EBE)	West	3000	590	7	MS	Yes, Informal	MA Department of Education
29	Assistant to Superintendent for Education & Support Services	Central	6700	927	8.5	CAGS	No	
30	Director of Special Education	East	2600	350	4	Post Graduate CAGS	Yes	Non violent crisis intervention instructor prevention and law level
31	Principal	West	380	60	6	MS	Yes	Informal – BSEN Health outside trainers with entire staff
32	Administrator of Special Education	Central	2000	300	10	MS, Ed.D.	Yes	Department of Education workshops – mediation and conflict resolutions. Administrative team participated in conflict resolutions in 1997.

Case Number	Title	Location of School System	Student Population	Number of Students with Disabilities	Years of Administrative Experience	Educational Level	Training in Conflict Resolution	Type of Training
33	Director of Special Education	Central	2350	520	14	Ed.D.	No	Informal – attended a number of sessions/discussions within school system.
34	Director of Pupil Personnel Services	Central	3020	721	14	Dr.	Yes	Courses in collaboration Department of Education work Took class in collaboration and negotiation
35	Director of Pupil Personnel Services	East	2500	310-312	10	CAGS	Yes	3 days of training in negotiation for teachers
36	Director of Pupil Personnel Services	Central	2300	391	5	M.S.Ed.	Yes/No	Graduate Conferences
37	Administrator in charge of Special Learning Services	East	12000	1440	4	CAGS	No	
38	Principal	East	300	51	9	Ph.D.	Yes	Department of Education

Demographic Information – Special Education Mediators

Case Number	Years of Mediation Experience	Mediation Training	Provision of Mediation Training for Others
39	10+	32 hrs. in Child & Family Counseling 15 hrs. Certificate from University of MA; various other workshops	None
40	22	Informal -- reading in Mediation, Sp. Ed Law – observing mediation hearings, working directly with other mediators	Yes, with public school personnel in MA. Out of state training in Illinois.
41	11	32 hrs. basic mediation – on the job training – observing other people in mediation training in Sp. Ed. Regulations.	Yes, State agencies in TN, Training for Amer. Arbit. Assn., Community Mediation, Metropolitan Mediation Services, Negotiation Training for Administration Attorneys and Advocates, staff training in individual schools
42	2	Harvard Mediation Program – 30 hrs. basic training 20 hrs. advance training in mediation background in Sociology and Social Psychology Courses in Parent Education/Child Development	Yes, various community programs; conflict resolution with parents; conducted course for Boston Housing Authority; taught advanced course in mediation at Eastern CT State.
43	3	Legal Courses at NYU Law School General Community Mediation Training Courses at Franklin Mediation Center, Springfield, MA Divorce Mediation courses in Boston (designed for divorced parents with children) Volunteer Mediation courses	None
44	19	American Arbit. Association Training sessions in: Contract Negotiation , Contract Management, Arbitration, Mediation, Grievance Arbitration Crime Justice Foundation – Washington, DC Special Urban Court Program Mediator for local district court	Training others since: 1980 in Mediation Negotiation (trained over 5000 including attorneys, school administrators, advocates, parents, students) Training for other states: TN, PA, AZ, VT, ME, NJ. National Institute for Dispute Resolution (American Arbit. State Agency)

## Appendix C



**The Commonwealth of Massachusetts**  
**Department of Education**

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**Malden, Massachusetts**

Dear Parent,

You participated in our special education appeals process as a result of rejecting your child, \_\_\_\_\_'s educational plan.

A researcher from Virginia Polytechnic Institute, Jeannie Fulton Lake, is interested in contacting parents who have had experience with the appeals process in Massachusetts. She is also seeking to contact parents in other states.

Your name and address are kept confidential in our office. If you want to take advantage of the opportunity to participate in some research, which might be of value to everyone in the special education community, you may contact Jeannie Fulton Lake by making a collect call as described in the enclosed letter.

Sincerely,

Art Stewart  
Coordinator of Mediation  
Tel:



Department of Educational Leadership and Policy Studies

College of Human Resources and Education  
East Eggleston Hall  
Blacksburg, Virginia 24061-0302

Dear Parent:

I am currently conducting research on special education mediation. This research will fulfill requirements for doctoral degree completion at Virginia Polytechnic Institute and State University.

I am seeking parent volunteers in the state of Massachusetts. I hope to better understand situations where conflict develops and believe that you are in a unique position to share your views of the strengths and limitations of the mediation process.

Your involvement will include a telephone interview and your participation in a meeting with 6-8 other parents who have experienced a special education mediation session. The meeting will last approximately three hours and parents will have the opportunity to discuss present conflict resolution strategies in place for parents in your state. There will be monetary compensation to cover your travel expenses to the designated location. There will be four meeting locations in the state of Massachusetts.

I want to assure you that your participation is completely voluntary and that no personally identifiable information will be released to any other party. If you desire to participate, benefits will include the chance to discuss your feelings with other parents and to offer information that will help improve conflict resolution strategies in special education.

If you are interested and willing to discuss further, please call Jeannie Fulton Lake collect at \_\_\_\_\_ during the week **October 13-17, 1997**. I will answer all questions you may have at this time.

I encourage you to participate in this important study. By listening to the concerns of parents, we will be in a better position to improve services to children.

Sincerely,

Jeannie Fulton Lake, M.S., Ed.S.



Department of Educational Leadership and Policy Studies

College of Human Resources and Education  
East Eggleston Hall  
Blacksburg, Virginia 24061-0302

Dear Mediator,

I am currently conducting research on special education mediation and factors that affect parent-school conflict. This research will fulfill requirements for doctoral degree completion at Virginia Tech in the area of Special Education Administration.

I am seeking parents, school officials, and special education mediators as volunteer participants in this study. I am inviting you to participate in an individual telephone interview that should take about 20 minutes of your time. I hope to better understand situations where conflict develops and believe that you are in a unique position to share your views related to conflict prevention and resolution.

I want to assure you that your participation is completely voluntary and that no personally identifiable information will be released to any other party. If you desire to participate, benefits will be that you have an opportunity to offer information that may improve conflict resolution strategies in special education.

I will send additional information to you if you are interested and willing to participate. I encourage you to participate in this important study. By listening to concerns of parents, school officials, and mediators, we will be in a better position to improve services to children.

Sincerely,

Jcannie Fulton Lake





Department of Educational Leadership and Policy Studies

College of Human Resources and Education  
East Eggleston Hall  
Blacksburg, Virginia 24061-0302

Dear \_\_\_\_\_,

Thank you for participating in a recent telephone interview as part of my research study on Mediation and Parent School Conflicts. Your shared insights, interpretations, and suggestions were helpful and contributed to the important field of special education research.

Your contribution to this research project was a valued and important one. I hope that you will continue your interest in this topic by reading the results of this study. As parents and professionals continue to work together, services for students with disabilities will continue to advance. Your help in this endeavor has been greatly appreciated.

Sincerely,

Jeannie Fulton Lake

**Virginia Polytechnic Institute and State University****Informed Consent of Participants of Investigative Projects**

Title of Project: Special Education Mediation and Parent-School Conflict

Investigator: Jeannie Fulton Lake, doctoral student

**1. Purpose of the Research Project**

I hereby consent to voluntarily engage in this study of mediation in special education by participating in one telephone interview. I understand that I will be asked to answer questions and to share information about my experience in attempting to resolve a conflict through either mediation or a due process hearing. I agree to abide by the participant rules and understand that the purpose of the study is to collect information from participants' actual experiences in resolving special education conflicts.

I understand that my telephone interview will last approximately 20-25 minutes and will be conducted at a time that is convenient for me. The total number of participants in this study will be from 45-55 persons.

**2. Procedures**

I understand that I will be asked to participate in one (1) telephone interview. I will receive a reminder phone call prior to the interview date.

The telephone interview will occur on \_\_\_\_\_  
at \_\_\_\_\_ (time).

**3. Risks**

It is my understanding that there are no known hazards or risks anticipated from participation in this research study.

**4. Benefits of this Project**

I understand that I will have the opportunity to express reflections on my experiences in order that improved conflict management strategies may be developed. Results of this study may assist policy makers and school officials in determining the most effective conflict resolution strategies. No promise or guarantee of benefits have been made to encourage me to participate.

I understand that I may contact the researcher at the completion of this study for a summary of the research results.

#### 5. Extent of Confidentiality

I understand that I will not be identified by name or social security number, but only by an assigned participant number. I understand that my responses are strictly confidential. Any personally identifiable information will be removed or altered in reports of the study. No personally identifiable information will be released to any other party. Only the researcher will have knowledge of the individuals selected for the study.

#### 6. Compensation

I understand there will be no financial compensation for participation in this study. I will receive a copy of the research results, if I choose to request them.

#### 7. Freedom to Withdraw

I understand that I am free to withdraw from the study at any time. I may choose not to answer any questions without penalty.

#### 8. Approval of Research

This research project has been approved, as required, by the Institutional Review Board for Research Involving Human Subjects at Virginia Polytechnic Institute and State University, Blacksburg, Virginia.

#### 9. Participant's Responsibilities

I voluntarily agree to participate in this study. I have the following responsibilities:

- 1) To call researcher collect at \_\_\_\_\_ to express interest and have all questions answered about the study.
- 2) To schedule an interview time that is convenient for me.
- 3) To be at the designated location at the specified time to conduct.
- 4) To answer questions and share information about my experiences with mediations or hearings.

I understand that the information shared is confidential and may not be disclosed to any other party without my written permission.

## 10. Participant's Permission

I have read and understand the Informed Consent and conditions of this project. I have had all my questions answered. I hereby acknowledge the above and give my voluntary consent for participation in this project. If I participate, I may withdraw at any time without penalty. I agree to abide by the rules of this project.

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Signature

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Date

Should I have any questions about this research or its conduct, I may contact:

Jeannie Fulton Lake

Dr. Bonnie Billingsley

I may request a copy of the results of this study by submitting a written request after September 1, 1998 to:

Jeannie Fulton Lake

Roanoke, VA 24014



Department of Educational Leadership and Policy Studies

College of Human Resources and Education  
East Eggleston Hall  
Blacksburg, Virginia 24061-0302

Dear \_\_\_\_\_,

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Sincerely,

Jeannie Fulton Lake

## Appendix D

**Telephone Interview**  
**Parents – Mediation Participants**  
**Part 1**

The information I will be asking you will be in two parts. The first part consists of facts about you and your family. This information will assist the research project by being able to describe families who have participated in special education mediations. The second part will be questions about your experiences in trying to resolve a conflict over your child's educational plan. All information you share is confidential and no personally identifiable information will be shared. I need to ask your permission to tape our conversation so that I best record the information you share. Do you give your permission? \_\_\_\_\_

1. What is your son's or daughter's name? \_\_\_\_\_
2. What is your child's disability? \_\_\_\_\_
3. How old is \_\_\_\_\_?
4. Is \_\_\_\_\_ currently attending: a) public school program?  
b) private school program?
5. What kind of special education services is your child receiving? \_\_\_\_\_
6. How long has your child had an Individualized Education Plan? \_\_\_\_\_
7. What is the name of your town? \_\_\_\_\_
8. what is the name of your school system? \_\_\_\_\_
9. What adults live in your home? \_\_\_\_\_
10. What is the last grade you completed in school? \_\_\_\_\_  
Last grade your spouse completed? \_\_\_\_\_
11. What is your occupation? \_\_\_\_\_  
Spouse's occupation?
12. Do you belong to a parent education/support group?

13. Did your mediation result in a signed mediation agreement?
14. How would you rate your overall satisfaction with the special education mediation process?
15. Reflecting on your experiences, what were the critical incidents that led to your request for a mediation?
16. Looking back, are there things the school could have done to decrease the conflict before the mediation was requested? If so what?
17. Do you think there might have been anything you could have done to decrease the conflict before the mediation? If so, what?
18. What expectation did you have of the mediator and the mediation process before you attended the mediation session?
19. Did anyone assist you in preparing for your mediation?
20. Were there other factors or influences that contributed to the conflict other than the issues of disagreement between you and the school?
21. During the mediation, to what extent were you able to fully discuss the issues that were important to you?
22. Do you think the mediator listened fairly to both sides? What did the mediator do to make you feel this way?
23. What are your views of the strengths of mediation?  
  
What are your view of the limitations of mediation?
24. What educational decisions occurred for your child as a result of the mediation?
25. What would you recommend to another parent who was considering using mediation to resolve a special education conflict?
26. What other actions should be taken to help parents and schools resolve special education conflicts?



**Telephone Interview**  
**Parents – Mediation Participants & Due Process Participants**  
**Part 1**

The information I will be asking you will be in two parts. The first part consists of facts about you and your family. This information will assist the research project by being able to describe families who have participated in special education mediations. The second part will be questions about your experiences in trying to resolve a conflict over your child's educational plan. All information you share is confidential and no personally identifiable information will be shared. I need to ask your permission to tape our conversation so that I best record the information you share. Do you give your permission?

1. What is your son's or daughter's name? \_\_\_\_\_
2. What is your child's disability? \_\_\_\_\_
3. How old is \_\_\_\_\_?
4. Is \_\_\_\_\_ currently attending: a) public school program?  
b) private school program?
5. What kind of special education services is your child receiving? \_\_\_\_\_
6. How long has your child had an Individualized Education Plan? \_\_\_\_\_
7. What is the name of your town? \_\_\_\_\_
8. What is the name of your school system? \_\_\_\_\_
9. What adults live in your home? \_\_\_\_\_
10. What is the last grade you completed in school? \_\_\_\_\_  
Last grade your spouse completed? \_\_\_\_\_
11. What is your occupation? \_\_\_\_\_  
Spouse's occupation? \_\_\_\_\_
12. Do you belong to a parent education/support group? \_\_\_\_\_
13. Did your mediation result in a signed mediation agreement? \_\_\_\_\_

14. How would you rate your overall satisfaction with the special education mediation process? \_\_\_\_\_
15. Reflecting on the events that lead to a conflict, why do you think the conflict was not resolved at the school level?
16. Why do you think you did not reach an agreement during the mediation?
17. Why did you decide to request a hearing?
18. How would you compare the mediation experience to what you experienced in the hearing?
19. Looking back, what you have done differently at any stage of the conflict?
20. What feelings do you have now about the mediation and the hearing process?
21. What would you recommend to another parent who is considering special education mediation?
22. What would you recommend to another parent who is considering filing a request for a due process hearing?
23. What are your views of the strengths of the mediation process?  
What are your views of the limitations?
24. What are your views of the strengths of the due process hearing?  
What are your views of the limitations?
25. Who assisted you in preparing for the mediation?  
For the hearing?
26. What other actions should be taken to help parents and school officials resolve special education conflicts?

**Telephone Interview**  
**School Officials – Mediation Participants**  
**Part 1**

The information I will be asking will be in two parts. The first part are facts about you and your school system. This information will assist the research project by being able to describe school officials and the schools you serve. The second part will be about your experiences in trying to resolve special education conflicts. All information you share is confidential and no personally identifiable information will be shared. I need to ask your permission to tape our conversation. Do you grant this permission? \_\_\_\_\_

1. What is your name and your title? \_\_\_\_\_
2. What school system do you serve? \_\_\_\_\_
3. What is the student population of your school system? \_\_\_\_\_ or school? \_\_\_\_\_
4. How many students with disabilities are identified in your school system? \_\_\_\_\_ or your school? \_\_\_\_\_
5. What is the name of your town? \_\_\_\_\_
6. How long have you served as \_\_\_\_\_ (position)?
7. Your highest level of education completed? \_\_\_\_\_
8. Have you participated in any formal or informal training in conflict resolution? \_\_\_\_\_ if so what and where was it provided? \_\_\_\_\_
9. Reflecting on your experiences, what are significant events or critical incidents that precede requests for mediation?
10. What are things you can do to reduce conflict before a mediation is requested?
11. What are things a parent can do to reduce conflict before requesting a mediation?
12. What are your expectations of the mediation process and the mediator?

13. Are there other factors or influences that contribute to the conflict other than the issues of disagreement between you and parents? If so what are they?
14. During mediations, to what extent do you feel that you are able to fully discuss the issues that are important to you?
15. Do you feel that mediators listen fairly to both sides? What have you experienced to make you feel this way?
16. How do mediators help create a solution that results in agreement?
17. Do you think there are particular types of cases that are better suited to mediation than others? Please explain.
18. In your view, what are the strengths of the mediation process?
19. What would you recommend to another school official about to enter a special education mediation?
20. What other actions should be taken to help parents and school officials resolve special education disputes?

**Telephone Interview**  
**Mediators**  
**Part I**

The information I will be asking will be in two parts. The first part consists of questions about you and your job as a special education mediator. The second part will be about your experiences in trying to resolve special education conflicts. All information you share is confidential and no personally identifiable information will be shared. I need to ask your permission to tape our conversation so that I can most accurately record your information. Do you grant this permission? \_\_\_\_\_

1. How long have you been a special education mediator? \_\_\_\_\_
2. Describe your training that prepared you for this job? \_\_\_\_\_  
\_\_\_\_\_
3. What part of the state of Massachusetts do you cover? \_\_\_\_\_
4. How many school systems are you responsible for? \_\_\_\_\_
5. Have you conducted training sessions for others in conflict resolution? If so, with whom? \_\_\_\_\_  
\_\_\_\_\_

**Mediators**  
**Part 2**

1. In your view, what are the strengths of mediation?
2. In your view, what are the limitations of mediation?
3. Do you think there are particular types of cases that are better suited to mediation than others? Please explain?
4. Are there things you wish school officials would do differently at the first sign of a parent-school conflict? Please explain.
5. Are there things you wish school officials would do differently while they are in the midst of a parent-school conflict? Please explain.
6. Are there things you wish parents would do differently when they are involved in a parent-school conflict? Please explain.
7. What actions increase the likelihood that mediation will result in a signed agreement?
8. What actions decrease the likelihood of a signed mediation agreement?
9. What information would you like to share with those who have never participated in special education mediation?
10. What actions can be taken to assist parents and schools in resolving special education conflict?
11. Do you wish to share information that I have not asked about that you feel is important and should be included in a study of special education mediation?
12. What thoughts do you have about the future of special education conflict resolution strategies and practices?

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