

Alexa Posny – *Featured Address to Symposium Participants*

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

October 26-28, 2011 – Eugene, OR

ALEXA POSNY: I think with that, I should just walk off the stage. Thank you very much. That was very nice. And I just wanted to say thank you to each and every one of you. You know, I'm delighted to be addressing all of you because I know that right now, I'm sitting with a group of people who are dedicated to making sure that the lives of kids with disabilities are even better than what they have been in the past. In this era especially of restricted travel, and I understand exactly how difficult it is with the state budgets, I applaud you for taking the time to come here and learn about all of the effective practices that are going on all over this great country. When I look at this particular slide, it reminds me of Kansas. Yes, there are plenty of these fields in Kansas, let me tell you. When I take a look at the audience to whom I'm addressing right now, what I'm looking at is exactly what this quote is saying. What we need is more people who specialize in the impossible. That's what you do every single day when you think about where it is that we need to head. When I think about dispute resolution and where we've been and where we want to go, you know, there's been quite a history. And it started out in the original, you know, authorization of P.L. 94-142. And yes, this is where I'm going to date myself because I've been in this business since before 94-142. So I'm going to go back. When I think about it, very clearly one of the major emphases that we wanted in 94-142 is the protection of rights, the protection of rights for kids and their parents. Those rights will never go away. You know, I talk sometimes, and for those of you who have heard me before, I talk sometimes about how I want special ed in general education to become more -- become an educational system, where we don't have to label kids in order to provide them with what we need. But don't -- yeah, it's what we need, whether a child has a disability or is disadvantaged or is disengaged or disenfranchised, it makes no difference. We need to give every child what he or she needs. The thing is we cannot ever forget, though, that there are rights that need to be protected. So we understand that very clearly. So then in the reauthorization in 1997, when mediation was put in, think about how long that took, 22 years to figure out that we might need another form in terms of making sure that the rights are there. And in 2004, the four procedural safeguard changes in terms of surrogates and the notice in consent, the mediation and resolution sessions that were added, the due process hearings, and the state complaint procedures that were looked at again. When we think about all of this, you know, I always think it's the teachers and the kids who tell us best about what we need to have. This was done in 1983. Think about this as part of A Nation At Risk; it is still just as true today as it was then. As surely as you are your child's first and most influential teacher, your child's ideas about education and its significance begin with you. These are the parents. The parents are the first and foremost important people who deal with and need to work on what their child needs in

order to be the best that he or she can be. What we know is that we need to engage as many partners as we can. We know that we have to not only have parents as partners, we have to engage families, we have to engage the communities, we have to truly value and promote these partnerships. Because only when we do that will we make a difference. And we know that the community has to be part and parcel of this. When I think about my friend that never went to school with me, you know, we were part of a community. And why that had to be broken up at that point in time and knowing that that will never happen again because every child needs to be there. And I know the superintendent from here just laughed, but I had a great -- oh good, oh great. Okay, well, I had the opportunity to be at Chavez Elementary School this morning. And if you want to talk about a totally and completely inclusive environment, that was exactly what I wanted to see. It has to be one of the best schools I've ever been. It is completely open, and the partnership between and among the parents, the teachers, the administrators, everyone who is in that building, it was so apparent. And to know that, you know, there are kids with disabilities, some very apparent, some not, who were totally and completely included within the classroom, and they're all part of them, what a great opportunity. When I think about where we want to head, what we want to do, and the whole purpose behind CADRE and everything else that all of you are working on is we want to swim upstream. You know, I've been in this a long time, as you can tell, since before 94-142. The one thing I want to tell you is that I have never been involved in a due process hearing at all. Now that doesn't mean that I gave everything to everyone. It just meant that when we talk about a partnership, that's exactly what I wanted. And that's what I wanted with my parents. You know, it was interesting, whenever I talked to a superintendent when I was a local director of special ed, the superintendent would always tell me, saying, "You probably have one of the most difficult jobs, probably even more so than the superintendent." Because think about it. As a local director of special ed, you are often a partner with your parents for 21 years. There isn't a principal who has the same group of kids for 21 years. The high school principal may be four. And think about a superintendent. How many superintendents stay on the job for 21 years in one district? It doesn't happen very often. So it behooves us to work together as much as we absolutely can. So when I'm thinking about the upstream practices that we want, when I think about the IDEA, the Individuals with Disabilities Education Act, and the Department, and you can hear it coming from Arnie and you hear it from President Obama, we are all committed to results, and that means all. So when we talk about children with disabilities and youth with disabilities, we are committed to making sure that they have the best education and they achieve to the highest level they possibly can. What we know is that we're also focused in on every single level. We're focused in on the early learning. And I was happy to hear that you have full-day kindergarten at Chavez. What a difference that makes. And think about IDEA and our Part C and our Part B 619 focus. We are the only part of the Department that has ever believed that we need to start with kids at birth. Think about that if we did that with kids who

live in poverty, that if we could do that for all of our kids, we would no longer have to be concerned about kids coming to kindergarten already so far behind. We're also very much focused on school-age and making sure that we are number one in the world in terms by 2020 to having the highest number of kids who are college graduates. And we have to focus in on transition from every single level to make sure that kids are successful. What we also know, though, is that disputes exist in this context and will continue to exist. Now I was born and raised in the great state of Wisconsin, so having flying cows is probably not something I haven't heard about. But when you think about going upstream and swimming upstream, all the cow is asking is for is he said, "Why should you guys have all the fun?" When we think about it and we think about what it is that we're trying to do, swimming upstream, but let's take a look at it in a slightly different context. What we know is what works best is we must communicate. And we can never undergird the communication. And yes, what this says, "Communication is key! Do you know what miscommunication gets us?" And the other little bird said, "The basis for all Three's Company episodes?" And for those of you who are too young to know, I would encourage you to go back and take a look at it. When I think about it and when I think of what -- when we think about appropriate and alternative dispute resolution, what's a primary basis that's going to be most effective? It's having all parties communicating with each other. We know that this is key behind what we need to do. The collaborative relationships that must be there are critical to what we need to do, and it's one more way to resolve disputes collaboratively. Now I want to try a little something with you. Okay, I want you to take a look at these words and I want you to remember these words because I'm going to do a little exercise with you. So the words, these are the four C's: cooperation, communication, collaboration, and coordination. Okay, so keep these kind of in your mind. Now what I'm going to show you, because I'm a very visual learner, I'm going to show you some visuals that, to me, help me define each and every one of these particular words. And I'm going to have you try to read my mind and figure out which ones speaks to which one. So this is the very first one. So as you're thinking about it, which one of those C words do you think really fits this picture? Is it cooperation, is it communication, is it collaboration, or coordination? This is the second one. So take a look at it again and I'll -- you know, I can share it with you. Here's the third one and here's the fourth. Okay, so now think about those four words. Now what I want you to do, and I know this is always dangerous because I'm going to allow you to talk to your neighbors, what I want you to do at your table is I want you to take the four words and I want you to talk amongst yourselves and see which word you think is best described by which visual. Here are the four words again. Okay, so talk at your tables and see what you can come up with. Okay, if you could kind of finish your final thought. I know it's not easy. Now just know that whatever you came up with is you're right, okay? And I'm just going to share with you what my thoughts were, but it doesn't mean that you're wrong, okay? These are the four words. Let's go to the very -- oops, yeah, okay, the very first one. Now this one I said was communication. Okay, do

you know why? In the example I use when I looked at this one is the fact that this, to me, represents the kindergarten teacher, the first grade teacher, and the second grade teacher. The kindergarten teacher talks to the first grade teacher, and the first grade teacher talks to the second grade, but not often does kindergarten talk with second. This is communication, okay? The next one is cooperation. This is now where the kindergarten teacher is working with the second grade teacher. And to me, these are almost on, you know, a continuum of how we need to move forward when we think about this. You guys were all right, right? Believe me, I understand. Well, good, they're no longer speaking to each other; I'm doing very well. Now this one, to me, was coordination. And what I always put in the middle of this one is I put the student. Okay, and this is where we've got the different teachers on the outside, but this is where we also have our silos. We have special ed as one of them; we've got Title I. And everybody is working separately, okay? And that's why I look at this as being we coordinate. But do we go to that highest level of what we need, where we really and truly collaborate? Because when you look at this particular diagram and how it speaks to me is each one of us gives up a piece of ourselves to make a better whole so that we have that piece in the middle where we are absolutely all in agreement. That's what we're trying to do and that's why it's so important to work together and to move away from this adversarial approach that -- you know, and I know sometimes just occurs and I know that happens, but we can accomplish so much more when we can really and truly collaborate across with each one. This is the key behind what CADRE and all the rest of you have been working on and where we need to head. You know, I often used Pennsylvania as an example. You know, I know you know that I came from the state of Kansas, and it was interesting because in the state of Kansas, probably for an entire year when we take a look at it, there may be a total of eight to 12 due process hearings in total for the entire state. Whenever -- and when I was the state director, I often looked at Pennsylvania because they had so many. And all I could think of was, "Oh my gosh, you know, and how time consuming." But look at the results of what has occurred in Pennsylvania over the last five to seven years. They have supported early and alternate dispute resolution. They have used an approach that looks at the design. They pilot tested the design, they evaluated, they redesigned, and then they implemented across the board. Look at the difference it's made in terms of the number of complaints that are filed and the number of reports that have been written. You know, this is exactly what we're trying to accomplish while we're ensuring that kids continue to get what they need. You know, there's a saying, you know, that goes like this, "Justice delayed is justice denied." We know that what we want, and we have become much more aware of the fact, that we want non-adversarial problem-solving that accomplishes so much more, that we need everything that we do to be highly productive, that we strengthen the relationships that we have between and among all of us. The timelines in IDEA, the complaint investigations, the due process hearings and so forth address the need to avoid delays in resolving disputes. We know that is critically important and that we know that we

want to make sure that justice is achieved. You know, we don't want to go downstream anymore. And now if you look at the name that's in the back of this particular -- this is not where we want to head. Anxiety and stress are a part of -- you know, can be a part of due process and the judicial proceedings. That's not what we want. That's why we want to swim upstream. Now this might be viewed as downstream when collaborative problem-solving has not worked, but this isn't what we want anymore. We know that we're headed in the right direction because what we want is we want to improve results for each and every single child. And when we take a look at the measures of effective dispute resolution, it's whether it contributes to improving the results for children. The bottom line is, are children learning and are they learning better than they ever have before? That's the discussion that we need to have. I can't tell you how many hundreds and hundreds of IEP meetings I have attended, and some of the most productive are when we put the picture of the child in the middle of the table. We have to remember that. And often that picture speaks volumes to us if the child isn't actually there him or herself. When I think about where we are at the federal level, when I look at alternative dispute resolution, this is absolutely a non-partisan issue. Both sides of the table absolutely believe in the alternative dispute resolution. And what it does when it is done well and it's done right is it reserves those precious resources to actually provide services to kids rather than to pay for litigation. And we were talking about it, in the downturn of the economy, I am concerned, I'm very concerned that we are going to be headed for more litigation because the services have been reduced. And that is exactly why what you're doing is going to be even more important than ever before. We know that we need to have our focus on those most appropriate approaches that we can work on. Because what we need is we always need to keep a lookout for the future. If you're familiar with Family Circus, the dad is sitting there and he said, "You know, sometimes I worry about the future of this country." And as his wife is looking out the window, she's looking out and what she's seeing are the kids playing and reading in a very diverse group, and she said, "I don't." When we think about the kids, they are our future and this is what we are building it for. The good news is kids are doing better, and kids with disabilities are doing extremely, extremely well. Are we there yet? The answer is no. Think about this: 60% of all kids with disabilities are now graduating with a diploma, and that's in comparison to 66% of all general ed students. We're pretty close, but yet it still means we got 40% of our kids that we're working with that are not graduating. We know that there has been a decreased use of adversarial procedures that have been done in the past. Over the past seven years, the number of written, signed complaints has dropped by 19% across all 50 states. Due process complaints have decreased a little over 11% since 2005. And the use of fully adjudicated hearings has fallen by 60% since 2004. And what I hope this means is that kids are getting better service than they ever have before, the true services and supports that they need to be -- you know, to be successful. The use of mediation. You know, when this came about and so forth, we were wondering, would it go down, would it go up? The mediation use is steady,

meaning it has remained pretty much the same over the course of the last few years since about 2005 and 2006. CADRE has referred to this as being hydraulic. It's the use of resolution meetings often results in less mediation if it's done correctly. Is that good or bad? The answer is we're working through it, and the answer is it's hydraulic. It's going to go up and down depending upon what happens. When we take a look at the use of the states using IEP facilitation techniques, in 2005, CADRE held a symposium on IEP facilitation. Eight states started working with them in terms of doing that. In 2010, 20 states are now supporting this very -- you know, this great initiative. What it did is it led us to seeing less formal adversarial activity in terms of where we've been engaged, which is the right way ahead. I know I always look at this one and it always makes me smile, but that's the picture of what it is that we want. Laws and regulations guarantee rights and they protect the access that we need, but what we want as the fundamental principal under IDEA is collaborative relationships between educators and parents. We need to think, talk, and work together. And don't ever think that that's not important. This is key behind the success in IDEA. We also need to be incredibly flexible. And I look at this and I think, "Oh, I wish I could be that flexible." But when we think about special ed policy, we need to encourage flexibility to use these collaborative approaches that work so well. We need to strengthen the partnerships, protect the services that are needed, and engage with everyone in a very positive framework. The perfect match are upstream collaborative approaches to use over and over again. What we don't want are the downstream, where a third party neutral resolves the dispute. Those should be reserved for those times when inequality in treatment or inequities in educational opportunities really and truly exist. We don't want that to happen and I'm hoping that that is not happening, you know, anywhere. It really shouldn't be. And parents, I don't ever want you to know that you are not the most important thing with whom we work. These are your kids. I am the parent of a son, and I know and I understand how important it is. And it's critically important that we don't ever forget that these are their children and they want the best for their kids. You know, I don't care whether a parent is poor or whatever, they want the best for every single one of them. We know especially parents who are culturally and linguistically diverse are part of this puzzle as well. We need to reach out to them and begin to understand and appreciate their culture as well, especially if they have a child with a disability. We need to design these processes that engage everyone in this process in a truly collective and collaborative approach, and recognize and honor everyone's perspective as they sit there. Now when I was thinking about this and I thought, "Yeah, I can talk to you about the IDEA reauthorization. I can tell you very simply where it is; it's nowhere." That's not good. I mean, that's not bad. You know, it's pro and con both ways. Think about it this way: we want ESEA to be reauthorized first. There is a bill that's out there. Senator Harkin did move it out of the help committee and we'll see what happens. I just think we're in an environment where this is not exactly the number one issue. And yet, when you hear President Obama talking and already talked as well, and the same thing for me, the number one and two

issues of the greatest importance in this country coming from the President is education and the economy. Education is the economic engine of the future, absolutely is. They cannot do anything if we do not have a well-educated workforce. So keeping that in mind and thinking about the IDEA reauthorization, what we will probably do in terms of some areas within that that need to be changed, we'll go out and do what's known as a notice of proposed rulemaking. We're going to do this in bits and pieces so that we can make some of the changes that need to be done. Where I want to leave you is I want you to remind -- to remind yourself, because it's time for us to think big, to imagine what the future holds and identify the steps that will begin to move our education system aggressively to a place where we can collaborate and we can work with all students to achieve at high levels. Because, as this picture shows, their minds are in our hands. Now I want to smile with you, and before I say thank you, I just want to share with you this picture is a picture of my nephew. Okay, this is Chase, who it was a football player. And this is his baby boy, Cash, who was born four months ago. So you know, when I think about the future, we all have this. And this is what we do and this is why we're in this. I just want to say thank you very much and I greatly appreciate everything you do. Thank you.