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July 2003

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Mediation and Facilitation Provide Informal, Collaborative Ways to Resolve Special Education Disputes

by Laura Bassein, J.D.

Among the options available for dispute resolution (see Figure 1), mediation offers a neutral, informal, collaborative means to resolve a wide array of special education disputes. In Michigan, parents and schools can use mediation whether or not a due process hearing has been requested or a complaint filed.

Mediation involves a face-to-face meeting. Occasionally when parties request mediation, mediation centers find that a few simple phone calls work to assist in resolving the dispute without a face-to-face meeting. In addition, neutral third party facilitators are available to assist with Individualized Education Program (IEP) Team meetings.

The Michigan Supreme Court, State Court Administrative Office, Office of

Dispute Resolution makes mediation, conciliation, and IEP facilitation available statewide through a network of Community Dispute Resolution Program centers. This effort is called the Michigan Special Education Mediation Program (MSEMP), which occasionally is referred to as the Dispute Resolution Project (MSEMP contact information can be found on page 5).

MSEMP constitutes the federally mandated mediation service that must be offered without charge to parents and schools for disputes arising under the *Individuals with Disabilities Education Act* (IDEA). The federal Department of Education provides IDEA funds to every state for mediation.

Figure 1

Dispute Resolution Methods in Special Education							
Parties Communicate without Third Party Intervention	Facilitation by Third Party Neutral	Conciliation	Mediation	Complaint	Due Process Hearing	Litigation	Appeal
Less Cost/Less Time				More Cost/More Time			
Informal				Formal			
Control by Parties				Control by Third Party			
Less Adversarial				More Adversarial			

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Meanwhile, don't forget to check www.cenmi.org often to learn about news and events of interest to the special education community.

Laura Bassein, of the Office of Dispute Resolution, State Court Administrative Office, Michigan Supreme Court, administers the Michigan Special Education Mediation Program. Laura coordinates mediation work through a statewide network of 24 community mediation centers, in such fields as special education, child abuse and neglect, and agriculture.



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MEDIATION Q & A

Q: What is mediation?

A: Mediation is a collaborative method to resolve disputes between schools and parents of students with disabilities. A neutral person (not affiliated with schools or parent groups), called a mediator, helps parents, school staff, and service providers to communicate effectively about issues related to the student. If all parties agree, the mediator assists in developing a written agreement.

Mediation is a voluntary, confidential process, so mediation discussions cannot be used in a future due process hearing or court action. Mediation offers an opportunity for parties to participate in resolving their own dispute, rather than having it resolved for them by someone else (like a hearing or compliance officer).

Q: Why should disputing parties try mediation?

A: Mediation provides an alternative to traditional, more formal adversarial processes such as the complaint investigation process, due process hearings, appeals, or lawsuits.

Through MSEMP, mediation:

- Leaves the decision-making process in the hands of those involved in the dispute.
- Results in agreement in over 80 percent of cases.
- Keeps costs down, as parents and schools pay no fees since grant funds cover the costs.
- Resolves disputes quickly at a location convenient to the parties involved.
- Maintains confidentiality of discussions.
- Assists parties to reach workable solutions.
- Helps avoid complaints, hearings, lawsuits, and appeals.
- Maintains or improves communication and relationships between school staff, service providers, and parents.

Q: When is mediation available?

A: Mediation is available any time a dispute arises in the special education context. Mediation can be used when the first indications of a dispute appear—rather than allowing the situation to escalate. Parents and schools can use mediation whether or not there has been a due process hearing requested or a complaint filed.

Q: What kinds of special education disputes can be mediated?

A: Any type of dispute arising within the special education arena can potentially be mediated, whether there is one issue in dispute or many. Commonly, disputes arise over such issues as eligibility for special education programs or services, how parents and schools interpret evaluation results, whether programs or services meet the educational needs of a student, or whether the IEP provisions are being appropriately followed.

Moreover, often the most critical need is to improve communication and repair and maintain relationships between schools and parents. Mediation addresses both specific special education issues and relationship issues equally well. In contrast, hearings, complaints, and lawsuits tend to impair relationships and further hamper communication.

Q: What is the mediator's role?

A: As neutral third parties, mediators help facilitate communication and help identify solutions to problems that all parties can accept. Mediators do not act as judges or hearing officers. They do not decide who is right and who is wrong.

Q: What is the role of advocates and attorneys in mediation?

A: Due to the complex nature of special education issues, parties are encouraged to consult with advocates and attorneys to prepare for the mediation session. In addition, advocates and attorneys may

attend the mediation session or be available by phone to help parties evaluate potential solutions. When advocates or attorneys attend mediation, they are expected to serve in a support role and are generally asked to allow their clients to speak on their own behalf as much as possible.

Q: Who pays for mediation/facilitation?

A: MSEMP offers mediation (and other services) free of charge to parents and schools. This is possible because the U.S. Department of Education makes IDEA funds available to every state to provide free mediation services to parents and schools. These IDEA funds pass through the Michigan Department of Education (MDE). Every few years, the MDE issues a competitive request for proposals to obtain an entity to operate the state’s special education mediation program. Since 1996, the Michigan Supreme Court, State Court Administrative Office, Office of Dispute Resolution has been the successful grant recipient awarded federal funding to operate MSEMP.

Q: Who are the mediators?

A: MSEMP mediators come from all walks of life. Some are lawyers, psychologists, or full-time mediators. Others are retired special education directors or teachers (current school employees are prohibited by federal law from being mediators). Many mediators are parents

themselves, some of whom have children with disabilities. No matter what their background is, mediators are highly trained and experienced (see Figure 2).

Q: I am headed to mediation—what should I expect?

A: During mediation, all parties informally describe the dispute from their point of view. The mediators help the parties focus on the issues and generate possible solutions. If an agreement is reached, the terms are put in writing, signed by all the parties, and, when appropriate, incorporated into the student’s IEP. Over 80 percent of all special education mediations result in an agreement.

Q: How should I prepare for mediation?

A: To prepare for mediation:

- Relax and feel free to speak openly.
- Be prepared to explain how you view the situation.
- Think about various solutions you are willing to present and discuss.
- Bring any documents related to the situation to which you might want to refer during mediation.
- If you are unsure of your legal rights, consult with an attorney or advocacy organization. You may bring an attorney or advocate to the mediation or consult with him or her by phone during the session.

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**Mediation
Success Story**

Joseph, a 14-year-old classified as having severe multiple impairments (SXI), was due to be transferred to a new facility because the school believed it would better meet his needs. Up to this point, Joseph’s parents had been quite satisfied with Joseph’s situation and got along well with everyone at the school. But Joseph’s parents were against this change in placement for a number of reasons. Telephone calls between the parties degenerated into arguments and no one really understood the root of the problem. Then the parents decided to request mediation.

At mediation, the parents and school personnel were able to communicate effectively about the parents’ concerns and school’s beliefs about the benefits of this change. The parties then jointly created a plan to make the change workable and fair for everyone. Mediation solved the immediate problem and more importantly repaired and preserved the relationship between this family and the school.

Figure 2

MSEMP Mediator/Facilitator Qualifications

Michigan Special Education Mediation Program mediators and facilitators must:

- Complete 40 hours of mediation training.
- Fulfill a 10-hour internship.
- Mediate at least 25 hours of non-special education disputes.
- Complete 16 hours of advanced mediation training in special education matters.
- Attend a day-long update training on mediation/facilitation skills and special education issues at least once every two years.

- Volunteer their time to provide these services.

Mediators/facilitators available under MSEMP are listed on the Roster of Approved Mediators. Mediation centers must assign mediators from the Roster to mediate special education disputes. If parties wish to select their own mediator, they may obtain a copy of the Roster of Approved Mediators from their local mediation center.



Mediation Success Story

Debbie, a second grader classified as having a mild cognitive impairment, exhibited extremely disruptive behavior. The school tried unsuccessfully several times to contact the parents to arrange a meeting to discuss what might be done to address the behavior problems and get Debbie back on track with her IEP. Because no meeting could ever be arranged, the school finally requested mediation. The parents agreed to participate.

With all parties present, discussions took place about how Debbie was doing both at school and at home. To everyone's surprise, many underlying issues came to light making it possible to find creative solutions to the problem and to create a plan to address Debbie's disruptive behavior. Mediation brought everyone together in the same place to hear the same information at the same time. With these parties, such communication had been impossible without mediation.

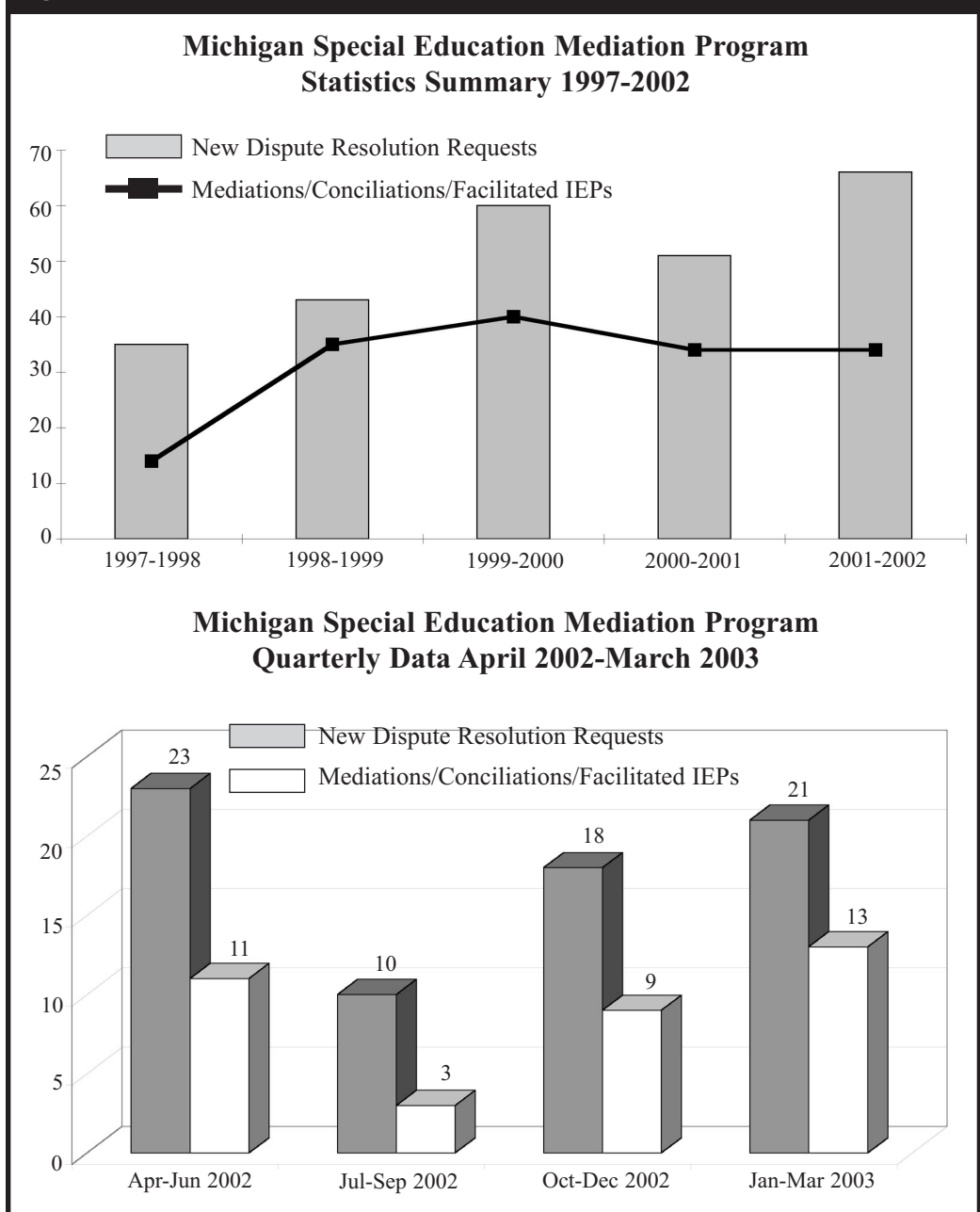
continued from page 3

- If you represent a school, make sure you have, or are accompanied by a representative who has, authority to make decisions and can enter into and sign an agreement on behalf of the school. Additionally, a limited number of school representatives who are familiar with the student should attend.
- Limit the number of people attending to make most productive use of the time.

Q: Are there any other ways I can obtain mediation services?

A: In addition to MSEMP, a few private mediators offer special education mediation services in Michigan. Schools or parents can hire these mediators and pay for these services by mutual agreement between the parties to the dispute. While these private mediators are often highly skilled, there are no specific training requirements to be a private special education mediator in Michigan.

Figure 3



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FACILITATION Q & A

Q: What is IEP facilitation?

A: Facilitation is a voluntary process during which a neutral facilitator helps IEP Team members communicate effectively at Team meetings. MSEMP provides neutral (not affiliated with schools or parent groups) facilitators to assist with meetings. These facilitators are the same persons who also serve as mediators. (See Mediation Q & A on pages 2-4 for more information.) Facilitating an IEP Team meeting supports early dispute resolution, before a potential conflict has time to build and become more difficult to resolve.

Q: When is IEP facilitation appropriate?

A: IEP facilitation can be requested for a number of reasons:

- When parents or school personnel feel uneasy about an upcoming IEP Team meeting.
- When participants feel the need to exclusively focus on the issues rather than having to also concentrate on running the meeting smoothly.
- When communication among parents and school personnel begins to become strained.

Greater Capacity Currently Exists for MSEMP to Provide Dispute Resolution Services

MSEMP has provided mediation, conciliation, and facilitation services since 1996. The number of cases has increased considerably over the years (see Figure 3); however, MSEMP has available even greater capacity to assist with collaborative dispute resolution. Generally, stakeholders favor increasing the use of collaborative dispute resolution. Everyone wins when parents and schools solve problems early and prevent conflicts from growing into formal—and more adversarial—disputes.

Join the ongoing trend toward more collaborative problem solving!

IEP facilitation is most appropriate before a well-defined dispute arises, but general tensions exist. When clearly disputed issues exist, the situation may call for mediation.

Q: What is the facilitator's role?

A: The facilitator works for the whole IEP Team, not just the person who first requested the facilitator, whether that was a parent or a school staff person. The facilitator works with the group to make sure that all participants have a chance to be heard and to keep the meeting focused on the IEP issues. The facilitator has no stake in the outcome, since he or she is a neutral, outside third party. This allows the facilitator to work on the process of keeping the meeting running smoothly, thus allowing the team members to concentrate on the content of the IEP. The facilitator may, for example, take on the full role of meeting chair, or he or she may play a more limited role, such as coaching team members to allow everyone to be heard and to consider creative options.

Contact the Michigan Special Education Mediation Program

To access mediation and facilitation services in your county or for more information, dial 1-800-8RESOLVE (1-800-873-7658).

This toll-free number connects to the mediation center serving the county from where you initiate the call. For local mediation center phone numbers and e-mail addresses, check:
www.courts.michigan.gov/scao/resources/other/cdrpcenters.pdf.

For additional information, call the Office of Dispute Resolution, State Court Administrative Office at (517) 373-4839 or visit www.courts.michigan.gov/scao/dispute.

In addition to mediation and facilitation services, MSEMP offers free presentations and workshops on conflict resolution in special education upon request. Consider inviting your local mediation center representative to your next staff meeting, Parent Advisory Committee meeting, organizational meeting, or other event.

Here's What Mediation Participants Have to Say

In the year ending October 2002, surveys from mediation participants indicated that 96 percent would use mediation again. Here are comments from some of those participants:

..... MEDIATION 1

A school official said: "[The mediator] was an expert in his role—very well done. Productive."

About the same mediation, a parent said: "Mediator was great—kept the meeting very well balanced."

An advocate participating in this same mediation said: "I very much appreciate the mediator's skill and competence in bringing two 'sides' together."

..... MEDIATION 2

According to a service provider: "This was an excellent opportunity to bring a close to many issues that could/would have ended up in a court room. I highly value this process and I will pass this positive info along to others."

..... MEDIATION 3

A teacher consultant said: "Great process. Good feelings exchanged at end of meeting. [Child's] best interests kept in focus."



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FOCUS on Results was produced and distributed through an IDEA Mandated Activities Grant, titled Education Information Network, awarded by the Michigan Department of Education (MDE) to the Eaton Intermediate School District (ISD).

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WEB LINKS

Dispute Resolution Web Sites

Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

www.directionservice.org/cadre

Michigan Special Education Mediation Program (MSEMP)

Michigan Supreme Court, State Court Administrative Office,
Office of Dispute Resolution

www.courts.michigan.gov/scao/dispute

mediate.com

www.mediate.com

American Bar Association Network

www.abanet.org/dispute/home.html

Association for Conflict Resolution

www.acresolution.org

National Special Education Web Sites with Dispute Resolution Pages

National Association of State Directors of Special Education (NASDSE)

www.nasdse.org

National Information Center for Children and Youth with Disabilities (NICHCY)

www.nichcy.org

Technical Assistance Alliance for Parent Centers (The Alliance)

www.taalliance.org

U.S. Department of Education, Office of Special Education Programs (OSEP)

www.ed.gov/offices/OSERS/OSEP/

Michigan Special Education Web Sites

Citizens Alliance to Uphold Special Education (CAUSE) Michigan's designated parent training and information center

www.causeonline.org/

Center for Educational Networking (CEN)

www.cenmi.org

Michigan Department of Education

(Click on Administrators, then Special Education)

www.michigan.gov/mde/