~ Creating Agreement ~

Collaborative Problem Solving in Early Intervention & Special Education

Jointly Developed By:

The Consortium For Appropriate Dispute Resolution In Special Education (CADRE)

The IDEA Partnership Project (at NASDSE)

With funding from the US Department of Education, Office of Special Education Programs (OSEP)

Development Team

- **American Occupational Therapy Association (AOTA)**
  - Carol Gryde
  - Remy Pai
- **Consortium for Appropriate Dispute Resolution in Education (CADRE)**
  - Loni Elliott
  - Philip Moses
  - Marshall Peter
  - John Reiman
  - Richard Zeller
- **IDEA Partnership**
  - Joanne Cashman
  - Terry Jackson
- **Fiesta Educativa**
  - Lorena Morales

Development Team (cont.)
The following individuals & organizations participated in the development of this presentation

- **National Education Association (NEA)**
  - Judy Richards
- **New York Long Island Families Together (LIFT)**
  - Helene Fallon
- **School Social Work Association of America (SSWAA)**
  - Steve Button
- **Statewide Parent Advocacy Network (SPAN)/Region 1 Parent TA Center**
  - Diana MTK Autin
- **Wisconsin Family Assistance Center for Education, Training & Supports (FACETS)**
  - Nelsinia Ramos
- **Wisconsin Special Education Mediation System**
  - Nissan Bar-Lev
  - Jan Serak

4

"Seek first to understand, then to be understood."

Stephen Covey, "Habit 5"
<u>Seven Habits of Highly Effective People</u>

CADRE/IDEA Partnerships
Dispute Resolution Workgroup Vision

- ❑ Educational outcomes will be improved when families, schools and service providers are working together effectively.

- ❑ Provision of training and educational opportunities to a diverse group of stakeholders enhances the capacity to engage in collaborative problem solving and shared learning that is responsive to individual students' needs.

Workshop Outcomes

Participants will acquire an increased awareness of the breadth of issues and strategies associated with Special Education Dispute Prevention/Early Resolution including:

- Gaining a better understanding of conflict and the ways that people respond
- Gaining familiarity with the Procedural Safeguards requirements in IDEA '04
- Learning about practices and strategies that comprise the "Continuum" of conflict resolution options
- Understanding the power of listening in preventing and resolving conflicts
- Gaining an awareness of interest based problem solving strategies
- Understanding the important role of cultural issues in relation to resolving disputes
- Becoming aware of useful resources for additional information and support

7

Our Assumptions…- collapse

- Different cultures may have differing perspectives on conflict and how it's most appropriately approached
- Conflict/disagreement is a healthy reflection of a diverse and competitive society
- Most parent/school relationships are or can be positive and mutually respectful
- Skills can be acquired that help facilitate productive relationships

Our Assumptions…

- Early opportunities exist to collaboratively address differing viewpoints on how to best serve the child

- Early conflict resolution can help create learning conversations that build shared learning, trust, and improved relationships

- Adversarial processes should be reserved for situations where other options have been exhausted

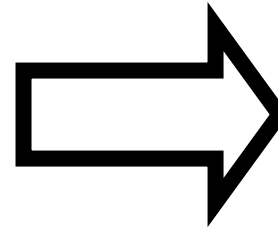- The cost of adversarial processes can be high in personal, relationship and financial costs

CONFLICT
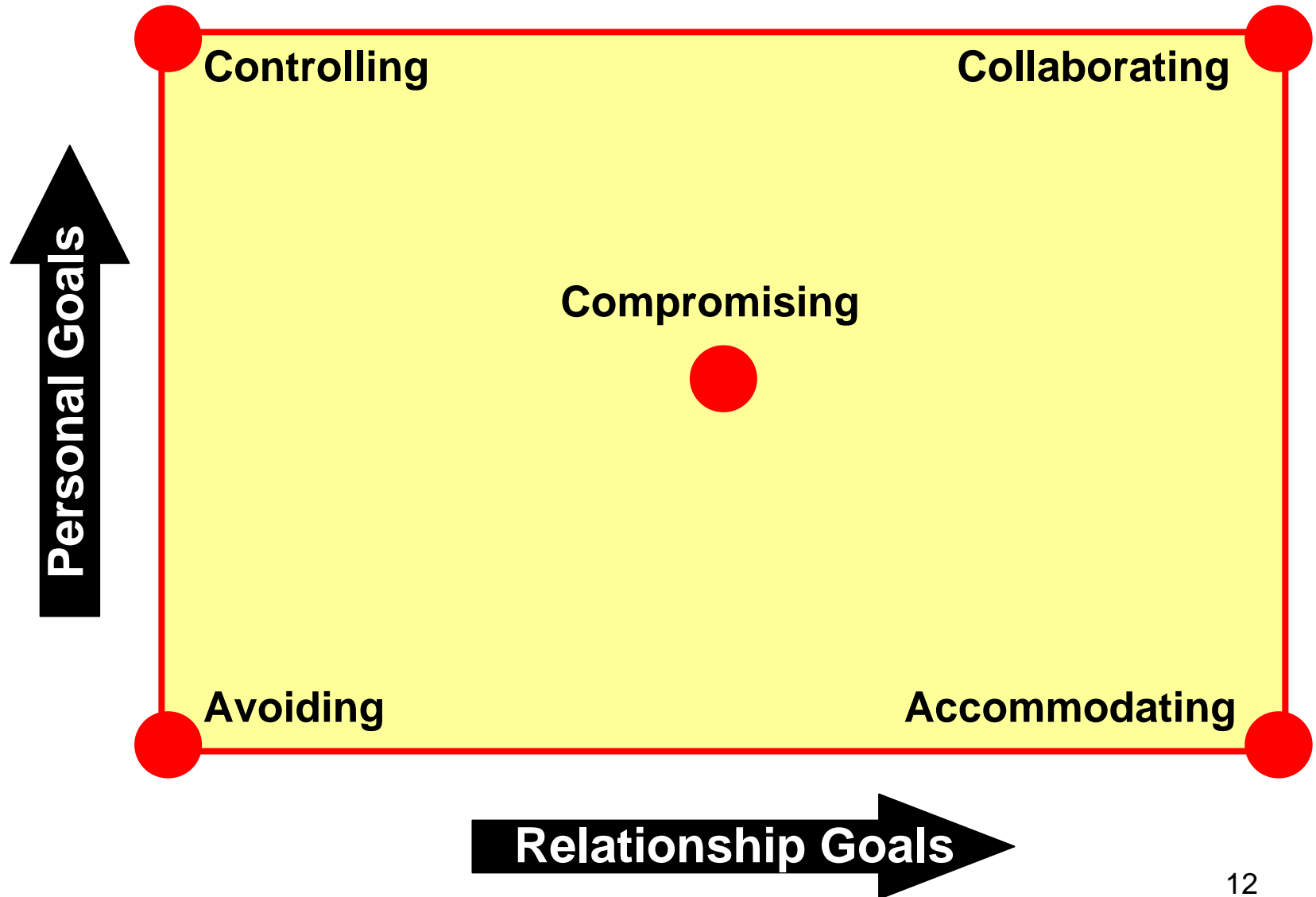
What does the word "conflict" bring to mind?

Conflict

- Expressed struggle
- Two or more people
- Interdependent
- Strong emotion
- Perceived blockage

⟹ Needs
Values

The Five Conflict Handling Modes

Controlling

Collaborating

Personal Goals ↑

Compromising

Avoiding

Accommodating

Relationship Goals →

12

Source: Thomas Killmann

Avoiding

Personal Goals

- What is it:
  - Unassertive and uncooperative
  - Sidestep, postpone, or withdraw from the issue for the present time
- When to use it?
  - When potential harm outweighs benefits to resolve
  - When time is needed to collect information or cool down

Relationship Goals

Accommodating

Personal Goals

- What is it?
  - Sacrifice your own personal goals to satisfy the concerns of the other(s)
  - Yield to another point of view
- When to use it?
  - When relationships are most important
  - Reach a quick, temporary solution

Relationship Goals

14

Controlling

Personal Goals

- What is it?
  - Pursue own ends without agreement of others
  - Achieving one's personal goals paramount
- When to use it?
  - When unpopular actions must be implemented
  - When your family or organization's welfare is at stake

Relationship Goals

15

Compromising

Personal Goals

- What is it?
  - Find expedient, mutually acceptable alternative
  - Both parties give up something
- When to use it?
  - When two parties of equal power are strongly committed to mutually exclusive goals
  - To achieve temporary solutions to complex issues

Relationship Goals
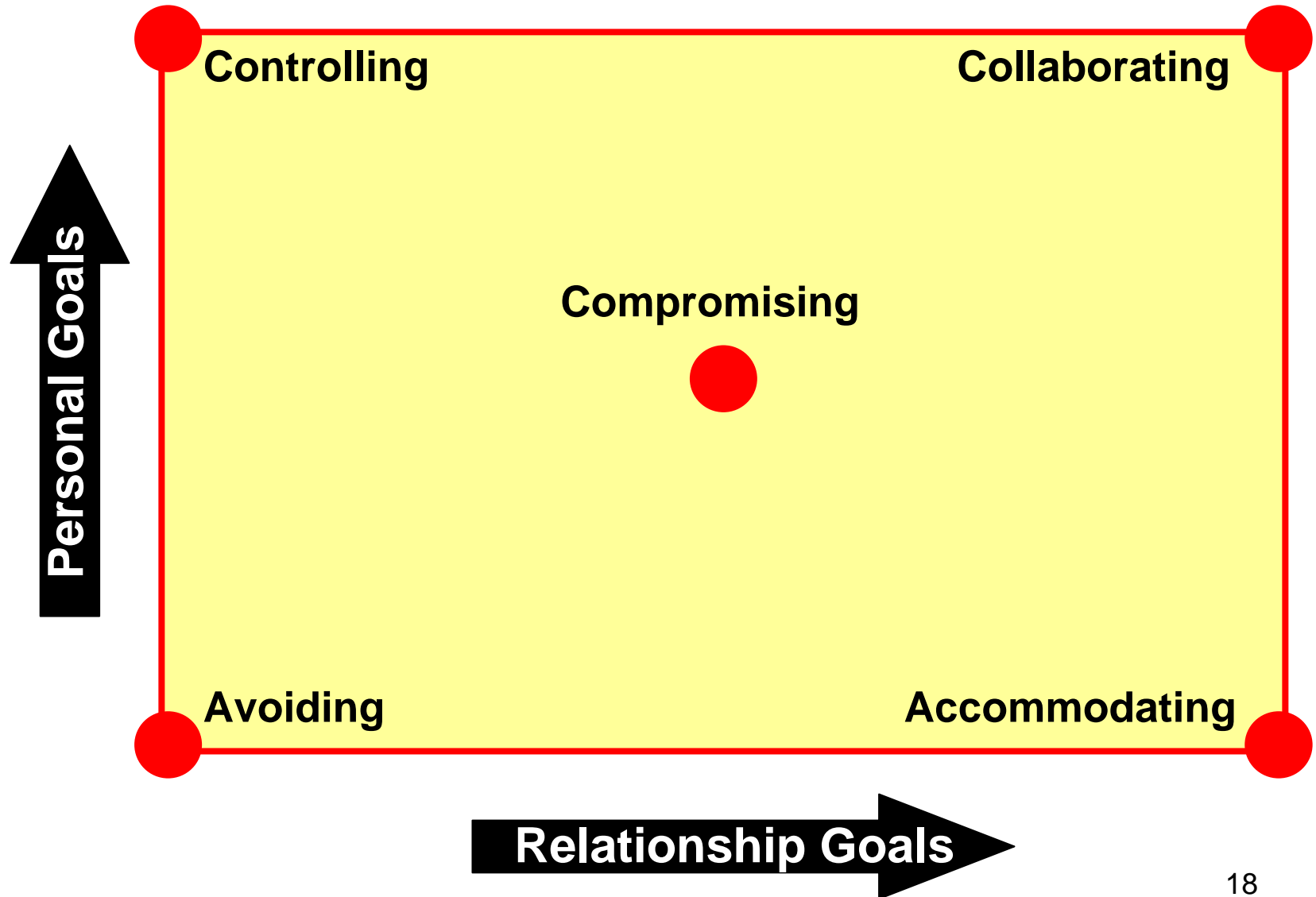
16

Collaborating

Personal Goals

- What is it?
  - Identifying concerns of each person and finding alternatives that meet both sets of needs
  - Finding a solution that fully satisfies needs and concerns of both people
- When to use it?
  - When relationships & issues are both important
  - To gain commitment and acceptance for a high-quality decision

Relationship Goals

17

The Five Conflict Handling Modes

Controlling

Collaborating

Personal Goals

Compromising

Avoiding

Accommodating

Relationship Goals

18

Source: Thomas Killmann

Costs of Conflict

- ❑ Financial costs
- ❑ Educational costs: takes energy away from instruction, can interfere with needed consistency
- ❑ Human costs: stress, burnout, marital discord
- ❑ Relationships: hurts relationships among people who have to work together
- ❑ Societal costs: parents, families, schools divided; bad press for special education; missed opportunities

Comparison of Dispute Resolution Approaches

Informal Negotiation	Resolution Session	IEP Facilitation	Mediation	IDEA Complaint	Due Process
Private/Informal	Private/Informal	Private/Informal	Private/Informal	Public/Formal	Public/Formal
2-3 days	15-30 days	12 Days	21 Days	60 Days	45 Days
$?	$?	$?	$?	$?	$?
Future	Future	Future	Future	Past	Past
Voluntary	Voluntary	Voluntary	Voluntary	Involuntary	Involuntary
Win/Win	Win/Win	Win/Win	Win/Win	Win/Lose	Win/Lose

Source: Wisconsin Special Education Mediation System

- How much do you think each of these processes costs?
- What do you include when you think about process costs?
- It is more cost-effective to resolve disagreements early in the process.

20

Dispute resolution processes under IDEA 2004

Dispute Resolution Processes Available Under IDEA '04

- Written State Complaint (assumed to be in regulations)
- Mediation
- Resolution Sessions
- Due Process Hearings (DPH)

Dispute Resolution Options

No Neutral

With a Neutral

C O N F L I C T

Informal/ formal Negotiation

Telephone Call

IEP Meeting

Scheduled Meeting

Mediation Session

IDEA Complaint

Law Suit

Resolution Session

Resolution Session

Due Process

Least coercive

Most coercive

Most self-determination

Least self-determination

CADRE Continuum of Conflict Resolution Options
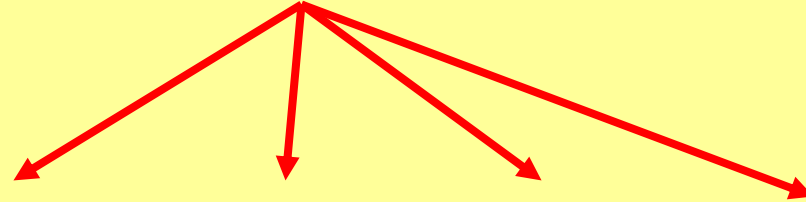
CADRE/IDEA Partnerships

Stage I			Stage II			Stage III				Stage IV				Stage V			Stages of conflict
Prevention			*Disagreement*			*Conflict*				*Procedural Safeguards*				*Legal Review*			Levels of Intervention
Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Session	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Process (Tier II)	Litigation	Legislation	Assistance/ Intervention Options

Third-Party Assistance — Third-Party Intervention

Decision Making by Parties — Decision Making by Third Party

Interest Based
Based on mutually acceptable solutions — Rights Based
Based on legally defined rights

Informal & Flexible — Formal & Fixed

Dimensions that help clarify placement of the options along the continuum

Use of Procedural Safeguards 2002-2003 – 50 States

- ◻ Mediations Held
  - ◻ 6,790 held
  - ◻ 4,722 with agreements (70%)
- ◻ Complaints Filed
  - ◻ 5,715 filed
  - ◻ 2,992 with findings (52%)
- ◻ Due Process Hearings
  - ◻ 12,889 requests
  - ◻ 2,184 hearings held (17%)

Creating Agreement

Creating Agreement-The Mediation Process

- Setting the Stage: Environment, Expectations, Process
- Establish rapport and trust
- Uninterrupted time for each participant
- Identify, clarify, summarize issues
- Discuss issues & listen for common ground
- Generate possible solutions
- Evaluate possible solutions
- Build agreements along the way

CADRE/IDEA Partnerships

Power Imbalances

- Inherent in conflict:
  - Actual and perceived power may differ
  - Participants may not be equipped/supported to participate effectively may not be able to participate effectively
  - Cultural differences may contribute

- Addressing Power Imbalances
  - Well-facilitated processes and trained participants
  - All voices encouraged, supported, and welcomed
  - Relationships well-built help overcome imbalance

What else can help reduce power imbalances?

Benefits of Early Dispute Resolution

- Flexible, informal
- Addresses underlying issues, concerns & priorities of participants
- Capacity for creative resolutions
- Allows direct communication
- Process educates participants
- Win/win outcomes
- Potential to build, maintain & enhance relationships
- More comprehensive
- Accessible to wide range of participants
- Futures focused
- Relatively time efficient
- Higher satisfaction

Listening

"Listening is probably the most cost effective element of a conflict management system."

Mary Rowe

High Risk Responses

Sending Solutions
- Ordering
- Threatening
- Moralizing
- Advising
- Logically Arguing
- Questioning

Evaluating
- Judging
- Praising
- Diagnosing
- Name-Calling

Withdrawing
- Reassuring
- Diverting

Takes the focus off the other person

Certain responses:
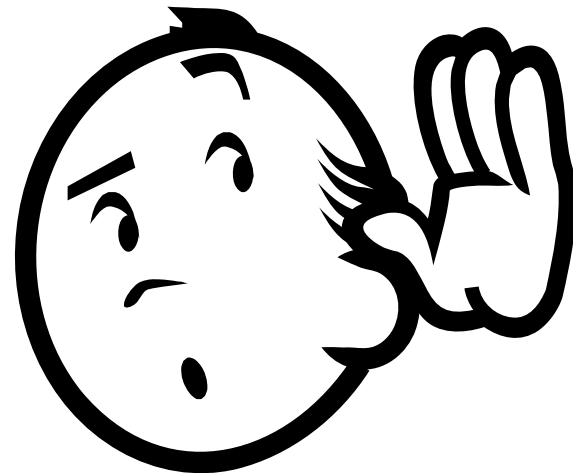
- Derail the conversation
- Take the focus off the other
- Block the other from finding a solution
- Lower the other's self-esteem
- Distance your self from the other
- Diminish the other's motivation

Characteristics of Good Listening

- Think of a time when someone listened to you.

- What did he/she do that made you feel he/she was listening?

- What was his/her attitude toward you?

Listening

Following the thoughts and feelings of others to understand what they are saying from their perspective, frame of reference, or point of view.

Dignity and Respect

EARS

EYES

UNDIVIDED
ATTENTION

HEART

The Chinese characters that make up the verb "to listen" tell us something about this skill.

Listening ➡ Problem Solving

- Sometimes speakers just need to be heard
- Sometimes listening clears up confusion
- Sometimes listening identifies a need for problem solving

Reflective Listening

- The HEART of listening is:

    EMPATHY, CARING & RESPECT

- Main rule:

    KEEP THE FOCUS ON THE OTHER

- Basic skill clusters for reflective listening:
  - Attending skills
  - Following skills
  - Responding skills

Attending Skills:

- ❑ Posture
- ❑ Contact (distance, eyes, touch)
- ❑ Gestures
- ❑ Environment
- ❑ Interested Silence

Following Skills

- ❑ Door-Openers
- ❑ Acknowledgement Responses
- ❑ Open-Ended Questions

Responding Skills

- □ Reflecting Content
- □ Reflecting Feeling
- □ Reflecting Meaning
  (Content linked with feeling)
- □ Summarizing

Listening is a disciplined skill

You can't do two things at once if one of them is listening.

You can't listen if you are trying to figure out what to say.

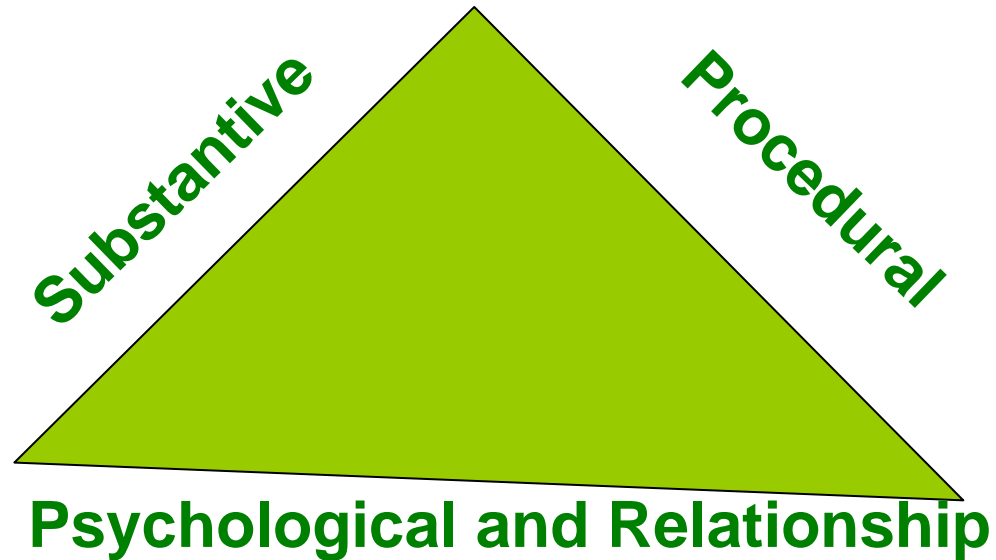# Positions & Interests

Positions & Interests

Position

Specific solution proposed to resolve problem - the "WHAT"

Interest

Underlying real need/desire that gives position its life (i.e., beliefs, expectations, values, fears, priorities, hopes, concerns) – the "WHY"

Types of Interests

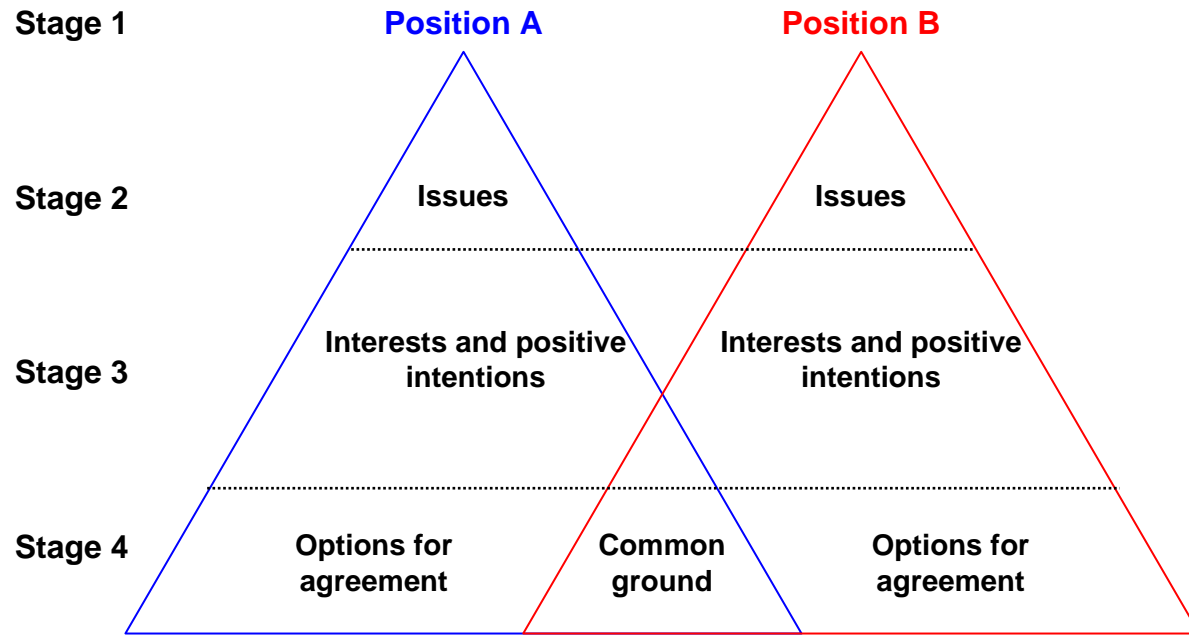**Substantive**

Procedural

Psychological and Relationship

46

Sample Positions:

- *"The target level for appropriate interactions in my classroom must remain at 50%."*

- *"We want an American Sign Language interpreter in that English Lit class."*

- *"I demand an apology now!"*

- *"Rob has a right to a full time instructional assistant next term"*

Finding the Interests

Stage 1   **Position A**   **Position B**

Stage 2   **Issues**   **Issues**

Stage 3   **Interests and positive intentions**   **Interests and positive intentions**

Stage 4   **Options for agreement**   **Common ground**   **Options for agreement**

Position: One party's solution to the problem/ situation.
Often a self-serving solution

Issue: Elements or subject matter of the problem.
Elements at issue between the parties that must be negotiated in order to reach agreement.

Interest: Factors that motivate/ drive parties to reach agreement and take positions
Interests underlie positions in that the parties' positions are intended to meet and or address their interests (hopes, wants, needs, fears, concerns)

Adapted from Highnam, K. (2001). Interest-based negotiation,
CSSEA 2001 Fall Conference and AGM. Surry B.C, Canada. CSSEA.

Finding the Interests

Question, question, question…

- *"What makes that solution so important for you?"*

- *"Why are you suggesting…"*

- *"What would you accomplish in getting what you want?"*

- *"What if that did/didn't happen?"*

- *"How will you be affected by…?"*

- ***"Imagine that you got _____; what would be taken care of?"***

Finding the Interests

- What need is the person taking this position attempting to satisfy?
- What is motivating the person?
- What is the person trying to accomplish?
- What is the person afraid will happen if a demand is not fulfilled?

Summary: Interest-based Negotiation

- Aims not to change the other person, but to change negotiation behavior
- Shifts from "your position versus mine" to "you and I versus the problem"
- Uses objective criteria
- Involves a mutual exploration of interests to yield more creative options.

Adapted from Highnam, K. (2001). Interest-based negotiation, *CSSEA 2001 Fall Conference and AGM*. Surry B.C, Canada. CSSEA.

Placement Scenario

- What positions can you identify?
- What interests can you identify?
- How can we move from position-based to interest-based negotiation?

Cultural Competence & Diversity

Cultural Competence and Diversity

- Understand the role of differences
  - Status
  - Relationships
  - Socially acceptable behavior
- Provide ongoing training and support in diversity, cultural competence, flexibility
- Provide qualified, trained & prepared interpreters when needed
- Modify communication methods, processes, & materials to respond to individual circumstances

Cultural Competence and Diversity

- Be aware of personal biases and assumptions based on how a person dresses, speaks, acts, etc.
- Check-in, monitor, and behave responsibly.
- Recognize that many people communicate and process information differently.
- Engage community leaders and cultural liaisons
- Actions and words don't always have the impact we intend.

Cultural Competence and Diversity

The Platinum Rule:

"Do unto others as they would have you do unto them."

Tony Alessandra

Student Involvement

Fundamental Value

The student should be present and participate as much as possible in any meeting regarding their services.

"Nothing about me without me."

Student Participation

What are the advantages?

What are the challenges?

What are the things to keep in mind?

Resources

- For more information, contact CADRE, the National Center on Dispute Resolution in Special Education at www.directionservice.org/cadre
- Links to IDEA Partnership www.ideapartnership.org
- Links to participants in development