

## What can you expect when you mediate?

Art Stewart  
Coordinator of Mediation  
Virginia Department of Education

IEP Teams meet to try to establish consensus on what services a child needs and should receive. If they can't reach agreement, they tend to put more effort into seeking resolution by continuing to meet. Following the same format, in the same room, with the same participants, can they expect the outcome to be different?

Emotion is energy. It attaches to all things human and coexists with memory. One of the things we know about memory is that highly emotional events are perceived as occurring more frequently. Also, the most recent event is experienced as occurring more frequently. When emotion is locked up in a conflict, its effects can be alternatively clarifying and focusing, abrasive and frustrating. It can prevent people from being able to move forward. Mediators are familiar with the emotional toll which conflict can take. They spend some time trying to help people gain a new stance toward each other, hoping to release the energy which goes into defense and maintenance of the conflict toward *creating* something new, a supportable outcome.

One of the things which gets omitted when we are having difficulty in negotiation is the *social support* we extend toward each other in other social contexts. We feel its omission and we feel less valued as a result. Mediators work to add back the social support and heightened courtesy in their work with parties in order to change the tone of the meeting and participants' expectations. People write to me in their consumer evaluations that: "The mediator made us each feel *valued*." This can go a long way toward reducing the emotion and energy which goes into defensive behavior.

People entering a negotiation have a sense of their range of acceptable outcomes. The poles of that range are defined by the maximum feasible outcome and an outcome with no perceived value, one which would cause one to abandon negotiations and seek a solution in another forum. When there is an overlap in ranges among participants in a negotiation, an agreement is possible. What good negotiators and mediators know is that these ranges are not fixed, but change during the negotiation, as people inform and influence each other and as they entertain ideas which hadn't occurred to them before they sat down at the table. This is why a process which "cuts to the chase" overlooks opportunities which never get uncovered.

A history of unsuccessful negotiations between people tends to result in their taking positions which they defend, but do not re-examine. Mediators encourage people to explain their thought process and how they have reached conclusions. This approach allows people room to think, less hemmed in by their own positions. I've heard mediators called "laser listeners" because they can elicit, bring to light, develop and underline the best thinking of people sitting at the table.

People requesting mediation ought to be able to expect these things. A mediator should act in a way which doesn't leave any party with a perception of bias or unequal attention or treatment. A hallmark of the practice is that agreements are self-determined. Parties to mediation should feel no coercion from the mediator. A mediator should be competent to conduct a process where people can feel comfortable discussing difficult issues which concern them. The mediator should help people to identify the issues important to them and to identifying the weight or impact of the issues as they affect a student's educational progress. The mediator should help people to focus on the value of possible outcomes. The mediator needs to be knowledgeable of federal special education law and regulation, state education law and regulation, key case law. These are important to insure that responsibilities and rights are fairly represented. Mediation provides some measure of flexibility in a highly regulated area. However, mediated agreements should reflect the guarantees in the framework of the laws and regulations.

Mediators seek to interrupt old and unproductive cycles of interaction. Making sure that each person at the table has a full voice is one of the mediator's tasks. They pay attention to the comfort level of the participants, providing what is needed for people to be at their best as negotiators. They pay attention to issue identification, issue framing, issue management and timing. They facilitate a methodical process for people to move from voicing and revisiting their needs to working on and evaluating possible outcomes. Mediators do not act as advocates, they are neutrals. They do not direct the outcome, but conduct the process.

In a mediation which brings to closure all the issues being contested, school representatives may reasonably request that parents consider agreeing to retract any outstanding complaints or requests for hearing which they've raised on the same issues. This brings things to closure and clears the air for future productive interaction. However, an attempt to reach forward to request that a parent not raise future claims about future issues has had the effect of scuttling some otherwise solid agreements before they were signed.

Mediation is a highly successful process. This past year, we reported an 83% agreement rate for mediations which were convened. The rate for agreements reached when a hearing has been requested is far lower at 29%. Although that means that in a number of cases, participants were spared the costs and travail of hearings, it also suggests that early use of the mediation intervention may bear a higher likelihood of resolution.

It is a creative act for parents and school administrators to decide to change the outcome of a discussion which has not reached closure by changing the format. By changing the format and bringing in a skilled mediator, several things may result. One is that, by simply bringing a new person into the negotiation process, people will speak and inform themselves differently. By introducing a mediator to the table, participants' expectations change. This is likely to change outcomes. People predictably bring forward new ideas and new options, which they haven't shared before. If you change the format, you can change the outcome.

For more information, please contact Art Stewart, Coordinator of Mediation, Office of Dispute Resolution and Administrative Services. You may reach him by Email at [Arthur.Stewart@doe.virginia.gov](mailto:Arthur.Stewart@doe.virginia.gov) or by phone at 804-786-0711.