

# Life in the Trenches – The Mediator's View

## The Evolving Landscape in Special Education Dispute Resolution

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# Overview

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- ▶ Characteristics of Conflicts Between Parents & Schools
- ▶ Why These are Challenging Conflicts to Resolve
- ▶ Promoting Resolution
- ▶ What Limits Resolution
- ▶ The Three Stages of Mediation

# Characteristics of Conflicts Between Parents & Schools



- ▶ Emotional
- ▶ Multiple as opposed to a single event
- ▶ Multiple players and personalities
- ▶ Context of the conflict
- ▶ School district concerns
- ▶ Continuing relationship
- ▶ Individuals vs. institutions

# Why These are Challenging Conflicts to Resolve

- ▶ Build up over time
- ▶ Ongoing relationships
- ▶ Getting mired in the details
- ▶ Resolution requires more than one thing in one day
- ▶ Differential power positions and the subject matter of the dispute
- ▶ Multiple personalities and different sets of needs, concerns, and dynamics
- ▶ The need to “win” – who is in charge?



# Promoting Resolution

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- ▶ Explaining the process and how it differs from IEP meeting or hearing – not truth finding/evidentiary
- ▶ Understanding the past experience to:
  - ▶ build rapport
  - ▶ gain trust
  - ▶ create safety to move forward
- ▶ Focus on interest over positions – concerns not specific solutions
- ▶ The advantage of the nature of the conflict – create solutions over a single event or dollar amount
- ▶ Analyzing options, legal issues, evaluating pros & cons
- ▶ Retaining focus on joint goals for the student
- ▶ Addressing individual conflicts between people as well as the general dispute
- ▶ Creativity

# What Limits Resolution

- ▶ Failure to assist parties in making sense of trust issues, anger
- ▶ Failure to encourage brainstorming, creative options, wider range of possible solutions
- ▶ Failure to test thinking, play devil's advocate, pose questions
- ▶ Fundamental disagreement about student's needs, capabilities or defining a legal issue
- ▶ Getting more out of conflict than resolution
- ▶ Time constraints, impatience with the process



# The Three Stages of Mediation

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- ▶ **1. Early Stages: connect and rapport**
  - ▶ Importance of timing and patience
  - ▶ Establishing rapport through active listening, questions, acknowledging feelings
- ▶ **2. Middle Stages: exchanging ideas and proposals**
  - ▶ Creativity, flexibility, asking questions
  - ▶ Communicating proposals and coping with reactions
- ▶ **3. Final Stages: reaching consensus and mediation agreement**
  - ▶ Helping the parties see the final solution
  - ▶ Crafting the written settlement agreement – who prepares it, explains it
  - ▶ Special Issues: release, boilerplate language