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Iowa's Special Education Mediators: Potted Plants Negotiating for a Place in the Sunlight, a Qualitative Examination of Personal Philosophy and Perceived Power

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IOWA'S SPECIAL EDUCATION MEDIATORS: POTTED PLANTS NEGOTIATING FOR A PLACE IN THE SUNLIGHT, A QUALITATIVE EXAMINATION OF PERSONAL PHILOSOPHY AND PERCEIVED POWER

An Abstract of a Thesis

Submitted

in Partial Fulfillment

of the Requirements for the Degree

Master of Arts of Education

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ABSTRACT

On November 19, 2004 the Individuals with Disabilities Education Act (IDEA) was reauthorized by the American government. Within the reauthorization, IDEA now includes provisions [20 USC § 1415 (*d-e*)] requiring mediation as an alternative to due process litigation. Prior to filing for a due process hearing, parents of children with specific disabilities must consider mediation as an option for resolving disputes concerning a child's special education program. Although mediation has been heralded as a successful dispute resolution tool, little is known about the process preferences or role of the mediator. An understanding of the philosophies and approaches of mediators may assist in uncovering essential ingredients of effective dispute resolution as reported by Iowa's mediators and through observation of mediation.

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DEDICATION

This project is dedicated to the state of Iowa's special education mediators, who welcomed me into their world. I have learned so much through this experience and it would not have been possible without their generous support and guidance.

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I would like to express my deepest respect and gratitude to my Advisor, Dr. Susan Etschiedt, whose enthusiasm is inspiring, expertise immeasurable and support endless. Dr. Etschiedt, thank you very much for caring about me and taking a vested interest in my life and academic adventures.

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INTRODUCTION

> (In) special education mediation the mediator…is oftentimes nothing more than a potted plant in the room. You get things started; the attorney for the parent will present their view on things and what they would like to see happen to remedy the situation. The attorney for the district and the AEA might ask a question or two, but then they'll go off, and decide how to generate a response. They may or may not meet with the parents while that's going on. And we just kind of wait for them to come back. And then it is really kind of a settlement negotiation between attorneys without a judge…and then the mediator becomes a secretary, a scribe, to write down what it is that they want in the agreement.
>
> *Iowa Special Education Mediator*
> *(in response to mediation in the state of Iowa.)*

Introduction to the Study

Mediation

> Mediation is neither a process designed to marshal evidence leading to an advisory opinion by a 3rd party, nor a rehearsal trial in front of a judge or a jury. Rather, mediation is a dialogue process designed to capture the parties' insights, imagination, and ideas that help them to participate in identifying and shaping their preferred outcomes (Brown, 2004, p.4).

Mediation is a problem-solving negotiation process in which an impartial third party works as a facilitator with disputants to assist them in reaching a collaborative agreement (King, P.C., & Witty, 2004). In contrast to court trial, mediation focuses on the future, rather than the events of the past. In the process of mediation the parties do not center on what did occur, but aim to arrive at an agreement about what will happen. "Mediation can be exonerated for its potential for fostering broad problem-definitions that allow for creative problem-solving, healing relationships and for transforming people and situations" (Riskin, 2004, p.2). The spirit of mediation values conflict as a problem to be solved rather than a combat to be won sometimes referred to as "litigation lite"

(King, P.C., & Witty, 2004, p.1), or "corporate goodwill" (King, P.C., & Witty, 2004, p.2). In mediation, negotiators replace prosecutors, judges, and juries (Bartens, 2004). Mediation is powerful because it places the opportunity to resolve the conflict in the hands of the disputants. The parties are able to facilitate creative solutions to their problem without the harsh mandates that are associated with formal litigation (King, P.C., & Witty, 2004).

Litigation remains to be the most dominant dispute resolution mechanism used. The delays, the expenses, and the unpredictability of litigation are persuading more counselors and disputants to look to mediation as an attractive alternative (Raisfeld, 2004). The collaborative and informal nature of this process is viewed as efficient and fair (Mathews, 2004). Mediation is highly appealing as a litigation alternative to attorneys due to mediation's flexibility and freedom from the rules that are attendant to the court process. Due to these perquisites, mediation frequently leads to quicker resolution of conflict than formal court procedures. Mediation is also much less expensive than alternative litigation (King, P.C., & Witty, 2004).

Mediation's success as a dispute resolution tool can be accredited to the extent of client participation in the process (King, P.C., & Witty, 2004). Disputant parties engage in dialogue and are encouraged to share their experiences, perspectives and brainstorm collaboratively for a creative solution to the conflict. This open and encouraging environment often promotes open communication and trust between the parties (Mathews, 2004). The mediator, or neutral third party, facilitates communication between the party members by promoting understanding of the perspectives and issues of

both sides. In addition, the mediator keeps the parties focused and on task, and most importantly, guides the disputants towards a creative solution to their problem (Brown, 2004).

Process of Mediation

The process of mediation is very informal and flexible. Despite the context of the conflict, most mediation meetings abide to very similar agendas. The general framework for a mediation meeting consists of the following components: initial joint session, opening statements, caucus, negotiating, and a conclusion to the mediation. (Raisfeld, 2004).

Within the initial joint session, or the opening of the mediation, the participants are introduced to the mediation process, and made familiar with any formalities that they may encounter throughout the mediation session (Raisfeld, 2004). In this part of the process, the mediator takes a moment to introduce himself, as well as formally introduce the individuals present. Most mediators invite the participants to indicate how they would prefer to be addressed (Haynes, Haynes, & Sun Fong, 2004). Following these formalities, the mediator reviews the agenda of the mediation meeting with the parties and reviews the confidentiality agreement to which they are bound (Raisfeld, 2004).

During the mediation, the mediator and the party members are bound by an agreement in confidentiality. What is shared at the mediation cannot be disclosed by any party member present at the mediation and cannot be used against them in a subsequent lawsuit. With the confidentiality agreement in place, the parties are more trusting to discuss their perspectives of the conflict at hand (Mathews, 2004). The security found in

confidentiality opens communication between the parties and helps to improve the free flow of information, which should lead to quicker resolution of disputes (King, P.C., & Witty, 2004).

At this point, mediators may set up ground rules with the parties. A common ground rule suggestion may be to recommend to their parties to avoid interrupting adversaries while speaking (Raisfeld, 2004). Some mediators will recommend that participants write down what they are thinking immediately as an alternative to interruption (Buntz, Buntz, & Myers, 2004). After discussing these formalities, the mediator will generally take care of house keeping duties. The party members will be informed where bathrooms, phones, or vending machines are located, discuss lunch arrangements, and other relevant matters. The mediator will inform the parties of the agreed upon time restrictions of the mediation and ask if any alterations need to be made. After these simple organizational issues have been addressed, the mediator will invite the parties to begin their initial presentations (Raisfeld, 2004).

During the initial opening statements, the parties present their arguments from their perspectives. Sometimes clients will advocate for themselves, other times lawyers will speak on their behalf (Raisfeld, 2004). Mediators may invite the participants to volunteer as to who would prefer to share their perspective of the conflict first (Haynes, Haynes, & Sun Fong, 2004), or invite the complainer to speak first. The complainer is the participant that initiated the request for the mediation (Haynes, Haynes, & Sun Fong, 2004).

Caucuses generally follow the opening statements of the parties. During a caucus mediators may ask clarification questions of both sides, or engage in some reality testing questions. Caucuses may be held separately or in unison and can be used to help determine the underlying interests of the parties beneath their adversarial positions (Raisfeld, 2004).

Throughout the negotiation process, the mediator works to keep the parties engaged, even when the parties appear to be hopelessly far from an agreement (Raisfeld, 2004). The purpose of the negotiation process is not to convince the mediator of the merits of a position in litigation, but to increase participant understanding, allow participants to consider how to advance settlement, or agreement discussions (Raisfeld, 2004). The mediator may question the parties about facts, relevant laws, interests, and will attempt to get the parties to think about strengths and weaknesses that they share. Some mediators will use strategies like creating lists of options or mapping on large chart paper (Raisfeld, 2004). Mediators will continue to ask very deliberate and thought provoking questions in order to clarify the underlying interests and needs that motivate the positions that the parties are taking (Brown, 2004). The mediator's questions will allow the parties to explore their interests as the problem to be solved begins to take new dimensions (Brown, 2004).

Additional disputes may emerge as the mediation session progresses. The mediator must lead the participants in negotiation through these unearthed issues in order to reach a resolution. Summarizing will assist the mediator in leading the participants to a mutually agreed upon problem definition (Haynes, Haynes, & Sun Fong, 2004). When

the parties in conflict communicate directly to one-another, better communication and understanding are more likely to be established. Eye contact and speaking to one-another may even allow healing to occur between them. Without the direct and careful facilitation of a mediator, direct communication between the clients may cause greater distress; even strengthen participants' hesitation to collaborate (Riskin, 2004).

In the conclusion phase of mediation many extensive hours may be spent facilitating further understanding, and sometimes even multiple mediation meetings are necessary. Once an agreement has been established, the mediator will write up a memorandum that summarizes the agreed upon terms. The document will then be signed, or initialed by all individuals present (Raisfeld, 2004). The mediation's agreement is valued as a compulsory document, signed to ensure that all parties understand the conditions of the agreement and are dedicated to its successful implementation (Bourdeaux, O'leary, & Thornburgh, 2001). Despite the monolithic implications of the agreement, it is suggested to envision the agreement as "direction signs along a path of development; as such they should be reassessed regularly for continuing fit for the parties involved" (Hoskins, & Stoltz, 2003, p. 347).

Description of the Mediator

A mediator is an unbiased third party through whom the parties may engage in negotiation (Mathews, 2004). The role as a neutral third party is essential for the mediator. This impartial position permits the mediator to facilitate dialogue amongst the participants and take an interest-based approach to problem-solving (Brown, 2004). Mediators facilitate the participants to identify shared interests (Winslade, & Monk,

2000). Once these underlying interests have been discovered the mediator can help facilitate dialogue, model appropriate behavior, and guide the parties in conflict to a collaborative solution. The persistence and relentless optimism of the mediator has the power to keep the parties communicating (Riskin, 2004). Mediators use a variety of strategies to assist parties in arriving in a mutual problem definition. These strategies include: mutualizing, normalizing, maintaining future focus, and summarizing (Haynes, Haynes, & Sun Fong, 2004).

In mutualizing, the mediator will listen for opportunities to point out when the participants share common ground. By pointing out these mutualities, the mediator is facilitating the parties to look forward to create a future vision in collaboration (Haynes, Haynes, & Sun Fong, 2004).

The normalizing strategy is used to validate each party's perception and make it clear to the participants that their argument is not unusual (Haynes, Haynes, & Sun Fong, 2004). Although participants may believe that needing third party intervention is unusual of abnormal, the mediator assures parties that their situation is normal and helps them accept that this problem too is solvable (Haynes, Haynes, & Sun Fong, 2004).

The process of mediation constructs a potential for an optimistic outcome. Mediation facilitates participants to envision and construct a new future. A mediator's focus on the future can help participants get past what they do not want, and enable them to focus on what they want as a desired outcome. Mediators are most helpful when they value their role as a pathfinder to the future, rather than wander in the events of the past. When mediators probe participants with reflective, future focused, and hypothetical

questions, they assist participants' vision towards the future. Once definitions of the problems have been identified, the participants can collaborate to create a new mutual problem definition (Haynes, Haynes, & Sun Fong, 2004).

The mediator listens carefully for any information from the participants that are relative to data, goals, personal strategies, and underlying interests of the parties involved. When the mediator hears relevant information, he summarizes it for the participants. To effectively summarize, the mediator must be very attentive to the useful parts of the participants' conversation. This strategy of summarizing allows the mediator to work within the parties' understanding of the conflict in order to create an environment suitable to change within the confines of the parties' perception of events (Haynes, Haynes, & Sun Fong, 2004).

Each party arrives at mediation with their personal perception, or dominant story, about the conflict. These dominant story lines are what construct the participants' positions in the conflict. When participants arrive at mediation they often participate in positional bargaining. This means that each party assumes a position, "argues for it, and makes concessions to reach a compromise" (Fisher, Ury, & Patton, 1991, p. 3). These positions must be broken down before the participants can collaborate to develop shared meanings about the problem and its solutions. The mediator helps to separate the problem from the people, so that the participants can begin to focus on the conflict at hand (Winslade & Monk, 2000). However, mediators help participants get beyond obstructive positions and be able to address underlying interests that are both substance and relationship based. Underlying issues or interests are what defines the problem,

oftentimes; these issues are important to all parties. These commonalities can be highlighted by the mediator and be used to construct a mutual problem definition, or shared perception of the conflict at hand and often may help parties get beyond impasse (Fisher, Ury, & Patton, 1991).

Once a mutual problem definition has been achieved, the mediator works to facilitate an agreement. Unlike an arbitrator, who adjudicates, or delivers judgment, the mediator's role is to assist the participants in reaching an agreement (Bartens, 2004). This facilitative role channels parties into dialogue, understanding, while focusing on the underlying interests, or needs, that are motivating the parties, while concurrently brainstorming for creative solutions to problems, and enabling parties to construct their own solution to the conflict (Brown, 2004). Lela P. Love, from the Mediation Clinic at the Cardozo Law School in New York, NY, describes the role of the mediator as more of an assistant. She states:

> Evaluating, assessing, and deciding for others is radically different than helping others evaluate, assess, and decide for themselves. Judges, arbitrators, neutral experts, and advisors are evaluators. Their role is to make decisions and give opinions...In contrast, the role of mediators is to assist disputing parties in making their own decisions and evaluating their own situations (Love cited in Brown, 2004, p.3).

This facilitative role of the mediator places the future vision of the conflict in the hands of the disputants.

As the participants' positions verbally begin to develop, the mediator assists the parties by mapping the emerging shared underlying interests and the effects of the problem-solving on the parties. The mediator will ask questions to assist the participants in thinking critically and reflectively to create a historic timeline of the development of

the conflict. This strategy allows the participants to enrich their perspective of the problem and provides a visual for the participants to see how their problem escalated and the effects those changes had on the participants (Winslade & Monk, 2000).

Sometimes the role of the mediator shifts from one as a facilitator to a more instructional role. The purpose of mediation is to facilitate individuals' negotiation of an agreement for their conflict. It is very unusual for participants in mediation to arrive at the meeting with strong negotiation skills. Throughout the resolution process, the mediator must support the participants in developing alternative, more successful problem-solving strategies. Mediators support participants by helping them become aware of the agreed common problem definition and reminding them of shared underlying interests and needs (Haynes, Haynes, & Sun Fong, 2004).

Once an agreement has been reached, a facilitative mediator will have no power to render a binding opinion or impose a settlement among the parties (Raisfeld, 2004). Mediators do not make binding decisions for the parties in conflict. If a mediator were to intrude, the action would threaten them with a potential for bias and would most likely compromise their appearance of neutrality, as well as interfere with the effectiveness of the mediation (Raisfeld, 2004).

Description of Counsel

Attorneys are usually involved in mediation. At the mediation session, it is common for both parties to be represented by counsel. The attorney's role is one as the gatekeeper, speaking for his client (Haynes, Haynes, & Sun Fong, 2004). Before the

mediation meeting the attorney usually meets with his clients in advance to discuss the conflict, plan a strategy, and present the critical issues in the case (Raisfeld, 2004).

Attorneys should discuss their opinions with their clients about the impediments to an agreement, thoughtfully consider who should attend the mediation, and make certain that all the appropriate people are present (Raisfeld, 2004). In preparation of the mediation, attorneys familiarize themselves with the background of the case. They should be highly competent of relevant case law and knowledgeable enough to assess the cost and risks associated with proceeding with the litigation (Raisfeld, 2004). Although the attorneys' role is inherent to reaching a successful agreement within mediation, their role is supportive to the participants who should be the key players within the negotiation process.

Effectiveness of Mediators

The competence of the mediator is also critical to the success of the mediation. Currently there is not a formalized mediator training process. The central government has no accrediting agency for mediators and no licensing requirements have been proposed. Currently, many practicing mediators are lawyers, certified social workers, or college professors (Raisfeld, 2004).

Methods of measuring mediator effectiveness include quality assessments (Della Noce, 2004), assessment of mediator performance through participant questionnaires (Wissler, & Rack, 2004), and establishment of an interactive rating scale that might measure mediator effectiveness (Della Noce, Antes, & Saul, 2004).

Wissler and Rack (2004) listed several methods for assessing mediator competence: training/ experience, written exams, settlement rates, performance-based assessments, and user complaints and assessments (pp. 3-5). Each suggested method of measurement has flaws and does not account for the complexities of mediation facilitation.

Practicing mediators dedicate hours to mediation training programs, which are used as an on-going assurance for mediator quality. Although these programs are straightforward and relatively economical, they do not ensure that the mediator has mastered the necessary expertise, or is upholding these skills to an appropriate degree (Wissler & Rack, 2004).

Written exams are another technique used to evaluate mediators' "decision-making abilities and knowledge about various aspects of mediation" (Wissler & Rack, 2004, p. 3). Although this assessment of mediator quality is simple and inexpensive, it cannot accurately calculate the mediator's ability to interact one-on-one with the participants. Due to this major limitation, paper pencil exams should not be the primary factor in concluding mediator aptitude (Wissler & Rack, 2004).

The use of settlement rates as an indicator of mediator effectiveness is deceptive. Due to the nature of mediation, a settlement agreement is only one possible outcome of mediation. The most common goal of mediation is that of increased understanding between the participants. Placing high stakes on mediation agreement may persuade mediators to pressure participants into a superficial settlement. In addition, the nature of each problem that results in a mediation intervention is unique to the individuals

involved. Evaluating mediators by settlement rates is deceptive because some conflicts are more complex than others (Wissler & Rack, 2004).

Performance-based assessments are another method used to evaluate mediators' effectiveness. This option is believed to most accurately depict mediator aptitude. This assessment involves a direct observation of the mediator facilitating a session. Generally the evaluators will arrive at the mediation, or mediation simulation, with a list of criteria and a rating scale. The evaluators will assess the mediator's performance in the setting of the mediation. There are many disadvantages to simulated performance-based assessments. Simulations are frequently time-limited, resulting in pressured facilitation. In addition, actors used in the simulations present a more limited variety of emotions than actual participants might (Wissler & Rack, 2004). This assessment tool is very complicated, time consuming and expensive. In addition, the evaluator's judgment of mediator performance is very subjective and open to interpretation.

User complaints and assessments are a final instrument used to evaluate mediator effectiveness. Collecting feedback from participants is a means of assessing on-going mediator quality. This form of evaluation may take shape in a post-mediation questionnaire. Although, this assessment measure is relatively inexpensive, questions have been raised about the participants' ability to monitor mediator quality. Many critics wonder if participants have a clear enough understanding about what should be expect from a competent mediator in order to provide meaningful feedback, and have concerns about whether they will take the time to provide meaningful responses (Wissler & Rack, 2004). However, despite the attempted research, there remains to be no clear depiction of

a method to predict mediator potential aptitude or ability, which is vital to the success of the mediation.

Mediation in Special Education

When conflict between families of children with disabilities and schools escalates to an intensity that the problem cannot be resolved internally within the school district, the Individuals with Disabilities Education Act (IDEA) and the state offers dispute resolution options. Parents and, in some limited conditions, the schools may disagree in regards to the student's identification, evaluation, placement, or right to free and appropriate public education (Yell, 2006). In these instances of disagreement, the family or school may file an affidavit of appeal for a due process hearing. Due process hearings are very adversarial, emotionally exhausting, time consuming, expensive and should be exercised as a last resort (Bartlett, Weisenstein & Etscheidt, 2002). Fortunately, the alternative dispute resolution options of a formal complaint and mediation do exist and are frequently utilized.

As an alternative to the confrontational disposition of a due process hearing, individuals in conflict may choose to file a direct complaint with the school district or state Department of Education (Bartlett, Weisenstein & Etscheidt, 2002). Once a formal complaint has been filed, a review process is initiated and a written verdict is issued within 60 days in response to the complaint (Bartlett, Weisenstein & Etscheidt, 2002). Although filing a formal complaint is of little or no monetary price for the parent, and that the time spent resolving the conflict is minimum, this option only results in a win/lose outcome (Bartlett, Weisenstein & Etscheidt, 2002).

In addition to a formal complaint, the option of mediation is also an alternative to due process. Special education mediation is the process by which an impartial third party—a mediator—facilitates a conversation among families and schools, to assist them in constructing a mutually agreeable decision regarding the conflict that led them to mediation (Buntz, Buntz, & Myers, 2004).

Statutes for mediation in special education are included within federal law. The Individuals with Disabilities Education Act (IDEA): 20 USC § 1415 (*d-e)* 1997 amendment reads:

> (*e*) *Mediation*
> (*I*) *In general*
>
> Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

IDEA law further elaborates, indicating that mediation is voluntary in part for all parties involved and cannot be used to deny, or delay a parent's right to due process. Each school must provide the option of mediation for dispute resolution between parents and schools for the same issues which are subject to a due process hearing (Bartlett, Weisenstein & Etscheidt, 2002).

According to national law, it is at the discretion of the participants to determine whether or not an attorney should be present at mediation. Attorneys can be physically present, or they can choose to be available to their clients through the telephone. If at any time the participants of the mediation feel that it is necessary for them to receive counsel

from an attorney they are welcome to do so (Beekman, 2000). No litigious statement has neither enforced nor denied the presence of attorneys in special education mediation.

Iowa Special Education Mediation

The Iowa Department of Education system is "defined by the strong working relationship between local school districts and area education agencies. Local districts provide the instructional program and area education agencies provide support services" (See Appendix C). The state of Iowa's commitment to alternative dispute resolution and early intervention for conflict at an informal level is an example of this systemic collaboration. Iowa's continuum of dispute resolution options has been heralded as highly efficient and held as a model for other states throughout the nation.

Iowa is dedicated to the early intervention of conflict and the continuum of dispute resolution services they offer is reflective of that value (See Appendix A). The resolution facilitation process is unique to Iowa. The Conflict Resolution Center of Iowa is an organization that provides conflict resolution training to individuals from Iowa's area education associations. Individuals who participate in this training are called upon to facilitate informal conflict resolution disputes of various natures within the area education agencies that they serve. The intention of this intervention is to relieve and address conflict at the lowest and most informal level before it escalates to a litigious level.

In 1985 the state of Iowa began to offer the option of special education pre-appeal mediation to families and school districts for conflicts related to the identification, evaluation, education placement, the provisions of free and appropriate education. Iowa

law includes provisions for the pre-appeal mediation as a dispute resolution option offered to Iowa's families of students with disabilities before an affidavit for due process has been filed (VII 41 I.A.C 281 41.106(1)). In the reauthorization IDEA 2004 this provision was formally added to the federal litigation. The state of Iowa's dispute resolution continuum, because of its high success rates and dedication to alternative dispute resolution, was influential to the amendments of IDEA 2004. In this period of transition, many states will be looking to Iowa as model to help them adjust to the legal ramifications of the reauthorization.

In 2004 (See Table C1), of the 14 requests for due process filed in Iowa, only four hearings were held. The rest of those conflicts were either settled privately before the hearing date or resolved through mediation. In 2004 the state of Iowa achieved a 100% settlement rate for all pre-appeal mediations and mediations held related to hearings. The pervasive preference of mediation as an alternative to a due process hearing is deeply entrenched value and practice for the state of Iowa.

In the state of Iowa five highly qualified mediators facilitate all of the pre-appeals and mediations held in the state. These mediators are independently contracted through the state's Department of Education. In addition to the mediator, attorneys are usually present at most pre-appeals and mediations. The attorneys for both the school districts and families of children in special education share the value of addressing and resolving conflict at the lowest and most informal level. Most attorneys representing families prefer that the parents who file an affidavit for due process first attempt to settle their

dispute in mediation rather than immediately proceeding to a due process hearing. Within the mediation session, the attorneys frequently speak directly for their clients and try to focus the dialogue only on the legal positions under dispute.

The state of Iowa has made additional steps to ensure that the agreements reached at mediation are being implemented. At pre-appeal and mediation meetings once an agreement has been negotiated the mediator will ask the participants for a volunteer to be the "Shepard" of the agreement. The "Shepard" is responsible for overseeing the agreement and makes sure the agreement is followed through with in a timely manner (Buntz, Buntz, & Myers, 2004). This person is usually an individual from the school district with whom the family has a positive relationship. Participants in the mediation should contact the "Shepard" if they have any questions or concerns in regards to the agreement.

The success of the state of Iowa's dispute resolution continuum is attributed to statewide support. In addition this success can be connected to the great care the state takes to ensure the participants in the pre-appeal and mediation sessions are satisfied with the quality of their dispute resolution assistance. Mediation satisfaction questionnaires are distributed to the participants after the special education pre-appeals and mediations (See Appendix B). Feedback received in these questionnaires is thoughtfully considered in order to best serve the participants in the mediation process.

The non-adversarial nature of mediation, coupled with its flexibility and optimism, continue to distinguish mediation as an attractive alternative dispute resolution option. Within the field of special education this avenue of dispute resolution is rapidly

increasing in popularity. As individuals grow familiar with the advantages of mediation, more families and schools are turning to mediation to assist them in facilitating a creative and collaborative solution to their conflict. The process of mediation is very welcoming. Through the assistance of the mediator, participants in mediation actively work together to create a resolution to the problem at hand. Although, at this time there is no formalized training process for mediators, studies continue to be done seeking ways to measure mediator effectiveness.

Statement of the Problem

The use of mediation has grown significantly as a method of dispute resolution. Mediation was first formally institutionalized in the United States in 1913 for labor-management negotiations (Moore, 2003). Since then, the use of mediation has exploded. Mediation is recognized at both the local and federal levels of litigation, and has become a positive alternative to due process in special education related conflict. The competence of the mediator has been established as an essential ingredient of successful mediation. Research examining effectiveness of mediators has focused on superficial and arbitrary indicators of competence, such as agreement rates, or standardized exams. Neither the process preferences nor the role of the mediator has been carefully examined.

The purpose of this study is to examine the conceptual frameworks that influence the mediator's role and to discern how a mediator's personal theoretical paradigm influences the mediation process. This study will focus on the role of the mediator through the examination of the mediator's reported preferences.

Conceptual Framework & Research Questions

The facilitation of a negotiation is a very fascinating and complex process. When this process is viewed from the problem-solving perspective, "what people want and brings them to mediation in the first place, stems from the expression their inner needs or interests" (Winslade & Monk, 2000, p. xi). According to Della Noce: (2004) "this model presumes that a solution—typically represented by a tangible settlement agreement—is 'what the parties want'" (p. 8). This theory is constructed upon the understanding of individual psychology and that individuals are "driven by internally generated needs, which are expressed in mediation as their interests" (Winslade & Monk, 2000, p. 33). This problem-solving approach to conflict resolution stems from the underlying premises that conflict is an outcome of the frustration of human need or interest.

Problem-solving approach and narrative approach to mediation

An illustration of interest-based or a problem-solving approach to mediation is captured in Roger Fisher and William Ury's book: *Getting to Yes*. Two individuals are arguing over temperature in the room. One individual is too warm and would like to open the window. The other individual fears that opening the window will create a draft that will be too chilly. According to Fisher and Ury, the purpose of mediation is not to create a mediocre solution to the parties' conflict. If the mediator would pressure the participants to agree upon a half opened window they still would risk the chance of the room becoming too chilled. However, the purpose of a mediator is to escalate problem-solving aptitude into an entirely new, more creative frontier. Fisher and Ury may instead facilitate the disputants in this disagreement to agree to open a window in the room down

the hall, or to bring in a fan. Thus the participants' need for fresh air and desires for cool air are satisfied. The recognition of underlying needs and desires allows the mediator to establish common ground among the participants and facilitate a solution that had a positive outcome for all individuals involved.

According to Wislade and Monk: (2000) "Sigmund Freud's account of the individual's psychodynamic struggles and Abraham Maslow's hierarchy of needs assume an inherent self-interested pleasure-seeking principle at a basic level of individual human motivation" (p. 33). In other words, human conflict is a result of unmet needs. Winslade and Monk (2000) report:

> A biological metaphor of homeostasis lies behind this idea. Unmet needs equals disequilibrium. The biological organism is driven to return to a steady state (homeostasis). A solution is found. Homeostasis, or equilibrium, is restored. What, then, is the task of mediation from this perspective? The task is to find solutions that will meet the needs of each of the parties and restore homeostasis(p. 34).

Thus, the mediator's goal is to facilitate the negotiation of an agreement that solves "tangible problems on fair and realistic terms" (Della Noce, 2004, p. 8). This paradigm contextualizes the components of the mediation, maintaining the belief that the mediator can be separated from the content, (Winslade & Monk, 2000) as well as views the role of the mediator as that of a science-practitioner. This theoretical paradigm is driven by the belief that the mediator is a neutral, unbiased third party, with no vested interest in the outcome of the disputants (Winslade & Monk, 2000).

In this study a narrative perspective is used to understand the choices the mediator makes to help facilitate the negotiation. Within the narrative approach to alternative dispute resolution the mediator validates that the participants arrive at the mediation

governed by their perception of events, the complaints against the other party, and their personal definition of the problem (Haynes, Haynes, & Sun Fong, 2004).

In contrast to the problem-solving approach to mediation, which stems from the belief that conflict is caused by unmet underlying needs, which the mediator must uncover; the narrative philosophical approach to mediation is focused on storytelling. Conflicts are shaped by complex social contexts (Winslade & Monk, 2000), and the narrative approach to mediation values how each individual's perspective of these social contexts creates the individual's reality, rather than accurately reports the experienced events (Winslade & Monk, 2000).

It is natural for human beings to organize life experiences into a story format (Winslade & Monk, 2000). Winslade and Monk (2000) state that the "narrative theory approach to mediation stems from the idea that people construct conflict from narrative descriptions of events" (p. 3). The participants each have constructed their own story of the conflict that has brought the participants to the mediation.

Through the natural discourse of the mediation, the mediator facilitates participants to construct a cooperative story of the conflict. Mediation opens with each party sharing their perspective of the story. Throughout the course of the mediation, the mediator helps the participants develop a mutual story about their conflict (Haynes, Haynes, & Sun Fong, 2004). Through the process of developing a reciprocal account about their conflict, the participants' paradigm begins to shift from a blaming-focused, into a more cooperative, future-focused perspective (Haynes, Haynes, & Sun Fong, 2004).

The philosophical framework of narrative mediation is centered upon social constructivism: "Ideas are constructed out of the available discourse that circulates in the communities in which we live, as are our thoughts, feelings, and experiences" (Winslade & Monk, 2000, p. 35.) Unlike the problem-solving perspective, the narrative model to mediation does not embrace the role of the mediator as an unbiased third party. This philosophical perspective refutes the "concepts of neutrality and impartiality and, in their place, recognize that mediators are coparticipants in the conflict who bring their own unspoken and often unrecognized biases to the conflict (Jones, & Hughes, 2003, p. 492). Instead, this perspective takes into account that it is impossible for the mediator to separate themselves and their perspectives from the conflict at hand, and that it is more likely that the mediator will respond to different individuals and their stories differently (Winslade & Monk, 2000).

Although some research has been conducted about mediation embracing one conceptual dichotomy or the other, no research has been conducted about the practicing special education mediators in the state of Iowa, in regards to the fundamental philosophy that guides the way they approach the facilitation of mediation. Thus, this study asks the following question:

RQ1: Do mediators report and observations reveal that a marriage between the conceptual dichotomies of the problem-solving and the narrative approaches support the facilitation of mediation?

The Role of Power in Negotiation

Erchul, Raven, & Wilson (2004) uphold that "power and influence are fundamental to all human relationships" (p. 1). Within this conceptual framework, there are two power bases: soft power and hard power. Hard or callous power is coercive and blatant. On the opposite side of the continuum, soft or weak power is subtler; it is positive and non-threatening in nature (Erchul, Raven, & Wilson, 2004). In this study, the role of power is very significant to understanding how the participants interact amongst each other within the dynamics of a mediation to facilitate understanding and negotiate an agreement. In mediation, two parties are each simultaneously attempting to influence the other (Raven, 1993). According to Adler and Silverstein (2000) an effective mediator is conscious of the unequal dissemination of power within the parties, and is able to level the playing field, assisting weaker participants to negotiate with more realistic expectations.

Many studies have been done on power and its ability to influence families, schools, marketing, and medicine (Raven, Schwarswald, & Koslowsky, 1998). According to Raven (1993), there are six bases of power influencing interpersonal interactions. The dynamics of mediation are influenced by these power bases. These six identified bodies of power can only exist as power when the other individual believes, or perceives, the other to have power.

Reward power derives from the subordinate's desire to receive monetary or momentary compensation for complying with the supervisor's request. Coercive power installs a sense of peril of punishment within the inferior. Legitimate power is generated

from the supervisor's entitlement to authority. Legitimate fairness exists in two forms: reciprocity and equity. Reciprocity is the natural give and take of a relationship. This model of power is carried out when one person feels obliged to be compliant with another individual's request because the other individual initially did something positive for the person. The power influence of equity is based in its compensatory norm that it is only fair for the subordinate to participate in the desired action of the supervisor. Sometimes those in power use the act of creating a sense of duty to reciprocate as a method for accessing and maintaining power (Raven, Schwarswald, & Koslowsky, 1998).

When one relies on the use of one's superior knowledge base they are exerting expert power (Raven, Schwarswald, & Koslowsky, 1998). Expert influence does not provide any evidence as to why the target, or inferior, should trust the superior, but persuades the inferior to comply through the basis of extensive knowledge and expertise. An example of a comment made from the expert power base may sound like: "I know a good reason why it would be better for you to change, but you will have to trust me" (Raven, Schwarswald, & Koslowsky 1998, p. 323).

Referent power is based on the inferior's relationship with the supervisor. An individual who is valued, as possessing referent power may also be perceived as possessing expert power. Raven, Schwarswald, and Koslowsky (1998) calls the perception of these power bases the "halo effect." Those whom we like, we are more likely to value as experts (p. 323).

Social influence has occurred when someone has experienced a change in beliefs, attitudes, or behaviors that can be attributed to the influence of another person (Erchul,

Raven, & Wilson, 2004). "Social power can be conceived as the resources one person has available so that he or she can influence another person to do what that person would not have done otherwise" (Raven, Schwarswald, & Koslowsky, 1998, p. 307). Throughout the duration of mediation, each party is trying to change the beliefs and attitudes of the opposition. In mediation it is possible that someone who would not normally agree to do something may agree to go ahead with a change due to "groupthink." By presenting reasons for change to a group collectively, through the encouragement of discussion about the need for change, it is easier to persuade a group to arrive at a decision for change than an individual alone under certain conditions (Raven, 1993).

Within mediation, Raven's (1993) power in conflict and negotiation model includes three progressions. In the mediation meeting the participants will first review their personal power strategies, as well as their personal underlying intentions/ needs of self and of the opposing party. In the conversation of negotiation, each party will then attempt influence, or sell perspective, and persuade the other participants that their perspective is most appropriate. Throughout the duration of the mediation meeting, the participants will continue to periodically reexamine their personal strategies and evaluate the opposing party's strategies for negotiation (p.11).

In negotiation, the mediator provides a sort of surveillance and facilitator role. Without the mediator's guide, the parties will tend to distrust each other, and blame the problem on the other party, while valuing themselves at a superior self-esteem (Raven, 1993). When referent power is used in negotiation of a conflict, the emphasis of

communality, mutuality, and cooperation will lead to less distancing and distrust of participants and will eventually deescalate the conflict (Raven, 1993).

Adler & Silverstein (2000) acknowledge the "fundamental concept of social science is power, in the same sense in which energy is the fundamental concept in physics" (p. 1). Social power is defined by Erchul, Raven, and Wilson as the potential ability of an influencing agent to motivate change in a target using resources that are available (2004). In this study, the role of power is very significant to understanding how the participants interact with each other within the dynamics of a mediation to facilitate understanding and negotiate an agreement. In mediation, two parties are each simultaneously attempting to influence the other (Raven, 1993). As introduced by Raven, Schwarswald, and Koslowsky (1998), there are six bases of power: "reward, coercion, legitimate, expert, referent, and information" (p. 307). The influences of these powers can only exist through acknowledgement of the other party. Existing literature on power has not been conducted within the parameters of a special education related mediation setting. This present study, therefore, investigates the connection between power and mediation by asking the following question:

RQ2: Which of Raven's 6 identified power influences are reported and observed within the parameters of special education related mediation?

Significance of the Study

On November 19, 2004 the Individuals with Disabilities Education Act (IDEA) was reauthorized by the American government. Within the reauthorization, IDEA now includes more powerful statutes [20 USC § 1415 (*d-e*)] advocating for mediation as an alternative to due process litigation. As mediation is pushed into the limelight, states are

carefully re-evaluating the quality of their formalized mediation processes. Therefore, the findings of this study will be very timely in consideration of the recent political events. The purpose of this study is to examine the mediator philosophy regarding role and the influence of power within the mediation process. This study may have significance at both the practical and theoretical implication levels. First, this study may assist mediators within the field of special education related dispute resolution recognize the philosophical foundations, which shape the approach they take to facilitating mediation. Second, this study may also inform mediators about the perception and influence of power within the dynamics of negotiation, as well as inform the state of Iowa and Iowa's mediators how they might approach mediation in a more effective manner.

CHAPTER 2

METHODOLOGY

This study was a qualitative investigation of theoretical frameworks and perceived power within the context of special education mediation. Within this study rich points were sought to serve as a bridge between the emic world of two Iowa special education mediators and the etic world of all other mediation. This chapter describes the preparation for the study, data-collection procedures, data organization and data presentation.

Research Design

The research was organized into three sections: prefieldwork, fieldwork, and postfieldwork (Carbaugh & Hastings, 1992).

1. Prefieldwork: Prefieldwork included establishing a literature base. This was accomplished by searching a variety of works in the genre of mediation and philosophical and conceptual frameworks. The information detained through an extensive review of literature assisted in the selection of the research problem and guided the research questions. The literature also served to guide in developing interview questions for the mediator participants.
2. Fieldwork: Two Iowa state special education mediators participated in semi-structured interviews for this ethnographical study. Participants were selected purposively through Iowa's Department of Special Education. One mediator was interviewed three times each for the

duration of thirty minutes for a total of 90 minutes. The second mediator was interviewed one time for the duration of 120 minutes. Interviews took place at various restaurants, Area Education Agencies and the University of Northern Iowa. Each location was selected for convenience of the mediators. In addition to the interviews, one pre-appeal mediation was observed. This mediation observation occurred in the natural setting rather than a simulated observation setting. Conflicts discussed at mediation are very personal to the disputants and data reporting were restricted due to the confidential complexities of mediation. Despite these limitations, a real mediation verses a simulated one was selected to better understand the mediator's authentic role within the context of mediation.

3. Postfieldwork: This segment of the research included comprehensive interpretation of the data collected throughout the fieldwork study. The information assembled was viewed through the lens of the conceptual frameworks highlighted in the prefieldwork literature review and developed theoretical framework. The postfieldwork conducted for this study also included documentation of the data in a meaningful and thoughtful way. This was the implementation of the writing process of reporting the results of the research study.

Research Site and Participants

Mediators courageously place themselves in the center of an escalated conflict, often becoming a target or a punching bag. This experience has only elevated this researcher's respect for mediators and their bravery. The opportunity to interview mediators with such diverse backgrounds and experiences in alternative dispute resolution and special education mediation was an honor. Collectively, the mediators have been working within the field of conflict resolution for over 52 years. The two mediators who participated in this study were S. Mc Fly and Sydney. Each mediator selected his or her own pseudonym.

Story of S. Mc Fly

S. Mc Fly leaned back in his seat. He chuckled as the researcher nervously fiddled with the voice-recording device. S. Mc Fly was calm and had an aura of cheer that surrounded him. He has had over 37 years of experience in the field of mediation. S. Mc Fly was a forefather within the field of alternative dispute resolution. In the year 1969 he was a graduate student at the University of Iowa studying labor industrial relations and working in the Center for Labor Management. There he helped within the labor education program, and trained machinists how to handle grievances. His introduction into collective bargaining was really just the tip of the iceberg. Ten years later as an academic, these experiences in negotiation were put to good use when he was invited to create a conflict management program for public administration at the University where he was teaching. He drew on his experiences in labor negotiations to conquer this challenge.

"At the time, there was not really a great deal of literature, at least not in terms of books." S. Mc Fly says, as he reflects on the experience. "I had to teach a course on cognitive management. I had to sort of cobble together a bunch of readings." This experience of teaching conflict resolution strategies only heightened S. Mc Fly's curiosity about alternative dispute resolution. Subsequently, he taught more courses and got involved in taking mediation training. He soon became a community mediator. In 1994 he moved to Iowa and started the Iowa Peace Institute. One year later, the Institute began to do some trainings for Iowa's Department of Education (DOE).

S. Mc Fly smiled as he reflected on his gradual submersion into the Iowa's special education mediation community. "We started out with just a three day program, they (DOE) wanted more. We added a couple more days, they wanted more, a little more timely... we added more days and eventually gave them a full mediation training." He explains how the DOE saw the great potential for conflict prevention in the trainings he was offering and suggested that the Iowa Peace Institute, now the Conflict Resolution Center of Iowa, began offering the trainings throughout the state.

Somewhere between the years of 1995 and 1996 S. Mc Fly began to directly mediate special education related disputes for the DOE. "Actually, at the time (a small group) from the department were doing the mediations, they realized that they really needed some outside folks to do that. Plus, they were probably anticipating the 97 amendments to the IDEA, which requires mediators on the state roster not be employed by a state agency." There was no turning back. For the past ten years S. Mc Fly and his

organization have been disseminating the power of hope and the skills of conflict resolution throughout schools in the state of Iowa.

The Story of Sidney

Sidney's presence was calming as she sat across from the researcher at the noisy restaurant. The clatter of silverware and the chime of laughter as well as the beautiful crackling fireplace, created an ambiance for the interview. She began by sharing with me her introduction to divorce mediation 15 years ago. "Well, prior to that," she tells me, "I had been working with the National Center for State Court in Virginia, doing a lot of research and writing on alternative dispute resolution across the spectrum of applications, whether it was small business or divorce, and at a certain point, I kind of became their designated expert on that." Around this time, Sidney initiated a grant proposal for a multi-state study of the efficacy of divorce mediation. This experience inspired her to want to facilitate mediation on her own.

Sidney participated in a divorce mediation training session and from there constructed her own internship. She gradually began to immerse herself into the role of a mediator. "I observed mediations, and then I co-mediated, and then eventually they had me do a mediation (independently)," states Sidney. For quite some time she honed her skills in divorce mediation for a pastoral counseling center.

When Sidney moved to the state of Iowa, she began to work for the Iowa Peace Institute, and worked as a trainer. Later she joined the roster of Iowa's special education mediators. She has been serving as a special education mediator for the past six years.

Data Analysis

Data were analyzed through a three-tier system (Strauss & Corbin, 1990). First audio taped interviews were transcribed and thoroughly read for an initial coding. During this initial coding, interesting concepts and powerful ideas were captured. Within the margins of the transcripts codes were created and titles for each piece of information were developed. A list of these headings was generated for each transcript. This list is included in Table C2.

After creating an initial coding each transcript was reread several more times to ensure that the mediators' meaning was accurately captured within the identified heading. Within the second-tier organization process the codes that had emerged during the readings of the transcripts were organized into categories and subcategories. The core categories for the second-tier analysis included "Mediator Philosophy," and "Power." This process is documented in Table C2. The third-tier of data analysis allowed the researcher to analyze the emerged sub-categories. In this stage of the interpretive process the researcher compared and contrasted the core categories, and subcategories. Once scrupulously examined, the existing themes were filtered through the conceptual frameworks of philosophy about mediation and perceived power in mediation.

This process could be defined as a self-created narrative analysis. A narrative analysis was the most appropriate analytical tool to assist in organizing this information because it recognized the lack of impartiality, and allowed the researcher to "go deeper into the causes, explanations, and effects of the spoken word" (Druckman, 2005, p. 277). This approach to data analysis allowed a focus on what was said by the mediators and

why. This particular analysis style was most appropriate to the nature of mediation and almost paralleled the mediators' role in facilitating special education mediation.

There are several features of this study that make it particularly strong. The first of these features are the outstanding qualifications of the mediators interviewed and their extensive knowledge of mediation, as well as their many years of experience within the field of special education mediation. Each mediator interviewed is regarded as an expert and has achieved many successes within the specific field of special education mediation and in the field of mediation in general. The trustworthiness and credibility of this study can be assured through the researcher's dedication to frequent summarization with the participants, as well as informal member checking (Brantlinger, Jimenez, Pugach, & Richardson, 2005). An ultimate exit check was performed with the participants in conclusion of the study. The researcher was very careful and reflective towards interpreting the participants' meaning and approached data analysis and interpretation with a very meticulous sensitivity.

CHAPTER 3

RESULTS

On a very personal level, this study explored the experiences and belief systems of two highly qualified and reflective mediators in the field of special education alternative dispute resolution. This chapter is an attempt to organize and make meaning of the rich information they so kindly shared. The intentions of the mediators' messages were carefully considered to ensure their perceptions, concerns and experiences were not distorted. Many very interesting and important themes emerged as the mediators shared their ideas and experiences. These themes shared include the mediators' philosophies, narrative approach vs. problem-solving approach in conflict resolution, the business of mediation: looking at participants as clients, roles and philosophical goals within mediation.

Mediator Philosophy

The dynamics of conflict resolution are complex and often unpredictable, even for experts. Just as easily as the ebb and flow of mediation could sway in one direction, mediation could just as easily surge into another. These complexities are heightened by the interpersonal nature of special education mediation. By the time that some disputes have made it to the formal mediation or pre-appeal mediation the participants may have experienced conflict "over-kill" and the issues that may at one time have been trivial have escalated to a new level. Oftentimes the individuals who are present at the mediation table have tried previously to come to an agreement independently and have failed. However, after the conflict has passed, the participants do not have the luxury of blowing

up and never having to cross paths again. The issues of the dispute that initially brought them all around the table are what will keep them around the table even after the de-escalation of the conflict.

Families and school administrators will have to continue working together after the mediation. Regardless of the outcome of the mediation, the individuals involved in the process may gather together in the event of an IEP meeting, parent-teacher conferences, or other school events. The strained relationships of the participants will need to begin rebuilding trust, or the challenge of collaboratively raising a child will become a very stressful and difficult event for all parties.

Narrative Approach vs. Problem-Solving Approach to Conflict Resolution

Research is filtered through a conceptual lens. The problem-solving approach to mediation decontextualizes the components of the mediation, upholding the belief that the mediator can be separated from the content, (Winslade & Monk, 2000) as well as views the role of the mediator as that of a science-practitioner. This theoretical paradigm is driven by the belief that the mediator is a neutral, unbiased third party, with no vested interest in the outcome of the disputants (Winslade & Monk, 2000). In opposition to this philosophical position is the narrative approach to mediation. This philosophical position is centered upon storytelling. Conflicts are shaped by complex social contexts and the narrative approach to mediation values how each individual's perspective of these social contexts creates the individual's reality, rather than accurately reports the experienced events (Winslade & Monk, 2000). The narrative theoretical model to mediation does not embrace the role of the mediator as an unbiased third party.

A mediator's philosophy, which guides the ways that he or she chooses to facilitate mediation, is as unique to the individual as the remarkable intricacies of the crystals that form a snowflake. Sidney articulated her philosophy in support of the problem-solving approach to mediation, "I find that it helps for me to understand and make room for the underlying reasons for conflict, the reasons that are extra-rations, I don't want to say irrational because they have a sense of reason." She also shared, that there are times "where people's rights have been abridged, and where they have to be able to say that my best alternative to a negotiated agreement, my batna, is just to sue your little pants off." However, she elaborated that she doesn't believe that either paradigm is mutually exclusive to the field. In reflection of the narrative perspectives she believes that the problem-solving perspective is really quite linear, "where as the narrative is building worlds together, that is more textured and more like a net." This net creates bridges to rekindle damaged relationships and work to slowly reestablish trust.

The philosophies that the mediators identify as driving the way that they choose to facilitate mediation are very abstract and difficult to streamline into a refined definition. At the Peace Institute, S. Mc Fly defined the approach as facilitative mediation. " It means that our job is to help people both identify their underlying interests, get beyond their positions and talk to each other, make their own decisions about what they want to do about the situation that has brought them to mediation." This approach to conflict resolution is centered upon encouraging the participants to take ownership for the outcome by collaborating to create their own solution.

S. Mc Fly also defined his approach as flexible. Mediators must be astute to the mediation's environment, the context of the mediation, and have a deep sensitivity to what the participants want. "You can't force your model, or your framework…or your philosophy on your party. If they don't want it, you have to back down." The mediator's personal belief systems about mediation at times need to be set aside to "help them the best you can to do what they want to do." S. Mc Fly values his role as the mediator as a conduit for the process of mediation and its participants.

The philosophy that provides the framework for the conceptual paradigm mediators use to guide the way that they choose to facilitate mediation varies from individual to individual. Sidney identified herself as a process oriented mediator. She also admitted that she, at times, may be a little more directive than some mediators. She shared her belief that when working with families the mediator must always act in the best interest of the child. She facilitates mediation as though the child were in the room. She shared how she "kind of coaches and educates them as to how to communicate in a way that would support the needs of a child." She explained: "For me being impartial actually meant being partial towards promoting the needs of a child at a very difficult time of a family's life." She concluded:

> I assume in good faith that the educators and the parents are there to address that same issue, they may come at it in different way, they may sincerely believe that the other side doesn't have the child's best interest at heart, but I believe they do.

She reflected on how her philosophy influences how she chooses to facilitate mediation. Sidney's beliefs show sensitivity towards the relationships that have brought the individuals to the conflict. S. Mc Fly always says, "Conflict begins and ends with

relationships." This careful balancing act hovers over the finite line that most mediators define as dutiful neutrality. The reflective and personal nature of the mediators' philosophies demonstrates a deep sensitivity and respect to the process of mediation and its participants. Although, the mediators admit to preferring a more human-centered understanding for mediation, unique to the participants involved, sometimes a more strategic approach is necessary in order to gain the most comprehensive understanding of the field.

The Business of Mediation: Looking at Participants as Clients

Mediators frequently define themselves as facilitators of the process of mediation. Yet, they are offering a service to the participants of the meeting. Like any other business, the underlying truth remains: "the customer is always right." S. Mc Fly shared that he can't run a "mediation session in a way that is counter to what quote 'my clients' want. They are my clients right?" It is uncomfortable for mediators to conceptualize their profession in a commercial posture. "We don't really call them clients, but they are." S. Mc Fly shared, " And so, if they don't want to get into feelings and emotions, I can't force them to do that." Mediators offer a specific service to a people in conflict.

Mediators must master the ability to be flexible and respond swiftly to the participants' and the attorneys' needs: "I can't force attorneys and their clients to talk about things that they don't want to talk about, or the attorneys believe they shouldn't talk about. I can't force them to do that. But I can certainly provide the opportunity." This statement from S. Mc Fly emphasized his ability to understand the participants and facilitate the mediation in a way that is most suited to their preferences. However, the

statement also demonstrates that although he is catering to the needs of his clients, he does not abandon his personal belief system and philosophies as a mediator. When opportunities do arise for questioning for greater understanding, or creating bridges to foster damaged relationships, S. Mc Fly listens for these golden nugget opportunities and uses them as a gateway into reestablishing connections.

Roles within Special Education Mediation

Mediators identify themselves with certain responsibilities throughout the duration of the mediation. These roles vary from mediation to mediation and occasionally alter within the dynamics of one mediation. Within attorney-driven mediation a mediator may discover his or her role as that of a scribe, however, within a mediation where the participants are free to engage in dialogue and address underlying issues, the mediators' roles within the mediation alter from task-oriented and begin to assume more creative characteristics.

In describing her perspective of the mediator's role, Sydney shared that sometimes she saw her role as that of a muse. In other situations, she plays the part of a clown, "and say, 'you know, this is really goofy, but how about we try this?'" She also shared about the ability in her position to use a little bit of lightness, to try to create a more safe and comfortable environment conducive to conversation. She told about a time that she used exaggerations to do a little bit of reality testing with participants who were really hesitant to participate in the mediation process. "What I ended up doing as a mediator was saying, 'You know, it seems that both of you all have come here with kind of your worst case scenario. Your biggest fear.'" She described how she "took a verbal

picture of the worst of what would come from either side and multiplied it by about five. So that's one way to help them loosen their grip and then come back and say, well, actually that is probably not going to happen."

Throughout the mediation session the mediator may participate as different characters in order to facilitate participant conversation. The characters, or roles that the mediator assumes are strategically selected by the mediator in order to guide the participants towards a greater understanding of the conflict at hand.

Philosophical Goals in Mediation

When asked about what their goals for mediation, both Sidney and S. Mc Fly responded thoughtfully: "increased understanding." Mediators focus on the relationships of the individuals in conflict. In a special education training led by S. Mc Fly, he instructs, "Conflict begins and ends with relationships." This dedication to interpersonal relationships is really the underlying belief that drives the way he chooses to facilitate mediation. The process of mediation provides an opportunity for individuals in conflict to increase their understanding of the other side's perceptions and feelings in order to address the underlying issues of the dispute.

Increased understanding. Both mediators interviewed shared that their primary objective of mediation was to increase understanding between the participants involved in the conflict. S. Mc Fly shared: "What we see mediation as, the value of mediation, is the value of getting to the underlying issues and (we see) the dangers of not getting into them." When issues are uncovered and discussed from the past, emotions get charged and some may feel it encourages the participants to become even more entrenched in

their positions. However, failure to attend to these feelings and misconceptions may result in a superficial agreement, or even worse, permanently damage the relationships of the individuals involved.

Sidney shared that the most powerful mediations she has been a part of were the ones where neither side was represented by counsel, and the participants were able to feel safe and speak using their own words, recreate connections and be uninhibited by their professional roles. "I have found that in those contexts, parents and school people have been freer to talk about what they really need and in a more heartfelt way. And I think that if you can get to that level, you build that bridge where we acknowledge each other's shared humanity and if you can do that, you can say there is a validity to your world... even if it looks a lot different than mine, so it is no longer a zero sum game." She shared from experience, that to cultivate an environment most conducive to creating connections is difficult "if you have attorneys who function mostly as advocates for their parties, you are stuck with us vs. them." The us vs. them orientation undermines all of the positive opportunities that mediation enlists.

Addressing underlying issues and reestablishing trust. The mediators interviewed each shared a concern that unless the underlying issues that brought them to conflict in the first place were addressed, an agreement that may be reached at mediation may be superficial. S. Mc Fly's experience shared earlier about forfeiting his belief system in order to be compatible with attorneys clearly validates that fear. "I think that some fail to recognize, that you don't resolve the matter, unless you address those underlying issues." S. Mc Fly shared that although the legal IDEA issues may seem resolved, or an

agreement may have been reached about an IEP concern, "if the parents and the district still mistrust each other, and they haven't talked about that, haven't gotten beyond it, they may be back in pre-appeal." Later he laughs, "We know full well that we cannot get disputes resolved meaningfully most of the time, unless you deal with relationship issues." The relationship issues are just as important as the perceived issues that brought the participants to conflict.

The unique nature of special education mediation is centered on the best interest of a child. The individuals who are present at the mediation have a relationship history. They have worked together in the past to raise a child in a safe community conducive to learning, and they will need to work together in the future to dedicate themselves to the development of this child. Once the mediation is over the relationships are not terminated; unless the family leaves the district, these individuals will have to collaborate once again in the future.

Once a conflict has escalated to the point of mediation, frequently the relationships between the participants are very weak and wounded. Sidney shared about what she has done in mediations where she found this to be the case. She viewed mediation as an opportunity to begin to rebuild bridges for these damaged relationships.

> We talk, when I mediate with people, especially in contexts where there is very little trust, because the trust has been broken, I talk a lot about… ok, this mediation, if you can picture it like I've just put a bowl on the table and the bowl is empty, and that bowl between all of you here is the trust reservoir, its empty. So, what we are here to do today, in part, is to refill that. So when you talk, they way you choose to speak, um, I want you to think about "how can I start refilling the trust reservoir?"

What a beautiful mental image she has constructed. She does not expect the participants to immediately be friendly and collaborative. She has very realistic expectations and wisely noted that this takes time, but she does invite her participants to begin to add to that bank of trust in her presence at the mediation. She has found this approach to rebuilding broken relationships successful. However, despite the communal value in addressing issues of trust and taking steps to rebuild damaged relationships not all participants in mediation are comfortable or even willing to venture into these less controllable and uncertain domains.

Conflict between philosophy and practice

The possibilities for mediation are immeasurable and exceedingly optimistic. In reality, most conflicts that go through mediation are resolved with a signed agreement by the participants.

> And so, I approach mediation of special education dispute in a hopeful way, I really truly believe, I think I've really never had a case that came to impasse and didn't settle. I've never had that, so when I think with people, preparing them a head of time, if I tell them to expect to succeed. And I say, I know you don't, but I do. And we work from that expectation. And that's how I set up my introduction, in the mediator's opening. And, I think a lot of times, being the voice of hope, and also, when necessary, helping the parties to refocus on ok what do you see as being the child's needs?

Sidney encouraged the participants with high expectations as they prepare for the mediation session. "It is being that voice of hope, of position expectation," that Sidney attributed as being very important for setting the stage of the mediation. "Because they don't come in with it," she shared, "And I personally think that is so powerful and when you say to people (both administrators, teachers, and parents) (in the pre-mediation conference call) we almost always settle, and I think if you give it a chance

it is going to be a really good experience. They don't believe it, but is almost always how they leave feeling." The mediators acknowledged, that when the participants arrive at the mediation, there has been a lot of previous negative history that has been established a head of time that people are holding on to. "But if you can loosen the grip," Sidney shared: "there is more free space to innovate, build trust, to let those positions fall apart... I think that is hugely powerful."

However, despite these powerful philosophies and hopeful ideals, the two special education mediators in the state of Iowa report extreme frustration when reflecting on the current system of mediation. There is a rift of tension forming between the mediators and their attorney counter-parts. Despite the helpful role as an advocate that attorneys contribute for participants in mediation, mediators report a sense of impediment on the ability for them to facilitate mediation in a manner that is conducive to their philosophies about mediation when attorneys are present at the mediation session.

Benefits of attorneys. Both mediators reported many positive attributes to having an attorney present at a mediation session. "Attorneys are very good advocates for their clients," shared Sidney. Both S. Mc Fly and Sidney agreed that the attorneys were hired by their clients to protect their legal rights. "They are legitimately concerned about protecting their clients' interest. That's their job," shared S. Mc Fly, "they are afraid (if attorneys are not present) they will agree to do things that are not in their best interest, particularly under the new law." Sidney reflected,

> Attorneys are really good advocates and I have been at mediations where the attorneys present particularly with parents has been very helpful, because when they have been able to formulate concerns in a way that can be heard maybe a little bit more skillfully and better than parent could. Especially maybe lower

> functioning parents, or parents who are just so enraged maybe they can't really speak.

Sidney shared that attorneys have frequently been very helpful when speaking for highly agitated parents: "if they are so agitated, that for them to speak would really sabotage any attempt for an agreement." Attorneys' ability to articulate their participants' needs in a coherent and meaningful fashion was reported to be a major benefit of having an attorney present.

Frequently when conflicts escalate to the level of formal mediation, the issues of the mediation have been previously discussed: "When (individuals) come to a pre-appeal/mediation, this is not the first time, the parents and the school and the AEA people have met on these issues, not at all, so they may have a lot of meetings where they got into emotional things and didn't make any progress in resolving the substantive issues which is why there are in the pre-appeal, so they don't want to go back to that, they want to get things resolved." Because of this long history of conflict, the mediators appreciate the attorneys' dedication to future focus. "There is one attorney in particular that represent parents in most of these cases he has done a very, very, valuable service as to helping his clients on focusing on what is possible. Moving forward. The past is past, you can't undo that; let's talk about the future." The attorneys' focus on not dwelling on negative history allows mediations to be swift and directly centered on possible solutions to the immediate conflict at hand.

Attorney driven mediation. The two mediators regard the process of mediation at very high esteem. However, in the interviews, an edgy cloud seemed to hover over their shoulders. Their body language changed as they spoke about their concerns about the

current state of special education mediation. Their words reflected their pain, discouragement and frustration in the process of mediation, which they both valued with great enthusiasm. The current events in Iowa's state mediation had left these interview participants feeling dissatisfied. The mediators were negotiating their place within the current spectrum of special education mediation. Both mediators reported about a sense of tension between mediators and attorneys in special education alternative dispute resolution. Sydney shared:

> I (sense) that attorneys are nervous about loosing control and I wish... and this is a perspective, I don't know how fair it is, but I feel that there have been times, for parents who were not represented that I've thought that they need the input of an attorney. I've called attorneys for input during a mediation session. And I wish really, I would like to sense a similar kind of professional courtesy. I'd like to see the attorneys trust the mediators that we know what we are doing. We are not competing with them. My job is not the same as the attorneys. I don't' know if it is true, but it seems that maybe they undervalue that skills that gees into being a mediator. They maybe just see us as the person that holds the magic markers.

This tension is fueled by a divergence between the values and desired outcomes of mediators and attorneys. On one side of the spectrum stands the "ideals" of a mediator with ideals of the attorneys on the opposite side. "The bottom line," S. Mc Fly shares, "is that I have gotten into this special education lawyer present mode, and even in (a) case (where) I knew there was an underlying issue, I didn't go there, and it was not that I decided not to go there, it was just that I didn't go there." The presence of attorneys in most special education mediation has altered the state of mediation. In fact, S. Mc Fly has begun to identify himself as a settlement-negotiating attorney. In this type of settlement negotiation, the attorneys consult back and forth with each other and speak for their clients. The mediator sits back and stays out of the way.

Attorney philosophy. The mediators reported that attorneys and mediators operate in opposite philosophical paradigms. Although both roles are primarily future-focused; within the context of mediation, their professional choices are perceived by mediators to be driven by very different theoretical belief systems. Mediators believe the attorneys to be very problem-solving focused. "They are coming to the mediation with the notion that they are there to reach an agreement if they can, if they cannot ok, but they are there to negotiate a resolution if they can," speculated S. Mc Fly in response to what his perceptions of attorneys' objectives. This philosophy is diametrically opposed to the mediators' beliefs in getting to the underlying issues and discussion of damaged relationship and rebuilding trusts. The mediators report that attorneys are afraid that if emotions are addressed, the conflict will escalate out of control. "(They) want things constrained and controlled and in a box," Sydney shares. Mediators believe the discussion of relationships will help create better understanding about the conflict and will he create a more authentic agreement.

Attorney goals. Mediators' goal of mediation is an increase of understanding for the participants. The mediators elaborated that hopefully an outcome of that increased understanding would be an agreement, however, that is not their primary objective. Mediators perceive attorneys' goals to be very different from their own. Attorneys are hired by their clients to lobby for their cause. "What attorneys want for their clients is an agreement. And they are very much focused on problem-solving, not on just having a conversation and letting that conversation take you wherever it will go," shared S. Mc Fly from his years of experience in special education mediation. "Their agendas are different

from those who want to be a pure mediator. I am not saying they are wrong, or that I am right, but it is just different," S. Mc Fly thoughtfully stated after taking into consideration the way that the process of mediation is frequently altered when attorneys are present.

Sidney shared that the heightened focus on problem-solving and the perceived attempts to constrain conversation about emotions, relationships and past experiences within the process of mediation have recently been heightened due to the recent reauthorization of the IDEA: "It seems that everyone has gotten really tense, and particularly attorneys. And it is curious to me, because frankly the mediated agreements have always been legally binding, in that they have been signed contracts, they've been on file with the Department of Education, and they could be followed up to make sure they are... it is just that the provision for following them up may be different now, for as now, people can go to district court. But, they have always been binding agreements." Overtime, Sidney anticipated that people will relax, "I don't know why you should be apoplectic about it," she stated.

Attorneys and emotion. Attorneys are often very quite reticent about addressing participant emotion during the process of mediation. "I (have) actually had one attorney say to me, I have it when mediators talk about that stuff, I wish they wouldn't," shares Sydney. Both mediators shared experiences about times emotions were addressed and redirected by present attorneys, or even times when they were told that they were not supposed to go there at all. "(Attorneys) do not like their client to get into emotions and feeling and that sort of thing, they want to focus on the problem, and what the law says,"

shared S. Mc Fly. They prefer for the mediation's energy to be funneled into the problem-solving process S. Mc Fly explained:

> Sometimes they strenuously object when we try to be pure to mediating, in a pure sense. And say things like: 'Amber, I am seeing that you seem to be kind of upset with this, can we talk more about this?' They don't like that, and sometimes we do it a little bit anyway. I mean if it is just obviously clear that you're not going to get this resolved unless there is at least some discussion of the mistrust or the feelings of disrespect or whatever it is, we'll get into it anyway, but basically...we adapt, and for the most part stay away from the things that we would rather not stay away from.

The mediators reported that in the process of a mediation session, most attorneys "put their clients under clamps," says S. Mc Fly. "I understand, part of it is, (they) don't want (their) clients to become unglued," shared Sydney. S. Mc Fly supports this by sharing his perception of attorney fears: "They are afraid, that it is going to mess up the opportunity to reach an agreement on the education and or legal issues." These diametrically opposing objectives of the attorneys and the mediators are very frustrating for both parties and creating a rift between the two professions.

Consequences for the mediators. The process of mediation for the mediators, although they are experts in the field of conflict and very sensitive to understanding the meaning behind peoples' words, is very stressful. They are placed physically between the lines of two groups of people with conflicting views and very high levels of anger and hostility towards one another. They expressed aggravation about when attorneys step into the mediators' mediation and told the mediators what to do. Such action is viewed as an encroachment of the mediator's turf and has resulted in hurt feelings and resentment on the part of the mediators.

Sidney reflected on a recent experience she had with an attorney. This power struggle really seems to capture recent tension between these two professional fields.

> I've actually had an attorney try to take the marker out of my hand when I was doing the agenda. I've had other attorneys dictate to me what the agreement should be, if the parties do that, that's good, you know if one attorney does, I don't know. So, I think attorneys are nervous about loosing control and I wish... and this is a perspective, I don't know how fair it is, but I feel that there have been times, for parents who are not represented and I've thought that they needed the input of an attorney. I've called attorneys for input during a mediation session. And I wish really, I would like to see a similar kind of professional courtesy. I'd like to see the attorneys trust the mediators that we know what we are doing. You know, that we are not competing with them. My job is not the same as the attorneys. I don't know if this is true, but is seems that maybe they undervalue the skills that goes into being a mediator. They maybe just see us as the person that holds the magic markers.

The visual image of an attorney reaching to grab a marker out of a mediator's hand depicts a need for control and sends a message to the mediators of inadequateness. Attorneys make it very clear, shared Sidney: "I see your job as only being a scribe. You know: don't talk directly to my clients." S. Mc Fly has had similar experiences: "They (attorneys) object, sometimes strenuously, when we try to be pure to mediating in a pure sense." In S. Mc Fly's experiences, the mediator is valued as "the secretary, a scribe to write down what is in the agreement." Not only do the mediators interviewed report feeling unappreciated and suppressed, but they also report examples of being physically prevented from executing their jobs. In this limited role, the mediators' share a sense of frustration and disregard. These actions of disrespect have frustrated the mediators, and created tension between the two professional groups.

Power

Within the process of mediation, participants engage in conversation about perceptions of the conflict, discussions about relationships, and collaborate to construct a vision for the future. Part of the magic of this process is that the participants are each arriving with entirely different perceptions of the events that escalated to the level that a formal mediation was necessary. These individuals are not happy with each other; they have most likely reached a point of frustration and desperation with one another that they are doubtful any progress will come of the mediation meeting. At this point, relationships have been severely damaged, the reservoir of trust is empty and communication may be idle. However, despite these pessimistic attitudes 99% of mediations culminate in a signed agreement. Why is this? This study has produced several very interesting propositions including equalizing the playing field, the realization the power shifts, power in remembering the child, the power of future focus.

Make No Assumptions About Power

The traces of power within mediation are evident, dynamic and also complicated. There is no scientific formula that can compute the perceptions of power, nor measure its potential. Both S. Mc Fly and Sidney warned to make no assumptions about power. Sidney shared her perception:

> I love that we say (make no assumptions about power) in our trainings, because an obvious power discrepancy might be when there is a single parent period, and eleven people from the school, the superintendent, the principal, the special ed director, the AEA director, etcetera, it is the cast of thousands. You know that is a certain set up. But, you know, the power of a compelling interest for the child, the power of victimization, the power of knowing that what the school folks did was wrong, I mean... so power is dynamic, and yes there are power disparities, I really don't think that we can pretend to "equalize" power, I don't know how you

would do that. What you do is you empower people to work together to meet the needs of the kid.

S. Mc Fly also mediates under this belief. The mediation observed was an excellent example. There were ten people on the side of the table representing the school district. "It would be so easy," shares S. Mc Fly, "all of them (administrators) have their doctorates and masters. Well, these parents got them there (to the mediation). These parents are in a powerful position. So don't assume these are poor trodden folks that need to be protected from the hoards of people on the other sides of the table. Because it may be the other way around." And it was, despite the overwhelming discrepancy of representation at the table, the parents at the mediation had the school district in the palms of their hands. The school district was even willing to do something that they did not believe was most appropriate for the student's education, in order to please the upset parents.

S. Mc Fly believes that every mediation is different. "Power even shifts in the course of a given mediation session. So what influences? What's the tipping point? What makes people decide to agree? I think that it varies every time." He shares that what has worked in some cases is the participants really speaking from the heart. "People just having that chance to say what they wanted to say, what they needed to say. Some cases, just the realization on the part of the district's attorney, 'we've got some vulnerability here and we don't want to go to due process over this, so we'll agree to this even though we'd rather not, but it would be a heck of a lot worse if we got to due process.'" There are many things that may motivate an agreement.

Although the mediator is hesitant to acknowledge the dissemination of power between disputants at mediation in a static way, they do validate the legitimate power held in identifying the best interest of the child as a underlying interest in a special education related dispute.

Legitimate Power in Remembering the Child

In the introduction of the mediation session, both mediators explained their role to the participants as an objective, non-biased, impartial third party and a fair participant. Both mediators have stated that mediators do not have a vested stake in the outcome. This obligation becomes very complex when the conflict is centered on the best interest of the child. Sidney explained: "being partial actually means being partial towards promoting the needs of the child."

In the mediation observed, it was very clear that despite introducing himself as an impartial third person party, S. Mc Fly was working as an advocate for the child. Throughout the duration of the very long meeting he intermittently reminded the participants why they were there. He asked about the child's future and invited participants to share positive reflections of the child.

"There are always two sides to the story," shared S. Mc Fly, "and as mediator you've got to be careful." The mediators first speak with both the parents and the administrators during a conference call to set a date for the mediation and explain the mediation process to the participants. The only written information about the conflict is the affidavit for due process, which is usually filed by the parents. "You've got to be real

careful to not accept that as the truth," warned S. Mc Fly as he described the importance in the mediation preparation process to give both sides the benefit of the doubt.

The mediators interviewed for this study mediate issues specifically related to a child's special education. At the nucleus of every conflict mediated in this field is a child whose future is being negotiated by the community of adults present at the mediation. In the heat of conflict, it is easy to forget the import individual that brought all the participants to the mediation in the first place. Although every participant at the mediation may not believe it, the individuals present at the mediation are there because they are genuinely concerned about the best interest of the child.

"I would say," S. Mc Fly shared, "French and Raven probably don't talk about this... I would say that the power of reminding people that we are there to talk about Joe, or Suzy, or whoever the child is, not to win points against each other is significant." However, in the available research French and Raven do suggest this category of power as legitimacy, which S. Mc Fly and Sidney have softened into the role of the advocate. Sidney reinforced this suggestion of advocacy by sharing: "What can be more important than your own child?" She described the power behind focusing on the child through the experiences she has had as a mediator.

> Yeah. And I think that just having that opportunity to stop before they go to the next step and go to a hearing and say... let's give it a try where everyone is going to listen to each other. We're going to put our guard down for a minute and were going to see if we can really come to a better understanding of what the child needs. Kind of setting the stage for: ok suspend your disbelief for a minute here. This is a new chapter and a new opportunity and let's see.

This approach is very collaborative and embraces both the mediators' dedication to rebuilding relationships. "What you do," Sidney shared, "is you empower people to

work together to meet the needs of the kid." This is no easy task, however it creates the footing for future positive interactions between the participants.

Expert Power of the Mediator

Iowa's current process of special education mediation has been reported by the mediators as more of a settlement counseling session between the representing attorneys. This particular approach to mediation does not provide very much opportunity for mediator involvement and reserves no place for the discussion of emotions or to emphasize rebuilding of relationships. "In 99% of the cases, roughly, there are attorneys involved in special education mediation. And what attorneys want for their client is an agreement. And they are very much focused on problem solving, not on just having a conversation and letting that conversation take you wherever it will go," shares S. Mc Fly. As a consequence most special education mediations in the state of Iowa tend to be more settlement oriented. Mediators, however, feel that their skills are being wasted and their expertise on conflict and relationships are being ignored when this settlement approach to mediation is used. In this particular style of mediation, it does not matter who facilitates the mediation, it could be a person off the street. This individual does not need to have the extensive knowledge or wealth of experiences in mediation in order to proctor the mediation smoothly because their role is quite trivial. "Some attorneys make it very clear... (about) wanting to really be in control. They make it very clear: I see your job only being a scribe," shares Sydney with frustration. The mediators interviewed are frustrated at being marginalized and deserve to have their competencies and expertise recognized.

S. Mc Fly reflected on his experiences with attorney-driven mediation as being fairly negative. "When attorneys are involved, (the) mediator is oftentimes nothing more that a potted plant in the room," he said with sadness. When the attorney is present representing the parents, the attorney will speak for the family and present what they would like to see happen to remedy the situation. The attorney for the district and the AEA might ask a question or two. The two parties will then go into private caucus, and decide how to generate a response. This type of interaction is quite contrary to the essence of the mediation process, which provides the opportunity for the individuals in conflict to interact with one another and discuss their feelings and perceptions about the conflict. The parties then collaborate to construct an outcome to which they will feel ownership.

S. Mc Fly confided that he has become accustomed to this format of mediation and shared an experience that became a turning point in his career. He described a mediation that made him realize that he had become comfortable as a settlement-oriented mediator. The powerful image he has created of the mediator as a potted plant came to life as he shared his experience and concern of how the process of special education mediation has become altered. "You get things started; the attorney for the parent will present their view on things and what they would like to see happen to remedy the situation. The attorney for the district and the AEA might ask a question or two, but then they'll go off, the attorney and the educators will go off and meet and decide how to generate a response. They may or may not meet with the parents while that's going on. And we just kind of wait for them to come back. And then it is really kind of a

settlement negotiation between attorneys without a judge." S. Mc Fly then described the mediator's role in this style of mediation. "The mediator becomes a secretary, a scribe to write down what it is they want in the agreement. And that's pretty much it." Occasionally mediators will ask questions or intervene if needed.

"The way that one attorney put it," S. Mc Fly shared, "not to me directly, he wants the mediator to get things started, and then he wants the mediator to stay out of the way, uh, not mess things up." This mutated form of negotiation is not S. Mc Fly's or Sydney's view of mediation. Sydney shares her frustration and wished that individuals would recognize: "My job is not the same as the attorneys. I don't know if this is true, but it seems that maybe they undervalue the skills that goes into being a mediator." She shared an experience when she had called for the input of an attorney for a parent who wasn't represented in mediation and "would like to see a similar kind of professional courtesy. I'd like to see attorneys trust mediators that we know what we are doing you know, we are not competing with them." Mediators reported a need for acknowledgement of their expertise and knowledge on conflict. In addition, mediators expressed frustration with the limited role they were permitted to play as the mediator within recent mediations.

S. Mc Fly acknowledged that he had acclimated to this model, and in his own words: "so used to either being forted at attempts to get below the surface and deal with feelings and emotions, or just not doing, that when I went off to a different type of mediation, where there were no attorneys involved…(my) brain went into sort of

automatic." In the observed mediation, S. Mc Fly asked some questions and felt that there seemed to be some level understanding attained, and an agreement was reached.

"The bottom line," S. Mc Fly shared, "is that I have gotten into this Special Ed lawyer present mode, and even in that case I knew there was an underlying issue, I didn't go there, and it was not that I decided not to go there, it was just that I didn't go there. Because everyone was so amicable." In special education mediation "mode," S. Mc Fly facilitated the participants to an agreement, not formally addressing the participants' feelings or mistrust towards each other.

S. Mc Fly confessed that he feared that he has become a settlement oriented mediator, "not that I push people to settle, but I accept settlement." S. Mc Fly shakes his head:

> I've been doing mediating for 16 plus years and I've been doing Special Ed mediation for 10 years. And maybe I've been doing it too long; maybe I've just been doing it too long. Maybe I've just gotten into a routine, a rut, that I "let" these attorneys, put quotes around that, strongly influence the way that I mediate, and I don't like that.

S. Mc Fly was sad as he shared these perceptions. He is very reflective about his mediation practice and feels his role is very important. He shared this experience with me with hope that some change may result for the better.

It is clear through the mediators' reports that there is a definite perceived influence of power within the context of special education mediation. As the mediators shared their beliefs about mediation, experiences in mediation, and feelings about attorney involvement in special education mediation the emergence of several themes were recognized. The mediators warned to make no assumptions about power. S. Mc

Fly shared: "Power shifts in the course of a given mediation session." In addition, he wonders about the complexities of power, and observes the shifting of power from participant to participant through various stages of the mediation session. Sydney validated this perception of power as "very dynamic" and expressed even in a "more obvious power discrepancy," there is really no way to equalize power. In addition to not making assumptions about power the mediators acknowledged the emergent theme of legitimate power in the process of mediation. Legitimate power was recognized within the process of mediation by the mediators as the mediators' as the power of compelling interest. Mediators report a power in reminding the participants about making decisions in the best interest of the child. This acknowledgement of shared underlying interest by disputants was reported by the mediators to allow the participants to think more collaboratively about the conflict and work to rebuild trust. Expert power was also a revealed emergent theme reported by the mediators. Mediators expressed a need for their valuable competencies of conflict, relationships and the process of mediation to be acknowledged and respected by their attorney contemporaries. This expression transpired as a result of the mediators' reported experiences of the process of mediation being impeded by their attorney counter parts.

CHAPTER 4

CONCLUSION

Mediation is more efficient, less costly, and less adversarial than due process. This study investigated the theoretical belief systems of the mediators' that influenced how they chose to facilitate mediation, as well as the mediators' perceptions of the influence and presence of power within the dynamics of special education mediation. Extensive interviews were conducted with the mediators and one pre-appeal mediation was observed. The results of this study are rich at both emic and etic proportions.

The results of this study discern that mediator philosophy is not mutually exclusive to either a narrative or problem-solving paradigm, supporting the proposed research question calling for recognition of a marriage between the two philosophies. However, the research question did not account for the multifaceted intricacies that mediators reported to construct their belief systems about mediation. Each mediator's belief system was interlaced with the complexities of past experiences, ideals for the process of mediation, expectations for self, as well as hopes for the future.

Mediator Philosophy

> The mediator who facilitates assumes that the disputants are intelligent, able to work with their counterparts, and capable of understanding their situations better than the mediator, and perhaps, better then their lawyers. Accordingly, the disputants can develop better solutions than any mediator might create. Thus, the facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the disputants in order to help them decide what to do (Shestowsky, 2004, p. 224).

The philosophies of mediators are intricately woven with complex idiosyncrasies and pre-existing belief systems about mediation. The results of this study suggest that

mediator understanding about philosophy is constructed of two parts, conceptual framework and role. A conceptual framework supports their beliefs in the system of mediation as well as its power to be future focused and collaborative. In addition, mediator understanding takes into consideration tacit procedural expectations about their role within mediation. The mediators interviewed in this study also report a sense of identification with the process of mediation and their obligation to impartiality.

Narrative Approach vs. and Problem-Solving Approach to Conflict Resolution

The problem-solving perspective, grounded in Freud's (Winslade & Monk, 2000, p. 33) criteria, is richly supported in mediation literature. A narrative perspective is also presented in mediation literature. This is an innovative approach generated by Narrative Family Therapy, "developed in the mid-1980's by Michael White and David Epston, in Australia" (Hansen, 2004, p. 1). The philosophies of the practicing mediators interviewed are much more complicated and dynamic taking into account pre-existing perceptions about mediation and background experiences. The existing literature does not support the complex reporting of mediator philosophy accounted in this study. Although literature depicted these two philosophical frameworks in opposing paradigms, the mediators report they are interactive, or mutually compatible. When facilitating mediation, often the mediator will use a combination of the two perspectives to shape his philosophy, as well as other values that have been uniquely shaped for the mediator over time and with practice. Perhaps the discrepancy is due to previous research's' gravitation towards more quantifiable methods of collecting data.

Business of Mediation: Looking at Participants as Clients

Thinking of the field of mediation as a business is awkward. The competitive, cutthroat and proceeds-driven nature of the corporate world is contrary to the collaborative and relationship centered principles that the mediators in this study have reported to value. Mediation is a business closely related but separate to the field of law (Nolan-Haley, 2002). However, the field of mediation is "facing the prospect of being entirely absorbed" into the legal playing field (Mayer, 2004, p. 7). In order to survive in this corporate, or attorney-driven world, mediators have compensated by compromising their esteemed ideals and strategies toward facilitating negotiations. As reported by one mediator interviewed in this study, S. Mc Fly instinctively conceded his dedication to rebuilding relationships and attending to emotions in the process of mediation in order to contend with attorneys' brawny gravitation away from the volatile topic of emotion and towards the more secure process of settlement counsel. A natural outcome of this transition is a more practitioner-based approach to mediation. An example from this study would be the mediators' tendency to refer to the individuals who have partaken in the mediation as clients, rather than participants. Despite best efforts of the mediators, the involvement of attorneys in mediation has "given rise to charges that they are making mediation more adversarial and legalistic" (Nolan-Haley, 2002, p. 5).

Roles within Special Education Mediation

Most research suggests that the mediators' duties within the process of mediation facilitation are duty oriented. However, the mediators interviewed in this study reported their obligations within the process of mediation in a much more complex nature. During

the mediation, "the mediator may be called on to play many different roles, some of which may be relatively passive, but others more directive: being a catalyst for transformations, shepherd for holding the mediation mechanism itself together, and punching bag when efforts go awry, as well as educator, inventor, stage director, mendicant, and visionary" (Crocker, Hampson, & Aall, 2003, p. 161). In order for the mediator to successfully implement these mechanisms for collaboration, the participants in the mediation must begin to refill the reservoir of trust. As the mediators interviewed in this study reported they took on many roles throughout the duration of mediation. The mediators reported these roles were employed meaningfully in order to guide the participants into further collaboration, model negotiation skills, clarify, and test the reality of the participants in a non-adversarial creative way, which is supportive a creating and maintaining a safe environment for the mediation conducive to taking risks and promoting collaboration.

Philosophical Goals in Mediation

The intent of mediation in special education "is to amicably resolve disputes regarding exceptional student (D'Alo, 2003, p. 4)." The introduction to mediation to the continuum of dispute resolution options has reduced the number of conflicts that have escalated to the level of due process. Although this is a celebratory consequence, this was not the anticipated goal of mediation. The goal in special education mediation is to not only: "meet the needs of exceptional students," but to focus on the development or reconstruction of a working relationship communication between parents and educators (D'Alo, 2003, p. 4). Despite "a rapidly growing literature admonish(ing) lawyers to shed

adversarial clothing, think outside the litigation box, embrace creativity, create value, and move into the twenty-first century as problem-solvers rather than as gladiators" (Nolan-Haley, 2002, p. 4), this study suggests that this progression is subtly being resisted.

Conflict Between Philosophy and Practice

> Psychological research using the same methodology for examining how people handle everyday interpersonal conflict – as opposed to legal disputes – has found a preference for negotiation or mediation over arbitration. Examples of issues that produced this pattern include organizational policy, an instructor's last minute decision to make a final exam mandatory for all students, the division of labor for a boring task, and dormitory noise (Shestowsky, 2004, p. 220).

The issues in special education, despite their legal context, are frequently interpersonal in nature, providing evidence that mediation is an appropriate match for special education related disputes. Currently the philosophies of conflict and the mediators vision for alternative dispute resolution are not being matched by their reality (Mayer, 2004). The presence of attorneys in the state of Iowa's mediation process have been reported to impede the mediators' abilities to focus on emotions and the underlying interests of the participants and regretfully have coerced them to take a more positional approach to negotiation.

There are both proponents and opponents for attorney involvement in mediation. "Adversarial representation induced greater trust and satisfaction with the procedure and produced greater satisfaction with the judgment" (Shestowsky, 2004, p. 218). When people are able to choose their own attorney, they feel that their self-interests are most strongly represented. Some people trust adversarial mediation and feel that it is more fair (Shestowsky, 2004).

Individuals who support active participation in special education mediation have two major concerns. They fear an unequal distribution of power at the mediation and stress that attorneys and advocates can assist in leveling the playing field between school district personnel and parents in special education mediation. In addition, they value attorneys' astute understanding of the legal ramifications of the conflict (Feinberg, & Beyer, 2000)

Individuals who participate in mediation should be capable of understanding their rights and interests and that mediation should cultivate fair and honest dialogue (Feinberg, & Beyer, 2000). Individuals who are hesitant to resolve special education related disputes through mediation without the presence of an attorney fear there is an imbalance of power between the parents and the school district. Parents using special education mediation are parents with children with disabilities, who are often poor, emotionally vulnerable, and undereducated (Beyer, 1999).

> Examples of power imbalances include lack of information by parents on the full scope of what children may be entitled to under IDEA; the use of jargon by the school officials, that despite explanation, can remain obscure and even incomprehensible for parents; lack of parental experience in participating in such a setting; cultural differences between families and school officials; differences in negotiating skills, and experience; and fear by parents that perpetuation of conflict could hamper future relationship with the school district (Feinberg, & Beyer, 2000, p.4).

In a study in Alabama, several parents shared that they felt overwhelmed when participating in mediation on their own. However, "they felt that they were accorded greater respect when they had counsel or an advocate accompany them to the forum" (Feinberg, & Beyer, 2000, p.6).

There remains to be great controversy regarding the presence of attorneys in special education mediation and their appropriate role within mediation's context. Those who do feel that the attorney's adversarial nature is supportive of the process of mediation's ideals, identify the mediator as an expert in conflict with the skills and knowledge necessary to guide participants to a collaborative solution. Some research supports the findings of this study reporting attorneys are "not necessary to overcome the power imbalances inherent between school district personnel and parents" (Feinberg, & Beyer, 2000, p.8). "Those who propose exclusion of attorneys view lawyers as obstreperous and obstructionist. They are seen as subscribing to the value of confrontation as and end in itself. Rather than engaging in consensus-oriented problem-solving activities, attorneys are perceived as dedicated to securing victories for their clients, hefty fees for themselves, and losses for their opponents without regard for the costs of such an approach" (Feinberg, & Beyer, 2000, 11). This perception identifies the distribution of power in a more liquid state more similar to the reports of the mediators interviewed in this study.

Power

The second question investigated by this study explored the mediators' reported perceptions of power and power's influence within the context of special education mediation. Although the mediators acknowledged that certain types of power have been exercised at mediations they have mediated, they were hesitant to embrace explicit categorization of French and Raven's power, because they did not perceive power as stagnant. S. Mc Fly and Sidney identified with power in a more liquid way, in constant

transfiguration, warned: "to make no assumptions about power." Despite the mediators' cautiousness when referring to precise definitions of power as defined by Raven, Schwarswald, and Koslowsky (1998) several emergent themes surfaced as the mediators reported their perceptions. The first emergent theme that surfaced recognized the interviewed mediators desire for acknowledgement and validation for their expertise. A second theme surfaced reported by the mediators as the power in remembering the child. This power has been interpreted as Raven, Schwarswald, and Koslowsky's (1998) classification of legitimate power.

Expert Power

"Lawyers have a long-standing monopoly on the law business and do not look favorably on sharing their power with non-lawyers" (Nolan-Haley, 2002, p. 1). Attorneys have this controlled monopoly for over one hundred years through the unauthorized practice of law (UPL) doctrine, which restricts the practice of law to licensed professionals that have been admitted to state bars and have demonstrated the appropriate educational and ethical competencies (Nolan-Haley, 2002). "Paradoxically, as the field of dispute resolution moves in the direction of professionalization," (Nolan-Haley, 2002, p. 2) fuzzy boundaries have developed differentiating mediators from attorneys.

Although mediators do not claim to identify themselves in a legal context, attorneys are threatened by the encroachment on what has formally been their turf (Mayer, 2004). This rift has resulted in frustration and hurt feelings for the mediators. Mediators respect and value the important role of attorneys in mediation as a legal

advocate to their clients. In return they would appreciate if attorneys would reciprocate a similar professional courtesy. David Hoffman, a mediator and attorney, remarks with frankness, "Many of my colleagues in the bar believe that their law degrees alone qualify them to be dispute resolvers, and they have little regard for the thousands of mediators who come from a variety of professional and nonprofessional backgrounds" (Nolan-Haley, 2002, p. 6). This attorney's statement mirrors the lack of respect and acknowledgements of expertise that Iowa state mediators report about their interactions with attorneys in the field of special education dispute resolution. "The normal dynamics of negotiation add additional complexity" to defining the mediator's expert role within mediation (Wade, 2004, p. 421.).

An expert is an individual who is acknowledged for skill and knowledge proficiency within a particular content area (Wade, 2004). Mediators need to be recognized for their expertise and skills. This researcher suggests that in order for mediators to attain autonomy, and relieve the tension that has between them and their attorney counterparts, mediators must begin to identify themselves in a new way. Mediators should examine the role that they play in conflict, and reframe their role as more than a "potted plant" in mediation. Bernard Mayer suggests reframing this professional role to that of a specialist in conflict (2004). In addition he suggests that mediators begin to identify themselves as individuals with expertise of the dynamics of conflict, and as a "conceptual tool" to assist individuals in conflict with developing constructive approaches to conflict, with a range of roles and intervention strategies (Mayer, 2004). Clearly defining these characteristics and qualifications will ensure

attorneys that mediators are not crossing the boundary of the UPL. In addition it will reemphasize and strengthen the attributes that mediators bring to dispute resolution, reestablishing their value and acknowledging the crucial specialties they bring to mediation.

Discussion and Implications

There are several rich implications that bridge between the emic and etic nature of this applied study. First, at an internal level, this study can be thought of as an instrument of self-reflection for the mediators involved in this study. The strategic questions asked about mediation philosophy and perceived presence of power within the context of mediation may have sparked inner cognizant deliberation and served as an opportunity for the participants interviewed to think critically and articulately about their practice. These findings may also benefit other mediators both in the field of special education mediation, and within other outside contexts.

Reflecting on the findings of this study, the researcher believes it is her ethical obligation to use the research as a force to call for action within the state of Iowa's continuum of alternative dispute resolution options. The current model (See Appendix A) is not efficiently utilizing our state mediators' knowledge of conflict and skills of facilitation appropriately. The integrity of the process of mediation, which is regarded by these mediators with such positive esteem, is being influenced by the ulterior agendas of attorneys at both the pre-appeal and mediation level. Consequences of conducting special education mediation in its existing condition may be superficial agreements and the inability to reconstruct severely damaged relationships.

Three special education mediators supported these suggested changes as model for improvement to the current dispute resolution options. The suggestions are modeled in Figure C1. The mediators appreciated the proposed model's ability to be compatible to the mediators' personal philosophies. In addition this model acknowledges both the mediators' and the attorneys' expertise, this is achieved by providing the liberty necessary for each offer their valuable services.

This model (See Figure C1) provides attorneys opportunities to legally consult their clients apart from the mediation process. The suggestion to separate special education and school district attorneys physically from the mediation session was proposed in order to allow the mediators to use their expertise to construct a mutual problem definition, begin to rebuild trust, and form the reconnections necessary for the participants to be able to rebuild relationships. In the state of Iowa, this suggested model proposes the expertise of attorneys to be readily accessible via telephone throughout the duration of the mediation and the pre-appeal mediation process.

The suggested option of settlement counseling is another opportunity for the disputants to negotiate in order to resolve their conflict at a less adversarial level than a formal due process hearing. At a settlement counseling meeting attorneys representing both the school district and the families will negotiate in a direct, straightforward manner that is attorney driven. Participants in the settlement counseling session will have a minimal role if any. This alternative dispute resolution option will bypass addressing emotional issues, and may be used as another attempt to resolve conflict if at mediation the participants are unable to reach an agreement. The goal of the settlement counseling

session will be a legally binding settlement agreement enforceable in a court of law. Reciprocity of expertise is better explicated in this model. This is the forum is most compatible with the attorneys' philosophical framework, within this session the expertise of the attorney are highlighted.

There are many predicted benefits of the implementation of the suggested additions (See Figure C1) to the current continuum. It is predicted that the proposed additions to Iowa's dispute resolution model will allow the mediators the autonomy necessary to engage participants in meaningful conversations about emotions, perceptions, and relationships. These opportunities may offer considerable benefits to the participants, such as better communication and improved relationships, which in the current dispute resolution model have been undervalued. At the same time, this suggested model is sensitive and conscious of the integral role of attorneys to advocate for the participant's legal best interests. Due to the interpersonal nature of special education mediation, the participants involved in the mediation will have to interact with one another on a regular basis about the best interest of the child the conflict is concerning. Despite the predicted benefits of implementing the suggested changes to Iowa's current dispute resolution, model there is risk involved in the model's implementation as well. It is possible that despite the implemented suggested changes to Iowa's current model, participants may still prefer to refrain from addressing the underlying emotional and relationship issues of a conflict, and in fact choose to bypass the option of mediation altogether. It is possible that the proposed suggestions may be interpreted with defense by the attorneys representing families and schools in special

education related disputes in the state of Iowa. It must be vehemently stressed these were not the intentions. The addition of settlement counseling is suggested in order to broaden the continuum of Iowa's dispute resolution options and rebalance the reciprocity of expertise between mediators and attorneys. The recommended changes (See Figure C1) are encouraged in thoughtful consideration of the expertise of mediators and attorneys as well as the proposed model additions, which were constructed in reflection to both mediators' and attorneys' philosophies and goals within deliberation. It is extremely important to note that when mediators and attorneys are able to collaborate they may be able to offer the participants of mediation more than just a settlement (Nolan-Haley, 2002).

Directions for Future Research

Although the approach to mediation will be altered without the presence of attorneys, there is no guarantee that the outcome of the mediation will be any different. If the suggested call for action were to be implemented, a longitudinal study should be implemented monitoring the consequences of the mediators' ability to address relationship and emotional issues at the mediation and the "quality" of the mediation outcome, as well as the effects on the interpersonal relationships of those involved in the conflict.

In light of the recent reauthorization to the IDEA and the addition of the resolution session to the alternative dispute resolution continuum, long term effects of this addition must be monitored. It will be interesting overtime to see how the introduction of this option will affect the use of mediation. Will less people be likely to

volunteer to use the formal mediation process because of this option? It will be interesting to find out.

It is evident that further studies should be implemented investigating the theoretical frameworks held by special education mediators, in this state and across the country. More studies should be done measuring the implications of attorneys within the dynamics of special education mediation. In addition, studies of the perceived influence of the dynamics of power within the context of special education mediation should be considered.

In conclusion, this study raises many more questions within the field of special education mediation. If theoretically mediation is such an attractive alternative to litigation, in reality, why is it not being used more frequently? In addition, if it is so successful at solving conflict, why is it most frequently used at the most informal level of conflict? If it is so effective, why cannot it be used at the most escalated level of conflict as well?

A Personal Reflection

There were many things that I learned from this opportunity. It was an honor to be able to collaborate with such intelligent and experienced individuals. I feel very fortunate that the mediators involved in this study allowed me the opportunity to work with them so closely. I began my thesis experience as a novice. I dove into the available mediation literature naïve and with a voracious appetite. I cobbled together my literature review and initial interview questions based exclusively on the world I constructed out of my readings. Once face-to-face with a flesh and blood special education mediator, I

learned quickly that there was a vast disparity between the theoretical worlds of mediation I read about in the available literature and the reality of special education mediation. I was shocked at how much more complex real life mediation was than how mediation was characterized in prose.

> The recognition of Iowa state mediators, who have been previously passed over as a potted plant within the context of special education dispute resolution facilitators, would reflect sunlight upon the many various different participants and options within Iowa's dispute resolution continuum. Providing acknowledgment of Iowa's special education mediators as experts as well as allowing them the opportunities necessary to utilize their knowledge and experiences of conflict and relationships will only further strengthen the state of Iowa's commitment to fostering positive relationships between schools and families.

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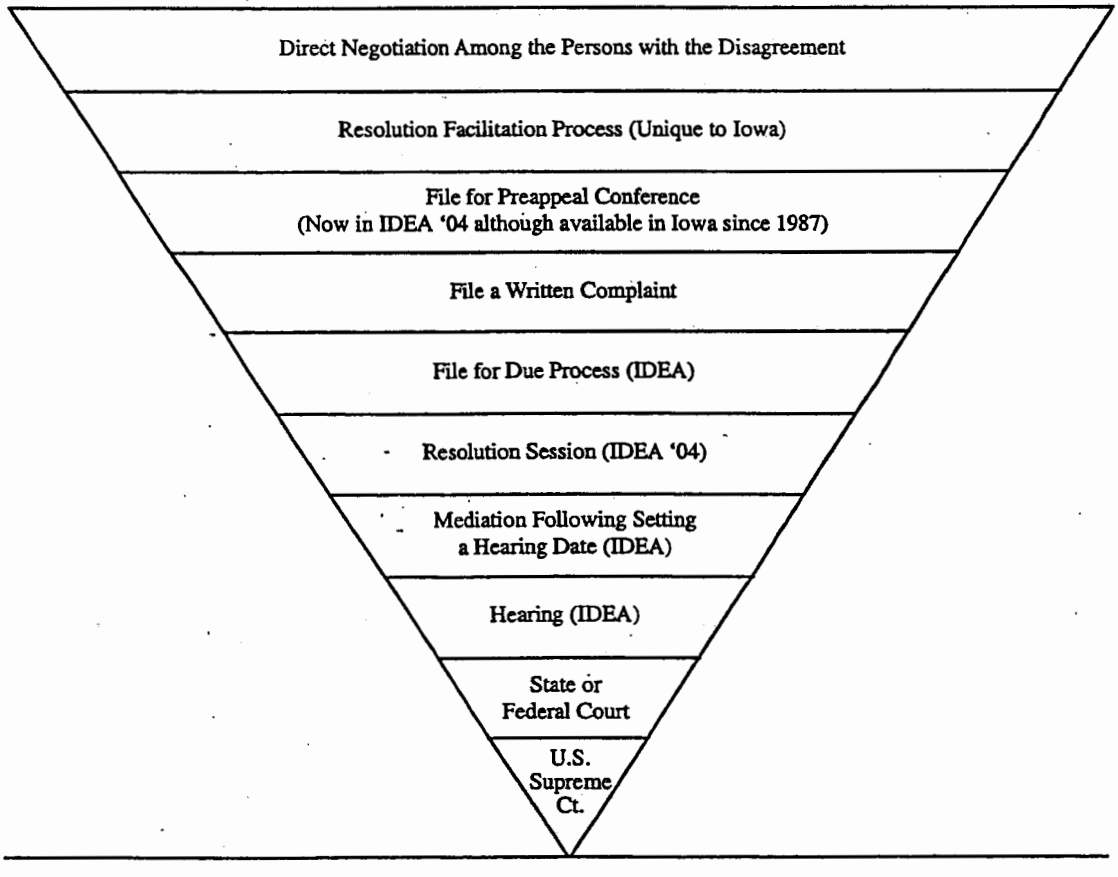
APPENDIX A

IOWA'S CONTINUUM OF DISPUTE RESOLTUION SERVICES

Resolving Disagreements in Special Education

The inverted pyramid below represents an important principle in Iowa's approach to conflict resolution in special education. The preferred mode of conflict resolution is direct negotiation among the persons with the disagreement. The least preferred mode is litigation. The ideal, then, is for people to address their differences themselves and work together to resolve them at the earliest possible time -- not to let them fester and escalate. A close second, in terms of our preferences in Iowa, is to seek the assistance of an impartial person to assist in the negotiations. In our state there are several hundred resolution facilitators trained especially for this purpose. Most are AEA staff, some are school district staff and some are community people. Each AEA has a Resolution Facilitator contact person: often, but not always, the director of special education. Neither of these first two modes of conflict resolution necessitate contacting the Department of Education about the disagreement.

As we move from the most broad to the narrower parts of the pyramid, the formality of the dispute resolution approach increases, and the Iowa Department of Education becomes involved because someone has to file for a preappeal conference, a due process hearing or file a written complaint. Also where legal issues are a part of the dispute lawyers are often hired by AEAs, districts, and families. The preappeal conference, a uniquely Iowa approach to conflict resolution from 1987 until it was added to IDEA '04, may or may not involve attorneys as the parties wish. It always involves a mediator assigned by the Iowa Department of Education from its roster of special education mediators. Due process further limits direct party involvement: although resolution sessions which may or may not be mediated, or mediation using a special education mediator on the state roster, are still options at this point. Litigation (including a due process hearing) is the least desirable approach in principle because it takes decision making out of the hands of the persons directly involved in the disagreement -- as does complaint investigation.



APPENDIX B

PREAPPEAL OR MEDIATION EVALUATION

Date 12/9/05

Case Number Pre 487

PREAPPEAL OR MEDIATION EVALUATION

Please take a few a minutes to respond to the following questions. Your views are very important to us, and will be treated confidentially. A return envelope is provided for your convenience.

Preparing for the Preappeal or Mediation

1. What did you expect to achieve from participating in the preappeal or mediation?

2. What concerns, if any, did you have about participating in the preappeal or mediation?

3. In preparing for your preappeal or mediation, how helpful were the following:

Introductory phone call from the mediator	Helpful	Not helpful	Not received	Not needed
Brochures: *When Things Go Wrong*	Helpful	Not helpful	Not received	Not needed
Preparing for Preappeal or Mediation	Helpful	Not helpful	Not received	Not needed

4. Comments on my preappeal or mediation preparation:

During the Preappeal or Mediation

	Strongly Agree	Agree	Disagree	Strongly Disagree
5. The preappeal or mediation process was explained adequately by the mediator.	☐	☐	☐	☐
6. I was given the opportunity to discuss and explain the issues important to me.	☐	☐	☐	☐
7. My views were considered before any solutions or agreements were made.	☐	☐	☐	☐
8. I was treated fairly by the mediator involved in the case.	☐	☐	☐	☐

9. Comments on my experience with the preappeal or mediation process:

Outcome of the Preappeal or Mediation

10. I was satisfied with the outcome of the preappeal or mediation.

_____Agree _____Undecided _____Disagree

11. On how many issues did you reach an agreement _____All _____Some _____None

12. If none or only some of the issues were resolved, is there anything else that could have been done to help reach an agreement on additional issues?

_____

_____

13. Regardless of whether or not an agreement was reached:

Did you get a better understanding of the issues? ___Yes ___No

Did you get a better understanding of your own interests? ___Yes ___No

Did you get a better understanding of others' interests? ___Yes ___No

Did you feel that communication between participants improved? ___Yes ___No

14. What is your overall evaluation of the preappeal or mediation?

_____Excellent _____Good _____Mediocre _____Poor

15. Comments about your preappeal or mediation experience:

_____

_____

_____

OPTIONAL: What role did you have at the preappeal or mediation?

_____ Parent/Student _____ AEA _____ Advocate for Parent/Student

_____ School _____ Other _____ Advocate for School

_____ Advocate for AEA

APPENDIX C

TABLES AND FIGURES

Table C1: Iowa's Special Education Dispute Resolution Statistics

Cluster Area 1: General Supervision
Dispute Resolution – Complaints, Mediations, and Due Process Hearings Baseline/Trend Data
(Place explanations to 1a, 1b, and 1c on the Table, Cluster Area 1, *General Supervision*, Cell 1, *Baseline/Trend Data*)

1a: Formal Complaints

(1) Reporting Period	(2) Number of Complaints	(3) Number of Complaints with Findings	(4) Number of Complaints with No Findings	(5) Number of Complaints not Investigated-Withdrawn or No Jurisdiction	(6) Number of Complaints Set Aside Because Same Issues being Addressed in a Due Process Hearing	(7) Number of Complaints with Decisions Issued within 60 Calendar Days	(8) Number of Complaints Resolved beyond 60 Calendar Days, with a Documented Extension	(9) Number of Complaints Pending as of :
July 1, 2000 to June 30, 2001	7	1	2	4	0	3	0	0
July 1, 2001 to June 30, 2002	6	1	3	2	0	3	1	0
July 1, 2002 to June 30, 2003	5	2	0	3	0	0	1	0
July 1, 2003 to June 30, 2004	10	2	0	8	0	2	0	0

1b: Mediations

(1) Reporting Period	Number of Mediations		Number of Mediation Agreements		(6)Number of Mediations Pending as of:
	(2) Not Related to Hearing Requests	(3) Related to Hearing Requests	(4) Not Related to Hearing Requests	(5) Related to Hearing Requests	
July 1, 2000 to June 30, 2001	21	0	21	NA	0
July 1, 2001 to June 30, 2002	20	4	20	4	0
July 1, 2002 to June 30, 2003	33	5	31	5	0
July 1, 2003 to June 30, 2004	22	12	22	12	0

1c: Due Process Hearings

(1) Reporting Period	(2) Number of Hearing Requests	(3) Number of Hearings Held	(4) Number of Decisions Issued within Timeline under 34 CFR §300.511	(5) Number of Decisions within Timeline Extended under 34 CFR §300.511(c)	(6) Number of Hearings Pending as of:
July 1, 2000 to June 30, 2001	10	3	1	1	0
July 1, 2001 to June 30, 2002	16	3	1	2	0
July 1, 2002 to June 30, 2003	16	3	2	1	0
July 1, 2003 to June 30, 2004	14	4	2	2	1

Table C2: Tier I and Tier II Data Analysis

Tier I: Initial Coding	Tier II: Subcategories
Attorneys' goal in mediation Attorneys' philosophy What mediation looks like when attorneys are present Attorneys' and emotion Cannot control emotions Benefits of attorneys Attorney's perceptions of mediators Predicted mediator response of attorneys to mediators' feelings about current mediation conditions: Nothing that states attorneys cannot be present Background Transition into Special Education Mediation History of Conflict Resolution in Iowa Mediator's sense of self Mediator's role Impartiality Values of Mediation in alignment with personal belief system When Training individuals in mediation Shepard Mediation now legally binding Trained in problem solving model Philosophies practiced by mediators Narrative approach to conflict resolution Problem solving perspective Business of mediation: looking at participants as clients Cannot control emotions Equalizing the playing field Power shifts Assumptions about power Power in remembering the child Power in future focus Disparity in power between attorneys and mediators Feelings of disrespect towards mediators from attorneys Power in setting the agenda Expert power Power of reciprocity Power in recognization Power of an over arching goal Power of the mediator Hard and soft power Bandwagon/ capitulation The participants must want to address these issues Need to address underlying issues Process of mediation's ability to focus on re-building relationships Re-establishing trust An Agreement	**1. Mediator Philosophy:** 1. Narrative approach to conflict resolution and problem solving perspective 2. Business of mediation: Looking at participants as clients 3. Roles within special education mediation 4. Philosophical goals in mediation 1. Increased Understanding 2. Addressing the underlying issues 5. Conflict between philosophy and practice 1. Benefits of attorneys 2. Attorney driven mediation 3. Attorney philosophy 4. Attorney goals 5. Attorneys and emotions 6. Consequences for the mediator **2. Power:** 1. Assumptions about power 2. Legitimate power in remembering the child 3. Expert power of the mediator

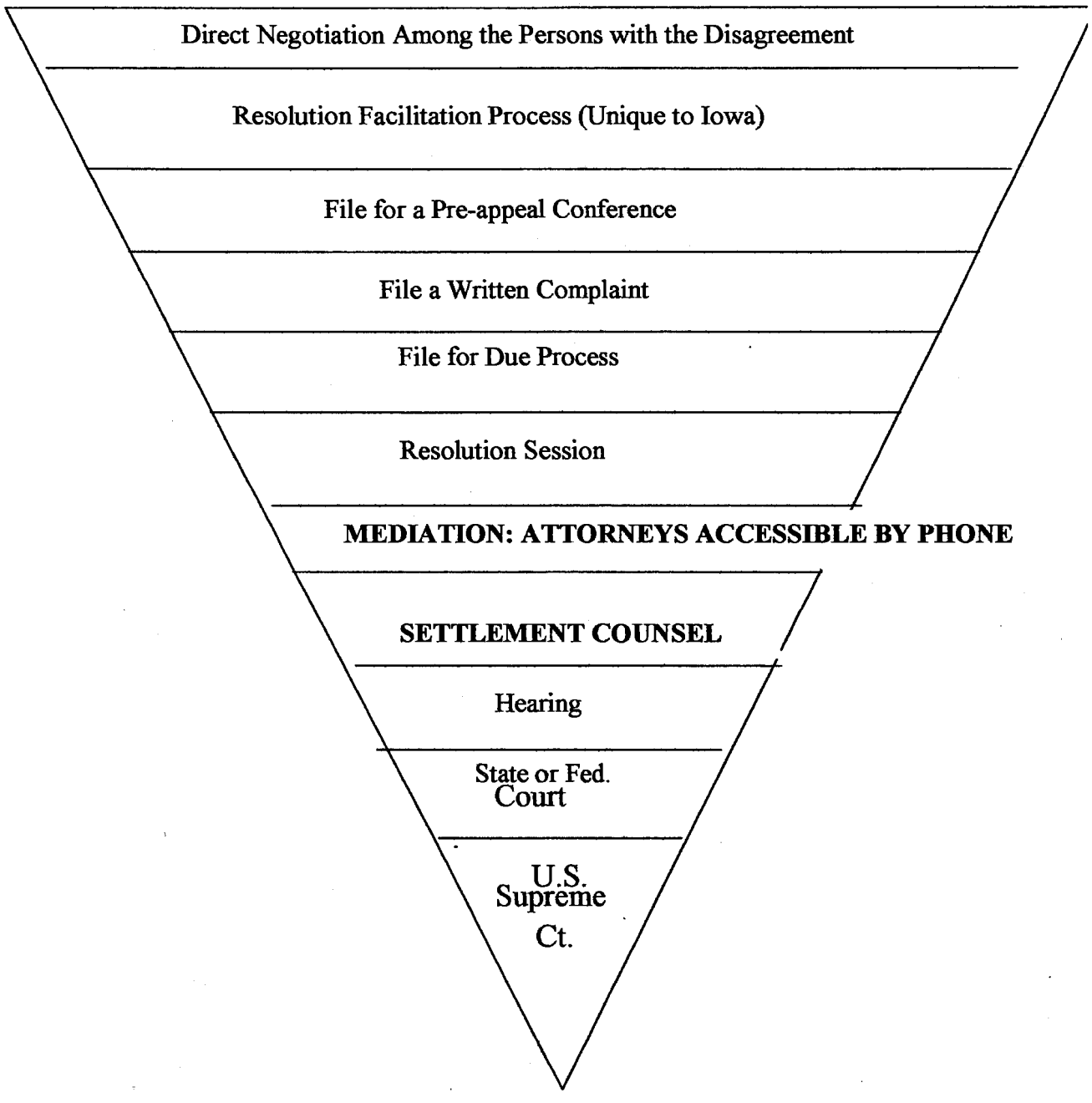


Figure C1. Suggested Additions to Iowa's Special Education Dispute Resolution Continuum. (Suggested additions in bold text.)