

Special Education Mediation — Good for the Team

By Sarah S. Bergdahl

Coming to grips with Michael's diagnosis of Asperger's Syndrome, right after Joe had asked for a divorce, was almost more than Sandy could handle. Her job would be jeopardized next if the school didn't stop calling her with complaints about her son.

Ever since he received all those failing grades on his progress report, he hasn't wanted to go to school, so every day starts with a fight. The teachers complain that he tries to run away during the day, he plays the "Airplane math game" on the computer over and over, and screams when asked to attend the sharing circle. Last week, out of sheer frustration, he tipped his desk over and grabbed the teacher's glasses off when she bent down to pick things up.

Sandy wonders how well the teachers are trained to work with children like Michael. She has read that he would be more successful in an environment with less stimulation and more one-to-one direct instruction. She has brought this up at meetings but feels no one listens. One teacher even asked how things were going at home since Joe left. It felt like the district blamed her for Michael's behavior.

Sandy and Michael are fictional characters in a common scenario from elementary schools across America. This article seeks to: 1) inform readers about the existence of the Special Education Mediation Program in Washington; 2) place mediation in the context of other formalized dispute resolution options; and 3) outline the benefits of mediated settlements in the district/family relationship.

Conflict that is left unattended shifts attention away from the ideal of student-centered, team collaboration. Sandy, the parent in our scenario, might eventually come to believe that her child is being denied FAPE (Free and Appropriate Public Education), a right all children with disabilities in schools and activities receiving funds from the U.S. Department of Education are guaranteed.¹

While she may have participated in hours and hours of meetings with her IEP (Individualized Education Plan) team, a multidisciplinary team that all parents of special education students are part of, she may still feel intimidated at meetings or that she is not being respected or heard. Staff and parents may disagree on the best way to educate the child. Fearful for their children and convinced of the merits of their case, parents may decide to sue districts.

Parents and guardians can formalize disagreements with a district concerning the IEP's provisions, delivery of services identified in the IEP or violation of federal and state requirements related to special education. Options for complaints include citizen complaints, due process hearings and mediation.

School districts may also request impartial due process hearings or mediation services regarding issues involving identification, evaluation, placement or provision of FAPE to a student. Either party can initiate the mediation process by contacting the Office of Superintendent of Public Instruction's (OSPI) administrative agent, Sound Options Mediation and Training, LLC: <http://www.somtq.com>.

The benefits of a mediated settlement in the context of family/district disputes are many. There is no cost to a district or family for the mediation session, which is confidential.

All-day sessions with skilled mediators also create a context for psychological safety. Working relationships can be strengthened through expression of emotions, exchanging information, comparing different interpretations of test results and evaluations, listening deeply to stories highlighting observed behavior in different contexts, and revealing fears and hopes for the future.

The process further allows for significant input from the myriad of professionals and family members involved with the student and the issues. High compliance with settlement agreements is achieved because mediation is based on the principle of self-determination, and agreements are voluntary and uncoerced. Finally, the mediation process allows parties to rebuild trust and begin to heal the relationship.

The Special Education Mediation Program in Washington was initiated in September 1994 by OSPI's Special Education Division. The program's objective is to provide a dispute resolution process that will result in mutually satisfactory solutions to disputed issues while avoiding costly litigation that drains school budgets.

There is a cadre of approximately 15 trained and certified mediators around the state who convene these mediations. Of the cases mediated in 2009, 85% reached full or partial settlement. The mediations averaged 7.3 hours in length, in addition to three hours of intake.² The state budget includes the cost of special education mediations. Legal counsel is welcome at the mediation table when agreeable to both sides.

In 17 years of working with educators, administrators and families in Washington, I have observed that special education mediation has been slow to catch on among ethnically diverse populations. For the sake of the children caught in complicated adult disputes, I hope this changes in the future.

Mediation, the opportunity to engage in conflict resolution with the help of a neutral third party, has proven itself a cost-saving, team-building and worthy option for school districts, children and their families.

Sarah Bergdahl, M.A., specializes in intercultural relations. She mediates for Main Street Mediation and Communication Services (www.mainstreetintercultural.com) and is serving her second year as president of the Washington Mediation Association. She has conducted over 150 special education mediations.

1 Section 504 of the Rehabilitation Act of 1973.

2 2009 Annual Report, Sound Options Group, LLC.