

Bulletin of the Maine Association of Mediators August 2008



Professionals Committed to Cooperative Conflict Resolution

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We're Trying a Teleconference Meeting

Meeting the challenge to provide state-wide services and contact.

By Acting President, Anita B. Jones

How to provide services and keep in touch with members and potential members in the various geographical areas of our state is a struggle that Maine Association of Mediators has in common with other state-wide organizations. We have tried various approaches in the past, such as holding meetings in the Bangor area from time to time, and in Augusta more often; even going so far recently as to divide the state into sections and plan to hold regional meetings several times a year. That didn't work due to the need for an additional volunteer structure to plan and implement these additional meetings, which proved to be difficult to recruit.

The fact remains that the preponderance of our membership hails from the southern part of the state, and meetings held in other places ask those many members to get on the turnpike and travel, which of course these days is even more taxing than before the high gas prices. We value our members from all parts of the state and have spent hours over the years discussing how to solve this dilemma.

This fall we are holding our first ever membership meeting by video-conference. Maybe this new technology will solve our quandary. "What Makes an Effective Agreement to Mediate", the topic for our meeting, is vitally important in any case because of the confidentiality contract and other important issues included in such documents. Add to that the excitement of participating in our first ever video conferencing meeting, and we're sure you will want to be part of this gathering. See elsewhere in this newsletter for more details, and I'll hope to see you there!

MEMBERS MEETING

WHAT MAKES AN EFFECTIVE AGREEMENT TO MEDIATE

Three locations:

USM - ABROMSON CENTER ROOM 110

Teleconference at 2 locations:

Bangor Public Library Board Room

Department of Education, August, Burton Cross Bldg. Room 103A

10:00 A.M.—12:00 NOON

More details & registration info by Email!

A Portfolio Business

Susanna Liller

I have learned that I have a "portfolio" business and I'll bet many of you reading this have one, too. Since leaving the employ of Bath Iron Works in 1994 after 12 years in the corporate world I have been building a portfolio business but didn't know it. Actually I knew I was building something but I didn't know it had such a grand name. I called it "cobbling things together to survive". Who knew it was a "portfolio"?

I started out as a "facilitator", facilitating strategic plans, teambuilding, group decision making. The next thing "cobbled" was mediation / conflict resolution. This was because, of course, almost every client who asked me to facilitate his group didn't tell me that there was conflict underlying the plan, the decision, the team. I quickly learned that I needed to learn how to facilitate groups who were also in conflict.... as conflict greeted me at every turn.

This worked for me for awhile, - facilitation and mediation - until I learned about public participation and thought, - yet, another service to "cobble". In 1999 I added that to the list and worked with the DOT in Maine and with the FAA in various airports as they conducted Environmental Impact Statement processes to determine the best alternative for the projects they were considering. This, most of the time, involved me standing up in front of several irate people, hundreds, actually. Definitely not mediation, - more like being a traffic cop - but I learned a lot about the National Environmental Policy Act (NEPA) and did help at times to improve communication between the warring factors.

My most recent portfolio addition is Executive Coaching, - which is how I found out that the "cobbling" was really the more elegant, - portfolio". Pam McLean, the head of the coaching school I attended, The Hudson Institute of Santa Barbara, was addressing the gathering of coaches at their

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Massachusetts

Special Education Appeals

by Marc Sevigny

An overview of the Bureau of Special Education and its dispute resolution processes

The Bureau of Special Education Appeals ("BSEA") conducts mediations, facilitation for Individual Education Program (IEP) team meetings, advisory opinions and due process hearings to resolve disputes among parents, school districts, private schools and state agencies. The BSEA derives its authority from both federal law and regulations (the Individuals with Disabilities Education Act, "IDEA") and Massachusetts law and regulations.

A parent or a school district may request mediation, a facilitated IEP team meeting, advisory opinions and/or a hearing at any time on any matter concerning the eligibility, evaluation, placement, individualized education program (IEP), provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A school district may not request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a child in a special education program. In addition, a parent may request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973.

Mediation, facilitated IEP team meetings, advisory opinions and hearings are conducted by impartial mediators and hearing officers who do not have personal or professional interests that would conflict with their objectivity in the hearing or mediation. The BSEA consists of eight hearing officers, all of whom are attorneys, eight mediators, a coordinator of mediation, a scheduling coordinator, support staff, an assistant director and a director.

The BSEA is located with the Massachusetts Department of Elementary and Secondary Education, but is independent from the Department.

About Mediation

Special Education Mediation is a voluntary and confidential dispute resolution process available at no cost through the BSEA. When school personnel and parents disagree about the educational needs of a student with disabilities, either party may request mediation.

In mediation, an impartial mediator helps parents and school staff clarify the issues and underlying concerns, explore interests, discuss options and collaborate to reach mutually satisfying agreements that address the needs of the student. The mediator does not decide how to resolve the dispute. When the parties resolve all or some of the issues, they work together with the mediator to put their agreement(s) in writing.

This informal, collaborative problem-solving process encourages mutual respect, promotes communication and often pro-

vides the basis for positive working relationships between parents and school staff.

Description of BSEA Mediation Practice

Since 1974 Massachusetts has led the nation in offering mediation to parents and school administrators involved in special education disputes. Federal regulations now affirm the value of mediation in resolving such disputes by requiring all states to provide this service. Massachusetts' BSEA mediators have extensive training in conflict resolution skills as well as special education regulations.

Conducting mediation is the primary task of the BSEA's group of eight mediators, each of whom completes roughly 95-150 mediations each year and is responsible for managing his or her own caseload from intake to conclusion. The mediators generally travel to the school district to conduct the mediations. The mediator schedules mediation when both parties have indicated a desire to participate in the mediation process. Typically a mediation session lasts for two to four hours and some cases require more than one mediation session. On average, each mediation includes anywhere from 3-10 individuals at the mediation table. Participants in mediation can include parents and school administrators, their respective representatives (parent advocates or attorneys), school staff and service providers, students and representatives from human service agencies. Generally, BSEA mediators write up an agreement reflecting the terms worked on by the participants at the end of the mediation session(s). In most cases, this marks the end of the dispute. One goal of the mediators is to see an improvement in the relationship between the parties, thus enabling them to work together more effectively in the future.

Mediators also respond to numerous telephone inquiries at the BSEA. These calls involve providing technical assistance to parents, schools, attorneys and advocates regarding special education regulations and BSEA procedures; explaining the mediation process to individuals; obtaining information from individuals requesting mediation; and scheduling mediations.

Mediators at the bureau regularly provide training to numerous groups throughout the state in effective communication skills and how to use mediation effectively to resolve special education disputes. The BSEA mediators convene monthly to discuss their mediation practices, trends in the field and changes in special education policies and regulations. In addition to this ongoing professional development, mediators regularly attend workshops and conferences on special education law and mediation practice.

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A Portfolio Business (continued from page 1)

yearly conference and told the group that coaching was still at the stage where it was difficult to support yourself financially on coaching alone, that one had to “develop a portfolio business”, i.e. a business built of an assortment of services. My brain perked up. I had heard such a statement before – said differently – but the same thought...where? Ah, when I began mediating, yes, several people had said – don’t quit your day job, - it’s hard to support yourself financially only doing mediations.

So, here I am. All the things I like to do can’t support me on their own, - so I’ve become...a facilitator-mediator-public participation expert-executive coach....and the owner of a portfolio business. It does sound important, but as you and those of you who have

done the same, know – we have done this to survive. Critics might say I should focus, - develop one skill well, - that I’m spread too thin. But you know as I do that all these practices are inter-related. They have to do with communication and transformation of a group or individual if the circumstances are right. And besides, I like them all and I like variety!

And the truth is, - I’m not done...I’m attending a speaker’s boot camp this summer – just maybe (we’ll see how I do) I’ll be adding Speaker to my cobbled list...rather, to my portfolio business!

SUSANNA LILLER is a former president of the Maine Association of Mediators and the owner of Susanna Liller Consulting LLC in Woolwich, Maine.

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Collaborative Practice: A new approach to resolving conflict in Maine

By David Webb, Esq.

Last March a group of approximately 100 lawyers, mental health professionals and financial experts came together for a two day conference on Collaborative Law sponsored by the Kids First Center. A number of these professionals are continuing to meet on an informal basis in order to form an organization in Maine, currently know as the “Maine Collaborative Law Council”. These professionals hope to establish a foundation for this new practice model in the state of Maine.

Commitment to a new process

In a Collaborative Law process, disputants each hire their own lawyer to represent them in a focused effort to reach settlement. The parties may hire other professionals, usually jointly retained, including mediators, divorce coaches, child specialists, and financial consultants. What makes Collaborative Law unique is that the attorneys agree beforehand that they will withdraw from any contested legal action if settlement is not achieved. Additionally, any professionals working with the parties agree not to testify in court on behalf of either party. In addition to this disqualification provision, other key aspects of the Collaborative Law participation agreement provide:

Voluntary Participation. Any party or counsel may unilaterally and without cause terminate the process. Upon termination, each attorney will facilitate the transfer of each affected client’s matter to successor counsel.

Open and prompt discovery. Sharing of non-privileged information is a key aspect of the collaborative process;

Experts are jointly retained. If the parties are unable to achieve settlement, the experts may not testify in court and their work product is inadmissible except by further agreement by the parties;

Separate representation. Each party has separate and independent counsel, trained and committed to the collaborative process. A Collaborative attorney never ceases to be an advocate as she or he commits to reaching agreement as a counselor rather than adversary¹;

Confidentiality during the process, so that each party can express his or her needs and concerns and propose possible ideas for settlement without fear that proposals or unaccepted offers may be used later in court.

Client control. In the Collaborative process, the focus is on helping clients achieve positive outcomes through a resolution of their case. While professionals act as guides and provide a safe environment, the ultimate decision making belongs to the clients.

Commitment to the process. The parties agree to use the Collaborative process in good faith and to treat each other with respect in an effort to settle their case.

Notes:

i. Douglas Reynolds and Doris Tenant, *Collaborative Law, an Emerging Practice*, Boston Bar Journal, November/December 2001. Douglas Reynolds and Doris Tenant, Id.

(to be continued in the October Bulletin)

Next installment David will discuss Settlement Team Meetings and Collaborative Law and Mediation.

DAVID C. WEBB, Esq. is a mediator, arbitrator and trainer specializing in employment, family, construction and education law. He is the founding partner of Middle Bay Associates, a dispute resolution and consulting practice in Brunswick Maine. He has taught programs on negotiation and conflict management at the University of New Hampshire, Israel College and PCI College in Dublin, Ireland. He may be reached at 207-725-6262, or at dwebb@MiddleBayAssociates.com.

Special Education Appeals

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About the Facilitated IEP Team Meeting

The Facilitated IEP Team meeting is a voluntary process through the BSEA available at no cost to the parties. Either the school district or the parent can request a facilitated IEP Team meeting. Facilitated IEP Team meetings are commonly requested when the relationship between the district and the parents is strained or adversarial, when there is a history of disruptiveness at meetings or when an IEP Team meeting is expected to be contentious due to the complexity of the issues being discussed or due to some controversy.

A trained, impartial facilitator, who is not part of the team, will come in to help team members: develop and follow an agenda; stay focused on the goal of developing an acceptable IEP; to problem solve; resolve conflicts that arise during the meeting; maintain open communication, with clarifying issues; to finish

Description of BSEA Facilitated IEP Team Meeting Practice

In 2006 The BSEA decided to try out another early intervention dispute resolution process that parents and school administrators involved in special education disputes might use if it were made available. After a short trial run, the Bureau decided that the FIEP process was indeed useful to parties trying to develop an IEP in difficult situations. Massachusetts' BSEA facilitators have extensive training in conflict resolution skills as well as in special education regulations.

The BSEA is beginning to develop its staff of facilitators and in FY 08 conducted 26 FIEP team meetings resulting with accepted IEPs about half the time. Rejected IEPs continue on to due process and mediation or a hearing. It is anticipated that when the BSEA provides information about this service on its web site, that more parents and school districts will opt for using this process. FIEP team meetings are provided in the school district. The facilitator is invited to the team meeting when both parties have indicated a desire to participate with the facilitator's help. Typically a facilitated IEP team meeting lasts for one to four hours. A facilitated IEP team meeting includes anywhere from 6-10 individuals. Participants

commonly include parents and school administrators, their respective representatives (parent advocates or attorneys), school staff and service providers, students and representatives from human service agencies. BSEA facilitators do not write up the IEP reflecting the terms worked on by the participants. The writing of the IEP remains the school district's responsibility.

Facilitators, like mediators, also respond to numerous telephone inquiries at the BSEA. These calls involve providing technical assistance to parents, schools, attorneys and advocates regarding special education regulations and BSEA procedures; explaining the facilitation process to individuals; and obtaining information from individuals requesting facilitation.

MARC SEVIGNY is a former member of the MAM Board of Governors, and former supervisor of mediators for the Penquis Dispute Resolution Center in Bangor. Currently, he supervises mediators for the Mass. Bureau of Special Education Appeals, mediates and facilitates. He can be contacted through the Bureau at: <http://www.doe.mass.edu/bsea/>

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MISSION

The Association is a non-profit organization of diverse professional interests seeking to broaden public understanding and acceptance of alternative forms of dispute resolution. The Association strives to enhance professional skills and qualifications of mediators, arbitrators, and other neutrals through training, educational development and promotion of standards of professional conduct.

Maine Association of Mediators

**Maine Association of Mediators
2008 Calendar of Events**

Sept. 10 BOG meeting 9:00-11:00

Oct. 15 Membership Meeting 10:00-12:00
Teleconference: Portland, Augusta & Bangor

SAVE THE DATE
Nov. 19 Annual Meeting 11:00-2:30
Holiday Inn - Augusta

Nov. 19 BOG Meeting 9:00-9:45
Dec. 10 BOG Annual Retreat 9:00-4:00
TBA at Augusta