**Time for an IDEA ADR Upgrade**

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**Abstract:**

Implementation of PL 94-142 in 1975 brought the hope of collaboration for families and educators in service of children and youth with unique needs. It was heralded as key civil rights legislation. Forty-six year later hopefulness has somewhat faded. Conflict within this complex work has taken a toll on the system and those committed to this work. As conflict engagement professionals we have strategies and skills to help recover this place of hope and collaboration. In this article I invite readers to expand their vision for the role that we can play in changing our individual and collective relationship to conflict.

**Introduction**:

I entered the world of special education in 1979 as a School Psychologist. I worked in public education for the next 15 years in several special education and general education roles. In 1988 I discovered the emerging field of Mediation and Alternative Dispute Resolution. I took my first course in Mediation, and within a year joined others committed to this work in starting a community-based Dispute Resolution Center. A few years later I left education to start my own ADR firm, Sound Options Group, LLC. In 1994 we responded to an RFP from the State of Washington to design and implement a Special Education Mediation resource. We have continued to administer this program for 25+ years while consulting nationally in the context of conflict engagement and leadership within educational systems.

I am at a stage in life when one sometimes asks, “Where have I been? What have I learned? What next?” What follows is my effort at collecting my thoughts related to these questions in the context of my professional life. I organize my reflections by describing what I call the “**What**” and the “**So What**”. **What** have I learned? **So, what** do I do with this learning?

**The “What”**

While my work in the context of special education started in 1979, I am focusing this retrospection on my work implementing ADR resources within the IDEA and education. We implemented the Washington State Special Education Mediation resource in 1995. In 1997 Mediation was added to the IDEA as a mandatory resource available to families and Local Education Agencies (LEA’s) to resolve conflicts related to the implementation of this law. The objective was:

* to reduce the cost of litigation and complaint investigations (Due Process Hearings and Compliance Complaints),
* to offer resources in support of a more collaborative approach to problem solving, and
* to support and maintain healthy relationships for educators and families in service of students.

A few years later states began offering IEP Facilitation as an additional resource in support of these objectives. While not mandated under the IDEA, many State Education Agencies (SEA’s) have implemented versions of this resource.

These strategies,

* Due Process Hearings,
* Resolution Sessions,
* Complaint Process,
* Mediation, and
* IEP Facilitation,

offered primarily through SEA’s and/or regional offices, have served as the primary mechanisms for resolving conflict related to the IDEA. As the field of Alternative Dispute Resolution (ADR) has continued to develop and expand, I believe it is time to build on this foundation and implement a more robust, nuanced, and systemic framework of resources in support of the healthy engagement of conflict.

As my thinking about the potential for increasing capacity began to take shape, I adopted the computer Operating System (OS) as a metaphor for a systems upgrade. Using this metaphor, I refer to the framework described above as the “IDEA DR OS 1.5”. It is a system grounded in Dispute Resolution (DR) and Alternative Dispute Resolution (ADR). The strategies listed above are “applications” that have been designed to run on this OS.

As an upgrade I propose an OS I call “IDEA CE OS 2.1”. Key upgrades and user benefits of this new OS include:

A fundamental improvement in the core assumption driving the operating system. Our current OS is designed primarily as a Dispute Resolution (DR) system. I am proposing an OS built on the notion of Conflict Engagement (CE) as introduced by Dr. Bernard Mayer in this book, *Staying with Conflict: A Strategic Approach to Ongoing Disputes*. In his book Mayer introduces the notion of Enduring Conflict and states:

*Enduring conflict is that aspect of a dispute that is embedded in structures, systems, values, or identity and will therefore not be resolved through short-term, resolution-oriented conflict interventions. Enduring conflict is long lasting because of its nature, not because of ineffective or inappropriate efforts to resolve it. Until the roots of the conflict change, the system evolves, or the identity or values-based element are profoundly transformed, the conflict will remain, although how it is manifested may vary over time.*

Conflict experienced in the implementation of the IDEA is often of this Enduringnature. It is differentiated from other types of conflict by being fundamentally unresolvable. By highlighting awareness of the context of Enduring conflict, Mayer recognizes the importance of dispute resolution capacity, but also the capacity for being with, and effectively engaging and navigating Enduring conflict over time. A core objective of my upgraded OS is to build individual and collective resources for being with conflict effectively over the long term. The goal becomes reaching agreements that support the ability to work together over time for mutual purpose while still being with unresolved conflict.

A second element of this upgrade is the focus on changing our individual and collective relationship to conflict. I have observed over the years working in this context that educators have an individual and collective aversion to conflict. Now I recognize this to be a very broad assertion and yet when I share it with my educational colleagues, they mostly agree. Given this relationship conflict becomes something to resolve, fix, manage, mitigate . . . On the other hand:

 *In great teams, conflict becomes productive. The free flow of conflicting ideas is critical for creative thinking, for discovering new solutions no one individual would have come to on his own.*

Peter Senge

Conflict has the potential to be productive or destructive. Our individual and collective experience with conflict is based on the choices we make in our engagement of this shared experience.

Ineffective conflict engagement practices will often compromise trust, erode social capital, challenge psychological safety, result in individual and collective disengagement from the pursuit of a shared objective, and be manifested in the avoidance of, and unwillingness to, engage critical complex challenges.

Effective and intentional conflict engagement practices have the potential to:

build trust, build social capital, increase the possibilities for innovation and creativity, and improve the capacity to address complex challenges.

A third benefit is the capacity to better support the nature of the complex work required under the IDEA. Ronald Heifetz of the Kennedy School of Government and author of, *Leadership Without Easy Answers* (1994), differentiates between “Technical Work” and “Adaptive Work”. When groups are engaged in Technical Work or solving technical problems, they apply existing learning and/or existing solutions to the challenge. New learning is not required. Accessing existing learning is required.

Adaptive work, by contrast, requires new learning. In this context groups are faced with a challenge for which current learning, both individually and collectively, is insufficient. This does not simply mean the creation of new knowledge. It requires the ability to engage diversity of opinion, perspective, and interpretation of what is, and what should be. It requires a commitment and ability to stay engaged with the *inevitable* conflict encountered.

Implementation of the IDEA requires both Technical and Adaptive Work. However, at the core of the IDEA is Adaptive Work. The determination of Specially Designed Instruction (SDI), Free and Appropriate Education (FAPE), and Least Restrictive Environment (LRE), all require a group of people to come together and engage in innovative and creative thinking.

A fourth benefit is much broader in scope and introduced in the quote below from an article entitled, *Relationships in the School House*, by Roland Barth.

 *One incontrovertible finding emerges from my career spent working in and around schools: The nature of relationships among the adults within a school has a greater influence on the character and quality of that school* ***and on student accomplishments*** *than anything else.*

 Barth, founder of The Principal’s Center at Harvard Graduate School of Education, basically asserts that our ability as adults to successfully collaborate is correlated to student success. He goes on to say:

 *In short, the relationships among the educators in a school define all relationships within that school's culture. Teachers and administrators demonstrate all too well a capacity to either enrich or diminish one another's lives and thereby enrich or diminish their schools.*

 An expanded reading of Barth identifies what he calls “undiscussables” that are present in almost every educational community. These represent issues that community members know need to be addressed but are too often avoided because of the potential for conflict. These are issues often related to student learning. What I conclude from this, and related research is that our capacity as educators to engage and be with conflict is a significant factor impacting student learning.

I believe that the complexity of the challenges we face, not only in education, call for a changed relationship with conflict. What better place to focus our attention than on educational communities committed to the possibilities and value of new learning?

**The “So What”**

There is a need to build conflict engagement capacity deep within the culture of education (and beyond). This is about increasing individual and collective capacity for engaging and being with conflict in service of new learning. New learning is essential for addressing increasingly complex challenges. The “So What” for me has been to think systemically about this challenge. Two bodies of work inform the framework that has taken shape for me.

The first is found in the work of William Ury and described in his book, *The Third Side: How We Fight and How We Can Stop*, (2000). In this book he reflects on conflict from the perspective of social anthropology and investigates the ways in which a range of cultures deal with conflict.

In the first chapter he introduces his notion of *The Third Side*.

*In our societies, conflict is conventionally thought of as two-sided: husband vs wife, union vs employer, Arabs vs Israelis. The introduction of a third party comes as an exception, an aberration, someone meddling in someone else’s business. We tend to forget what the simplest societies on earth have long known namely, that every conflict is actually three-sided. No dispute takes place in a vacuum. There are always others around – relatives, neighbors, allies, neutrals, friends, or onlookers. Every conflict occurs within a community that constitutes the “third side” of any dispute.*

*The third side is the surrounding community, which serves as a container for any escalating conflict. In the absence of that container, serious conflict between two parties all two easily turns into destructive strife. Within the container, however, conflict can gradually be transformed from confrontation into cooperation. (7)*

The approach I propose is grounded in valuing both the formal and informal role of the third side and intentionally building capacity within this context for supporting the healthy and effective engagement of conflict. In the context of the IDEA, we need to bring resources in support of the healthy engagement of conflict closer to the conflict. This includes strengthening the ability of families and educators to collaborate effectively and to make available resources within the local third side to support them.

The second body of work informing my model is found in a framework currently informing educational practice, a Multi-Tiered System of Support (MTSS). A MTSS, in the context of education, is a framework for organizing resources, services, and interventions in support of student success. Many schools and LEA’s use this framework for organizing resources to respond to the instructional and social/emotional needs of students.

Specifically, I have chosen a MTSS as a framework in which to structure my approach because:

* It is a framework being developed and applied in the context of education. Educators understand it,
* It focuses on early intervention and the use of best practice in the context in which it is being implemented, and
* There is a tiered framework for defining and implementing interventions of increasing intensity and focus of engagement.

While there is a growing body of research regarding the application of this framework in the context of education related to student success, there is less evidence of the application of the framework in other contexts.

A foundational experience for me informing this model was a project I participated in early in my practice. At that time, we contracted to work with the Department of the Navy in the Pacific Northwest to help design and implement a system for responding to Equal Employment Opportunity Commission (EEOC) complaint filings across five major naval bases in the region. While the Navy recognized employees’ rights to file an EEOC complaint they were committed to providing a range of alternative strategies and resources for engaging and processing these complaints. This resulted in the implementation of an alternative and integrated tiered system of support for employees, supervisors, managers, union stewards, human resource professionals, etc. It also resulted in a measurable decrease in actual EEOC filings and the cost (as measured by timeliness, money, relationships) related to the processing and investigation of a complaint.

A Multi-Tiered System of Support for Conflict Engagement is designed to:

* Recognize that conflict shows up in the interactions of individuals who work together daily, within teams tasked with pursuing some shared initiative, and in the context of comprehensive and complex organizational improvement and change,
* Acknowledge that people experience the impact of conflict on a continuum and that there is a need for a range of resource for supporting the effective engagement of conflict,
* Provide individuals and groups operating across the community, organization, or system with a range of skills and resources that will support the healthy individual and collective engagement of conflict,
* Design and deliver a continuum of systemic resources and strategies for supporting the healthy and effective collective engagement of conflict,
* See every conflict engagement as a learning opportunity that will inform improvement of the system and/or organization for those engaged, and ultimately to reframe people’s relationship to conflict.
* Align ourselves individually and collectively with what we say we believe; that there is value in diversity of opinion, perspective, and experience.

The system is grounded in several key beliefs about the experience of conflict.

* Conflict is an essential life experience.

*Conflict flows from life. Rather than seeing conflict as a threat, we can understand it as providing opportunities to grow and to increase our understanding of ourselves, of others, of our social structures. Conflicts in relationships at all levels are the way life helps us to stop, assess, and take notice. One way to truly know our humanness is to recognize the gift of conflict in our lives.*

John Paul Lederach

*In great teams, conflict becomes productive. The free flow of conflicting ideas is critical for creative thinking, for discovering new solutions no one individual would have come to on his own.*

Peter Senge

* Conflict has the potential to be productive or destructive. Our individual and collective experience with conflict is based on the individual and collective choices we make in the engagement of this shared experience. I stated it earlier and it is worth repeating:

Ineffective conflict engagement practices have the potential to:

* Compromise trust,
* Erode Social Capital,
* Challenge psychological safety,
* Result in individual and collective disengagement from the pursuit of a shared objective, and
* Be manifested in the avoidance of, and unwillingness to, engage critical complex challenges.

Effective and intentional conflict engagement practices have the potential to:

* Build trust,
* Build Social Capital,
* Open the potential for innovation and creativity, and
* Increase our capacity to address complex challenges.
* Interpersonal conflict is experienced when two or more people interact, and in the context of the interaction, perceive some level of incompatible difference or threat. Conflict is initially experienced when our individual and collective interpretations of our interaction indicate some level of dissonance between ourselves and the other

person(s). It could be said that conflict starts between our ears and is a result of our interpretation of a single interaction or pattern of interactions.

* Conflict is experienced on a continuum. From the work of Dr. Bernard Mayer (2009), her refers to the “six faces of conflict”: Low Impact, Latent, Transient, Representative, Stubborn, and Enduring conflicts. As shared earlier, I believe that his construct of Enduring Conflict has significant ramifications within the context of Special Education.
* The health and success of individual relationships, communities, organizations, and systems is based on individual and collective capacity for engaging and being with conflict.
* As we explore our individual and collective relationship to conflict, we will also explore our relationship to trust, vulnerability, and forgiveness or letting go of anger and resentment.
* Because the manifestations of conflict are complex and the contexts diverse, it is essential to approach capacity building systemically.

So, what does this look like in the context of a MTSS? I am proposing a framework, not a program. It is not designed as a “one size fits all” resource but rather is structured to allow those implementing the framework to design a resource specific to the needs of their context. What follows is a broad description of the resources offered within each tier of the framework.

**Tier 1: In Service of Self**

Skills and strategies introduced at Tier 1 focus on an *individual’s* relationship to conflict. The concepts, processes, and skills taught are applicable within a range of situations and are foundational to Tier 2 and Tier 3 learning. They are applied daily in the context of collaboration and in pursuit of shared purpose.

Competencies at the core of Tier 1 include:

* Mindfulness/self-awareness of what you, as an individual, bring to shared work. What is your relationship to conflict? To collaboration?
* Starting with yourself, how do you effectively prepare for engaging conflict and challenging conversations?
* Listening for understanding, presence, and genuine curiosity regarding the perspective of others.
* Sharing and advocating your perspective and ideas in ways that do not polarize and/or lead to debate,
* Exploring issues to better understand interests, identifying a shared understanding of the criteria to be used to determine wise and shared action, and
* Creating solutions for mutual purpose/benefit.

**Tier 2: In Service of Others**

Tier 2 is designed to build deeper understanding of key concepts, processes, and skills taught in Tier 1 and to develop competencies necessary to effectively support others as they engage conflict. Tier 2 is about building capacity within the “Third Side” as described above. I focus on the following three roles/functions for Tier 2: Conflict Coach, Facilitator, and Teacher.

* The role of a **Conflict Coach** is defined by Robin Amadei, conflict engagement professional:

 *as a set of skills and strategies used to support peoples’ ability to engage in, manage, or productively resolve conflict.  In this process, the conflict coach works one-on-one with a coachee experiencing conflict with another person.  Conflict coaching enables the coachee to talk about the conflict with a neutral third party (the conflict coach), consider options for managing the conflict, and design an approach to discuss the conflict with the other person.  Conflict coaching can be used as a stand-alone process or can be practiced with each of the parties in separate meetings during mediation.*

* The role of **Facilitator** in the context of IDEA is most often considered in the context of IEP meeting facilitation. While this has proven valuable, I believe that considering the increasingly collaborative nature of education there is a need to develop facilitators skilled at supporting a range of shared work.

 The role of facilitator has been described in several ways. For many the role is seen as simply “the person running the meeting”. In this context, I define the role as significantly more than managing the flow of a meeting. For example, the role of a facilitator is:

* To hold a space for shared learning,
* To support everyone to do their best thinking,
* To do for the group what it cannot do for itself.
* The role of **Teacher** is to develop the competency to support professional development for staff related to the core Tier 1 competencies, and eventually Tier 2 roles.

**Tier 3:**

In this application of a MTSS to the IDEA, the interventions offered at Tier 3 are very much determined by the law. We see Mediation, Compliant Investigation, Resolution Sessions and Due Process Hearings as Tier 3 interventions. I propose the need to provide both basic and advanced training in these applications to stay current with emerging best practice in the field.

I am currently piloting the implementation of this framework in multiple sites in Washington and California. While I have developed a range of courses and seminars in support of implementation, I also believe that communities may choose to access resources currently available at the State and local level to build out capacity for implementing and sustaining the framework.

**Conclusion:**

It is time that we move beyond our aversion to conflict as educators and recognize that our ability as adults to engage and navigate this inevitable experience is highly correlated to the success of the children and youth we serve. It is time that we individually and collectively align with two of our stated values; there is value in diversity of opinion and a commitment to life-long learning.