

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Senate Committee on  
Education (SC-Ed)

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- 05hrAC-EdR\_RCP\_pt02

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- Record of Comm. Proceedings ... RCP
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September 8, 1997

Sen. Calvin Potter  
100 N. Hamilton  
Room 407  
Madison, Wisconsin

Re: SB 272

**VIA HAND DELIVERY**

Dear Sen. Potter:

As I will be unable to appear at the Senate Education Committee hearing on September 10, 1997, regarding SB 272, due to a conflict on my calendar, I am enclosing sufficient copies of this letter which will serve as my testimony, for you and the other committee members which I would appreciate your distributing to the members during the hearing.

The Wisconsin Coalition for Advocacy (WCA) is the state designated Protection and Advocacy agency in Wisconsin, which represents the rights of individuals with disabilities in our state. As WCA's staff attorney who concentrates in the area of special education, I was appointed to serve on the Special Education Mediation Advisory Council, along with Sen. Grobschmidt, and many others, which developed SB 272, as it now appears before you. WCA supports the bill wholeheartedly and urges the committee to take swift action on the bill so that parents, children, and school districts can reap the benefits that mediation has to offer in what can often turn into a contentious atmosphere.

Wisconsin is one of only 11 states which does not currently have a mediation program to help resolve special education disputes. This has resulted in a number of unfortunate problems:

1. Many disputes go unresolved, thereby leading to years of mistrust, and misunderstandings between parents and school districts, and sadly, often resulting in inadequate educational programming for children with special needs;
2. Currently the only method which the state provides to resolve a dispute between parents and a school district is through an adversarial due process hearing, which is expensive, time consuming, emotionally draining, and does not always resolve the process in the way that even the "winning" party desires; and

3. Even if the parties want to mediate, they are left to their own resources to find a mediator who is qualified to handle the matter. The Department of Public Instruction has been of no assistance in this matter, as they have no panel to refer parents or districts to.

AB 480 will resolve each of these problems in a way that will benefit parents, school districts, and most importantly--children. It is a bill that was produced through a collaborative process with parent and child advocates, school district representatives, Rep. Duff, and Sen. Grobschmidt to make sure that it was a bill that was fair to all. Equally important is the fact that the bill writing process was facilitated by the Director of Marquette University's Center for Dispute Resolution Education, Prof. Eva Soeka. Her expertise helped the Advisory Council make sure that the bill will help create a mediation system that works for all the parties in the special education system.

Thank you for your attention to this matter. If you have any questions about my testimony or need to explore WCA's position on this bill in any further depth, please feel free to contact me.

Sincerely,



Jeffrey Spitzer-Resnick  
Staff Attorney



State of Wisconsin  
Department of Public Instruction

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John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent

September 8, 1997

The Honorable Luther Olsen  
Education Committee Chairperson  
Wisconsin Assembly  
9 West Capitol  
Madison, Wisconsin 53702

The Honorable Cal Potter  
Senate Education Committee Chairperson  
Room 407, 100 North Hamilton  
Madison, Wisconsin 53703

Dear Representative Olsen and Senator Potter:

RE: Testimony for Public Hearing on Senate Bill 272/Assembly Bill 480

The department would like to provide the following written testimony in support of Senate Bill 272/Assembly Bill 480.

Parents and school district personnel are increasingly concerned with the litigious and confrontational nature of special education issues that too often emphasizes formal due process proceedings over student instruction and learning. The formal dispute resolution methods as provided in the federal and state law, specifically the procedural complaint process, due process hearings and court litigation, are expensive and emotionally draining for both school districts and families. In response to these concerns, key stakeholders in special education in Wisconsin have developed an alternative dispute resolution system referred to as mediation.

The department supports this bill on special education mediation for the following reasons:

**It is voluntary**--the parties, usually the parents and the school district, are free to participate; no one can be compelled to mediate or penalized for electing not to mediate;

**It is collaborative**--the parties have an opportunity to fully discuss the issues and to work together to create mutually beneficial solutions; the parties are the decision-makers;

**It is non-binding**--the parties retain their rights to a due process hearing and/or to litigate without prejudice if the mediation is unsuccessful;

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**It is private and confidential**--sensitive family issues are not open to public scrutiny; the parties control who may attend; discussions that occur during the mediation process are confidential;

**It is future-oriented**--resolution of the conflict is focused on the future relationship of the parties rather than assignment of blame or fault for past actions;

**It is results-oriented**--results show from the 40 states that have special education mediation systems in place, more than 75 percent of special education mediations result in agreements;

**It is widely supported**--the key stakeholders in special education have developed the proposed legislation and support its adoption;

**It is more cost-effective**--the costs associated with the mediation process are much less costly in comparison to a due process hearing or litigation proceedings, and

**It is mandated by the recent federal legislation, the Individuals with Disabilities Education Act (IDEA) Amendments of 1997**,-- the state is required to offer special education as an alternative dispute resolution option; the state is required to bear the cost of the mediation process.

The department strongly recommends the adoption of this proposed special education legislation as an optional, non-adversarial, less expensive dispute resolution system for parents and schools. The department feels the availability of this option could, in many cases, avert the need for a due process hearings and/or IDEA procedural complaints, and could result in fostering more positive working relationships between parents and schools. The department encourages the committee's support for this legislation.

Sincerely,



Juanita S. Pawlisch, Ph.D., Assistant Superintendent  
Division for Learning Support: Equity and Advocacy



Paul T. Halverson, Director  
Exceptional Education

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**Testimony of  
EVA M. SOEKA,  
Marquette University Center for Dispute Resolution Education  
Director and Associate Professor of Law  
Facilitator and Consultant to the  
Wisconsin Special Education Mediation Project  
(414) 288-5535**

I am testifying today to urge the passage of **SB 272**. For the past year, I have been significantly involved in the field of special education as a partner in the Wisconsin Special Education Mediation Project. I am also a practicing mediator.

The Wisconsin Department of Public Instruction funded the Wisconsin Special Education Mediation Project with a discretionary grant in July of 1996. The primary purpose of the Project was to design a system of special education mediation for the State of Wisconsin. This process was hastened by the reauthorization of the federal Individuals with Disabilities Education Act on June 4, 1997.

The Director of the Project was Nissan Bar-Lev, special education director of CESA #7 who worked in cooperation with Jan Serak of FACETS and the Marquette University's Center for Dispute Resolution Education. The Project concluded its work as of June 30, 1997.

The Project established and convened the Wisconsin Special Education Advisory Council. The Council was comprised of representatives or stakeholders of 16 constituencies in the special education field in Wisconsin. The Council met in Milwaukee for five full day meetings on December 6, 1996, January 31, 1997, February 28, 1997, April 18, 1997 and May 16, 1997. The discussion at the Council meetings centered around the drafting of legislation that would implement a special education mediation system in the State of Wisconsin. The discussion was lively, thorough, and sophisticated. This facilitated approach to the drafting of the legislation is unique to the State of Wisconsin.

The focus of the Project and the Advisory Council was the drafting of legislation that you are considering today to establish a system of special education mediation. The Project collaborators also conducted wide-ranging activities to inform the public and the special mediation community about mediation generally and the proposed special education mediation system.

The introduction of a special education mediation system in the State of Wisconsin represents a change in philosophy. Instead of viewing disputes between parents and school personnel as battles to be won, they will be viewed as problems to be solved. This type of systemic and systematic change, however, is not accomplished without hard work on the part of all stakeholders in the system. This change represents a move from an adversarial to a problem solving philosophy; the stakeholders must remember that the primary objective of this system is to address the best interests of the children that are its primary focus.