

Practitioner Perspectives on Caucusing

What follows is an excerpted summary, under three organizing headings, of select contributions to a recent CADRE Practitioner Listserv thread on caucusing in special education ADR settings. A caucus is generally thought of as an opportunity for a party to meet in private session with the mediator, in contrast to a joint session where the mediator meets with both parties together. CADRE is publishing this summary with permission of the authors, and with the objective of capturing in an organized manner a variety of contributions to our field's expanding shared knowledge base.

Goals and Purposes of Caucusing

I caucus in just about every mediation I conduct when there's a wrinkle that calls for parties to process separately, when folks need an opportunity to explore different directions they could take...caucus is a critical tool. Doesn't matter how many people, I always find it beneficial. (Edward Hermann)

The caucus (a private confidential meeting with individuals participating in a dispute resolution process and their mediator/moderator) can be a powerful tool when used wisely and with reason. Caucus allows for some "breathing room," a chance to empower parties to share needs and feelings, and is always done with both sides in the dispute. The wisdom of calling a caucus comes in recognizing that the process is heading for or has arrived at impasse and that no further useful dialogue is taking place. The reasons to call the caucus are coming directly from the interactions in the room and might include the fact that:

- one party has reached a point of anger or frustration that is limiting their ability to communicate effectively (this person needs the attention of the neutral at this point in the process);
- the neutral is hearing the same information repeated with no movement forward (caucus can be useful in helping the parties get "un-stuck");
- the body language of one or more parties indicates that more is going on than what is being verbally expressed (they may seem shut down, frightened, defeated). (Letitia J. Rosenthal)

Our mediators use caucus frequently to be able to ask parties to re-examine their own thinking and conclusions, to be able to ask hard questions which would be experienced differently in a joint session. It allows people to methodically contemplate the merits of an offer without consideration of its source. Moving to a private session may provide for a positive change in energy and momentum in the assisted negotiation. Its private setting usually results in a more relaxed, less guarded discussion without an "antagonist" present. As a consequence, it may allow for a shift in stance between the parties, lessening their antagonist role toward each other. The use of caucus to keep momentum going by asking people to continue to work and think beyond a rejected offer is also possible. I've long observed that in caucus, people say things they need to say that they wouldn't feel comfortable airing in a joint session. This can have the effect of clearing the air, providing some hygiene in the discursive field. Another effect, which almost invariably happens, is that people offer the stranger, the mediator, information which they haven't shared with each other. This promotes the possibility of generating more options for new outcomes than were previously on the table. The caucus also allows the mediator to affect the intramural negotiations, interrupting for a time, the protocols which have resulted in an impasse by focusing the discussion and amplifying the voices of the people making solid contributions. (Art Stewart)

In our initial agreement to mediate form, we include the option of a private caucus time. During intake, I always ask the school to provide a mutually acceptable space to meet, that includes a room to caucus. I think the nature of special education mediation leans towards using caucus. When there is more than one person on each "side," those people (whether it be the school staff or the parents) will need to check in with one another before feeling the freedom to suggest solutions in the joint sessions. I think both sides feel the need to show unity during the joint sessions. (Ellen Bernstein)

I use a caucus quite often when there is a stalemate, when I sense that one party or the other is reluctant to talk or make an offer, or when a party asks to separate. There is usually a time limit and it is understood that I will participate by working between the parties. I also use a caucus when one party or the other refuses to meet face to face with the other party. (Stephen E. Weckstein)

I have used it (caucus) in . . . a situation when the dynamics between the two parties were deteriorating and I could see we were moving quickly toward impasse. I separated the parties and asked each the same question: "Is there something you would like me to know that you would rather not say in the mediation room?" I got an emphatic "yes" from both and they proceeded to give me information that I held in confidence, but each side felt better that I knew and we were able to move forward. It shifted the momentum and allowed each party to exhale, so to speak. (Jonda Hamilton)

We explain in the introductory remarks that usually the mediator meets separately with the parties to clarify issues and explore possibilities for resolution, or to explore obstacles and how to overcome them, or sometimes the parties may have a need to share specific information with the mediator. The parties generally respond well if they are cued that it is part of the process and no one is taken by surprise. Sometimes we find that the parties do not need this intervention and are making good progress in problem solving. At those times, we tell the parties that there does not appear to be the need, but if either party wants to have a few minutes with the mediator, we can do so. (Doris McQuiddy)

Challenges Associated with Caucusing

It is critical that parties be forewarned that this (caucus) may be used as a part of the process, or the whole process may be undone by the suspicion that can be generated if it is just "sprung" on people. (Letitia J. Rosenthal)

I attempt to avoid caucus at all but if the parties are especially contentious will sometimes caucus at the outset of mediation. Usually, I have the most difficulties when attorneys are present as they want to "direct" the proceeding. When necessary I will pull the attorneys out for separate caucus and have been known to be very directive with attorneys about my intention to act in the best interest of the student and preserve my role as "neutral". (Linda LaBeau)

It is difficult to use when there is so little trust between parties that they would have difficulty tolerating the mediator meeting with them separately. It is unnecessary when the parties have a solid rapport and are working well with each other, requiring less intervention from the mediator. When overused, it may result in a mediator-centered process rather than a client-centered process. People need to be given explanation, to understand what they did which moved them from impasse to better understanding and agreement in order to not ascribe the accomplishments to the mediator. (Art Stewart)

The art of caucus is to know when to employ it as a tool. I have often seen some mediators caucus when it would have been more beneficial to keep the parties together. I use the level of dialogue as the litmus test for caucusing -- or often the parties will ask for a caucus themselves. A unique side effect is that when I am caucusing with the other party(ies) the other side has time to sit alone and consider the positions they just heard...some of the best processing occurs when left to their own devices... (Edward Hermann)

Caucusing In IEP and/or Resolution Meetings

Resolution meeting facilitators and IEP facilitators are professors of special education within our state universities. Caucus is not used in the IEP facilitations and has not, to date, been used for resolution meeting. (Teresa Monicken)

We haven't used caucus in our FIEP team meetings and we don't participate in resolution sessions. There is another process in Mass. where the caucus is frequently used and that's in the settlement conferences that we do. (Marc Sevigny)

I have also used caucusing in facilitated IEP meetings...less often than mediation...but I have caucused when the agenda looks like it's in jeopardy of being hijacked by an entrenched issue. If folks can't move on, and the meeting looks as though it is in danger of falling apart altogether...a caucus can be a great tool for cooling tempers, discussing intent, refocusing on the agenda, ultimately bringing the team back together. While I normally caucus with the parents and advocates separate from the school admin...sometimes I have to tri-caucus, teachers, parents/advocates, and school administration. (Edward Hermann)