

Alternative Dispute Resolution in Educational Settings: A Conceptual Analysis *

Eğitim Kurumlarında Alternatif Çatışma Yönetimi: Kavramsal Bir İnceleme

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Abstract

The purpose of this paper is to examine alternative dispute resolution processes and their fundamental principles as well as its applicability in educational settings. First of all, the concept of conflict was explained. Second, the limitations of traditional conflict resolution processes were analyzed. Finally, discussing alternative dispute resolution processes, the paper concluded with implications for educational settings and recommendations.

Key Words: Conflict resolution, alternative dispute resolution.

Öz

Bu çalışmanın amacı, uyuşmazlık çözümünde kullanılan alternatif çatışma yönetimi tekniklerinin teorik temellerini açıklamaktır. Bu nedenle, ilkönce geleneksel çatışma ve uyuşmazlık yönetimi tekniklerinin sınırlılıkları tartışılmış ve daha sonra da alternatif çatışma yönetiminin temel ilkeleri açıklanmaya çalışılmıştır. Bu ve benzeri çalışmaların son yıllarda okullarda ve eğitim sendikalarının şiddet ve çatışma içeren eylem ve söylemlerini anlamada yardımcı olabileceği ümit edilmektedir.

Anahtar Sözcükler: Çatışma yönetimi, alternatif çatışma yönetimi.

Introduction

Public schools try to increase their interaction with other institutions in line with the policies and procedures that are necessary to carry on their work. Each interaction is likely to result in conflicts because of the differing values and varying expectations. Effective management of conflict is a critical issue for any school administrator. A lack of skills in this area will surely result in frustrations and diminished performance at best or major disputes and disruptions at worst. Schools are more likely to be politicized at local, state, and federal levels. The pressures on schools are not likely to diminish in the years ahead. School leaders of the new millennium need to become skilled managers of conflict and rethink alternative non-rational models if they want

to be successful leaders. This article is an introduction to alternative dispute resolution processes and their fundamental principles as well as their applicability to educational settings. First of all, the concept of conflict is explained. Second, the limitations of traditional conflict resolution processes are analyzed. Finally, discussing alternative dispute resolution processes, the paper concludes with implications for educational settings and recommendations.

Definition of Conflict

Coser, in his classic book *The Functions of Social Conflict*, defines conflict as “a struggle over values and claims to scarce status, power and resources in which the aims of the opponents are to neutralize, injure or eliminate their rivals” (1956, 8). We live in a world of conflicting interests and great social, political, and economic inequalities of status, power, and resources. The clash of classes, riots, rebellions, revolutions, strikes, marches, and demonstrations, protest rallies, and racial, religious, and community conflicts are some examples of social conflict. Conflict is not a new phenomenon. Its history goes back to the dawn of mankind. Himes (1980)

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states that archeological and historical records from the earliest times show people engaged in struggles with their fellows. We see disputes among children, spouses, parents and children, neighbors, ethnic and racial groups, fellow workers, superiors and subordinates, organizations, communities, and citizens and their government (Moore, 1986).

Conflict is a fact and a daily part of the lives of people and organizations. Most of us see it as stressful confrontation. Dispute may be stressful and unpleasant, but we need to learn how to overcome it in constructive ways that reduce stress and result in satisfactory outcomes. Over the years, many approaches have been developed to resolve conflicts in organizations. Conflict literature provides many models and approaches to dispute resolution such as avoidance, informal discussion, problem solving negotiation, mediation, formal resolution processes (grievance, arbitration, administrative action, etc.), legal proceedings (judicial decision, legislative decision) to extra legal actions (violence, coercion, etc.). The traditional approaches have created dissatisfaction among disputants and have become costly in terms of money, time, and energy. Unlike traditional models of conflict resolution which emphasize formality and means-ends rationality, such as courts and administrative decisions, alternative dispute resolution (ADR) models emphasize informality, face to face communication, problem-solving orientation, parties shaping the processes, decisions by consensus, and, if necessary, third party assistance (Fisher and Ury, 1991; Bingham, 1986; Carpenter and Kennedy, 1988; Susskind and Cruikshank, 1987).

Limitations of Traditional Dispute Resolution Processes

In the last two decades, literature on conflict resolution has questioned the role of traditional dispute resolution processes for "failing to provide sufficient opportunity for dialogue among affected contending parties" (Stephenson and Pops, 1991, 17). In the early 1970s, the American Bar Association (ABA) pointed out the popular dissatisfaction with the administration of justice by the judicial system (Goldberg, Sander, and Rogers, 1992; Ide, 1993). The same organization, therefore, sponsored a national conference on the causes of popular dissatisfaction with the administration of justice. That was the beginning of the ADR movement.

The ABA suggested that "alternative forms of dispute resolution, in particular mediation and arbitration, would ease congested courts, reduce settlement time, and minimize costs" (Scimecca, 1993, 212). Since the 1970s ADR has grown rapidly in the United States (Breslin and Rubin, 1995; Ide, 1993; Mills, 1991). Leading ADR scholar, Susskind and Cruikshank (1987) states that good conflict resolution should share four characteristics: *fairness, efficiency, wisdom, and stability*. Susskind and Cruikshank (1987) question whether to maintain these characteristics of traditional approaches in solving disputes. Legislative institutions and courts are two main dominant traditional conflict resolution approaches that feature limitations and shortcomings. Limitations of representative democracy include (1) increasing government accountability, (2) the tyranny of the majority, (3) lack of long-term commitment, (4) inequalities of voting process, (5) today's technical complexities, and (6) the winner-takes all mind-set (Susskind and Cruikshank, 1987). Like representative democracy, courts also have some shortcomings. These shortcomings are (1) procedural emphasis, (2) continuing legal battles, (3) ineffective decision-making, (4) technical complexities, and (5) human and financial costs. Two alternative processes to court adjudication, negotiation and mediation, will be summarized in the following pages. Those approaches are not intended to take the place of the traditional court system and democratic decision-making processes, but rather provide opportunity for *dialogue* among the disputants, assert "*win-win*" decisions, and *promote open and informal communication* between parties.

Alternative Dispute Resolution Processes

Alternative Dispute Resolution (ADR) has received wide acceptance in practice (Carpenter and Kennedy, 1988; Goldberg, Sander, and Rogers, 1992; Mills, 1991; Scimecca, 1993; Girard and Koch, 1996; Hall, 1993; Breslin and Rubin, 1993; McDermott and Berkeley, 1996). ADR refers to "a variety of approaches that allow the parties to meet face to face to reach a mutually acceptable resolution of the issues in a dispute or potentially controversial situation. All are voluntary processes that involve some form of consensus building, joint problem solving, or negotiation" (Bingham, 1986, xiv). This definition does not include litigation,

administrative procedures, and arbitration. The two most widely used alternative approaches to dispute resolution are *negotiation* and *mediation*. Common to all ADR procedures is the word *alternate*. Each ADR procedure is an *alternative* to court adjudication.

Negotiation

Over the past two decades, researchers have studied and emphasized the importance of negotiation in solving disputes in different settings and circumstances (Breslin and Rubin, 1995; Fisher, Ury, and Patton, 1991; Hall, 1993; Sandole, 1993). Negotiation is the most common form of alternative dispute resolution. Moore (1986, 6) defines negotiation as follows:

[A] bargaining relationship between parties who have a perceived or actual conflict of interests. The participants voluntarily join in a temporary relationship designed to educate each other about their needs and interests, to exchange specific resources, or to resolve one or more intangible issues such as the form their relationship will take in the future or the procedure by which problems are to be solved.

The most popular approach to negotiation, which was conceptualized by Fisher and Uri is called "interest-based." Fisher and Ury (1991) identify basic steps for effective negotiation that can be used under almost any circumstance: (1) separate the people from the problem, (2) focus on interests, not positions, (3) invent options for mutual gain, and (4) insist on using objective criteria.

Mediation

In this section, the concepts of mediation and mediator are defined and discussed. Furthermore, selection of mediator and intervention processes in conflict resolution are defined and discussed briefly.

Mediation involves the assistance of an acceptable, impartial, and neutral third party who helps parties to resolve their differences. Unlike an arbitrator or judge, a mediator has no power to impose an outcome on disputing parties. Mediation refers to "the intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute" (Moore, 1986, p. 14). Since mediation means the involvement of a third party, the selection and

role of a mediator are crucial. Selection of a mediator should be carefully considered and should have some prerequisites: impartiality, process skills, and ability to handle sensitive information (Carpenter and Kennedy, 1988; Moore, 1986; Susskind and Cruikshank, 1987). The role of the mediator includes serving as the opener of communication channels, the legitimizer, the process facilitator, the resource expander, the problem explorer, the agent of reality, the scapegoat, and the leader (American Arbitration Association as quoted in Moore, 1986). In the dispute resolution process, the mediator plays a crucial role. It works because he or she depersonalizes issues, handles emotions, observes and comments, and provides model behavior and negotiation techniques.

The timing for the intervention of a mediator is also important. Carpenter & Kennedy (1988, p. 189) suggest that in the following conditions, a mediator is needed: (1) when negotiation is deadlocked; (2) when the parties need help in establishing communication; (3) when sensitive information is involved; (4) when negotiation is threatened by disagreements inside groups; and (5) when a process is not working. In many instances, a mediator works well because people expect change when a third party enters.

Implications for Educational Settings

Violence and dispute in schools have become reality and part of life (Curcio and First, 1993; Girard and Koch, 1996; Katz and Lawyer, 1993, 1994; Lantieri and Patti, 1996; McCormick, 1988; McCuen, 1995; Morse and Ivey, 1996). The causes of the conflict in schools include a steady rise in general environmental violence, changes in the family environment, economic and demographic shifts, poor self-esteem, institutional racism and discrimination, violence associated with drug and alcohol use, and the proliferation and use of handguns (Sherman, 1994).

When conflict within schools is inevitable, as within any organization, ways must be found to manage the dysfunctional effects of conflict. Conflict must be, at least, managed effectively if all conflict cannot be resolved. Adversarial relationships are not productive in school settings. People need to be able to work together on behalf of students. Schools need to help both staff members and students develop skills and attitudes that

will lead to conflict management behaviors. Alternative dispute resolution models emphasize problem solving with all parties participating in efforts to find mutually acceptable options to the issues in a dispute and to deal with the conflict. Furthermore, alternative approaches can provide a different framework and mode of thinking in solving disputes among parties.

Such alternative approaches have been employed with students in order to help young people gain skills that will enable them to deal with conflict in ways that are not violent or adversarial (see Girard and Koch, 1996; *Mediation in the Schools*, 1985; Wilburn and Bates, 1997). Instead of relying on the traditional systems of dispute resolution, the process of mediation, especially peer mediation, will create an environment where adults and students come together to discuss the issues that they are facing by using ADR models. According to Girard and Koch (1996, xvii), "conflict resolution programs in schools, particularly peer mediation models, have proliferated in elementary and secondary schools throughout the United States, and college campuses have experimented with ombudsperson positions, peer mediation, and staff training in conflict resolution."

There are few studies concerning the role of ADR in schools. Dejong (1994) emphasizes the importance of expanding peer mediation programs from individual classrooms and schools into the larger arenas of neighborhoods to solve school-based violence. The author believes that conflict resolution principles such as active listening, expression of feeling, perceptiveness, cooperation, negotiation, and ways to interrupt expressions of bias must be taught to teachers, students, and parents. Moore and Batiste (1994) identify the importance of nonviolent conflict resolution programs to provide needed skills and techniques designed to promote communication, understanding, problem solving, critical thinking, and self-esteem. Munoz and Tan (1994) specifically discusses the importance of applying alternative dispute resolution principles and skills to nontraditional centers such as those working with community policing officers, youth workers, and young people in a retreat format. In addition to using ADR principles and techniques in resolving school-based disagreements, ADR can also be useful tool in addressing the issues and disputes between school administration and teacher unions.

Conclusion

The limitations of traditional dispute resolution processes indicate that we need alternative methods of dispute resolution. Negotiation and mediation are two alternative models in understanding, analyzing, and resolving disputes in educational organizations. These alternative dispute resolution models emphasize informality, face to face communication, problem-solving orientation, participation by the parties to the process, decisions made by consensus, and, if necessary, third party assistance. These characteristics of ADR distinguish it from traditional approaches and provide more flexible processes with less transaction costs, high satisfaction with outcomes, and positive relationships as well as durable solutions.

ADR models provide an appropriate framework for solving disputes in educational settings. In order to be successful in using alternative conflict resolution approaches in schools, prior training and hard work are required because schools are peopled organizations that are shaped by human emotion and interpersonal relations. According to Girard & Koch (1996, p. 77), for an effective practice of these models in schools, "conflict resolution processes—negotiation, mediation, and consensus building—need to be studied, observed, modeled, and practiced before they can be effectively utilized." ADR has outstanding implications for educational settings where violence and dispute increase every day. We cannot predict that in the 21st century, school will be safer than today. What we can predict is that with alternative approaches we can create an environment where students communicate each other and solve their disputes on a face-to-face basis and in an informal environment.

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