



Useful Ideas for Special Education Advocates and Parents

Alternative Dispute Resolution

Researched and Developed by

The Advocacy Institute

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About Us



■ Advocate Academy

> Series of interactive Web/Audio Conference presentations designed to provide essential training to practicing special education advocates nationwide.

> Archives available for all 2006 events – 8 totaling over 15 hours.

■ **Advocacy in Action**

> Quarterly reports that synthesize key findings from important research studies in special education – designed to help bridge the gap between research and practice.

> Procedural Safeguards Notices and Behavior Intervention Plans (BIPs)

■ Publications

> Series of parent-friendly articles, booklets and guides that address:

- *key provisions in IDEA 2004*
- *key provisions in NCLB*
- *intersect of IDEA and NCLB*

All Free ♦ All online

Purpose of Session



- Policies in place to implement Alternative Dispute Resolution activities in IDEA 2004
- Current issues for advocates and parents
- Ideas and strategies to assist advocates in overcoming barriers

What is ADR?



■ **Alternative Dispute Resolution (ADR)** is defined as any means of resolving a dispute outside a courtroom. For advocates or parents working on behalf of children receiving special education, ADR is also used to refer to alternatives to the formal Due Process administrative hearing.

Background



- In 1975 when the US Congress passed the Education of all Handicapped Children Act and in the thirty years since, Members adopted and continue to strongly support requirements for **shared decision making** that are unique to special education

- In addition, students with disabilities are protected by **procedural safeguards** that ensure their right to a free appropriate education and to nondiscriminatory treatment in assessments and in their access to the same programs, curriculum and school resources as their nondisabled classmates.

- When a parent or student believes that their rights have been violated under IDEA, they may appeal the decisions that have been made in an administrative hearing and, ultimately, in the courts.

- parents and school professionals often have an uneasy relationship.
- Policy makers have systematically put policies into place that encourage parents and school districts to solve problems and disagreements without resorting to administrative Due Process hearings or litigation.

- “It is the committee’s strong preference that **mediation** becomes the norm for resolving disputes under IDEA. The Committee believes that the availability of mediation will ensure that fewer conflicts will proceed to the to the next procedural steps, formal due process and litigation, outcomes that ... should be avoided”

May 9, 1997 Report, House Committee on Labor and Human Resources,

IDEA encourages or Requires ADR



- In the development of the Individualized Education Program (IEP) the IEP team **must consider the concerns of the child's parents** for enhancing the education of their child. 34 CFR 300.324(a)(ii)

- **The parents** of a child with a disability must be given the opportunity **to participate in meetings** held to determine the identification, evaluation and educational placement of their child as well as the provision of FAPE to their child. 34 CFR 300.500(b)(1)(i)(ii)

- School districts and public agencies must make sure that **the parent** of each child with a disability is a member of any group that **makes decisions** about the educational placement of that child. CFR34 300.500(c)(1)

- **A voluntary mediation process** must be made available to parents and school staff members to resolve disputes including matters that are in dispute prior to the filing of a due process complaint.

34 CFR 300.506(a)(b)(i)

- After a due process complaint is filed by parents, and before a due process hearing can be held, the school district must convene a meeting – known as a **Resolution Session** - with the parents and relevant members of the child's IEP Team who have specific knowledge about the facts contained in the complaint.

- The purpose of the Resolution Session is to provide another opportunity for parents and school staff and administrators to resolve their disputes without going to a hearing. 34 CFR 300.510(a)(d)



The Advocacy Institute recently conducted a survey of parents and special education advocates to determine their participation in formal and informal Alternative Dispute Resolution activities.

What did Parents Tell us about ADR?



- Only half of the parents of children with disabilities surveyed received information or preparation prior to the additional meetings held to resolve disputes over their children's' educational services.
- Most indicated that they "did the best they could".
- The majority got their information through written materials or through the internet.

- Less than half of the parents surveyed had participated in mediation sessions.
- Of those that had participated, most felt that the sessions were somewhat helpful or not helpful at all.

- By a large majority, parents reported that they had either never filed for a due process hearing
- The few that had filed reported that, for one reason or another, the dispute was resolved prior to holding a hearing.

Special Education Advocates Responded



- school professionals are often “uncomfortable” and lack knowledge about the ADR provisions.
- The lack of knowledge and expertise poses a real barrier to the use of multiple meetings, Mediation and the Resolution Session to resolve disputes.
- Some mediation sessions are set up in ways that seem “adversarial”. Ex. having parents in one room and school staff in another.

- When additional informal meetings or mediation sessions are successful “on paper”, that does not mean that the relationship between parents and the school professionals working with their child has been repaired.

The most significant finding of the AI survey and follow up interviews was that, by a large majority, parents and special education advocates resolve disagreements and disputes with school professionals outside of the encouraged or required ADR activities contained in IDEA.

- Parents and special education advocates reported that the majority of disagreements were settled in **additional meetings** with IEP members, principals or school administrators.
- These meetings were often continued informally outside of meeting rooms. One advocate referred to these activities as “**parking lot negotiations**”.

THEMES:



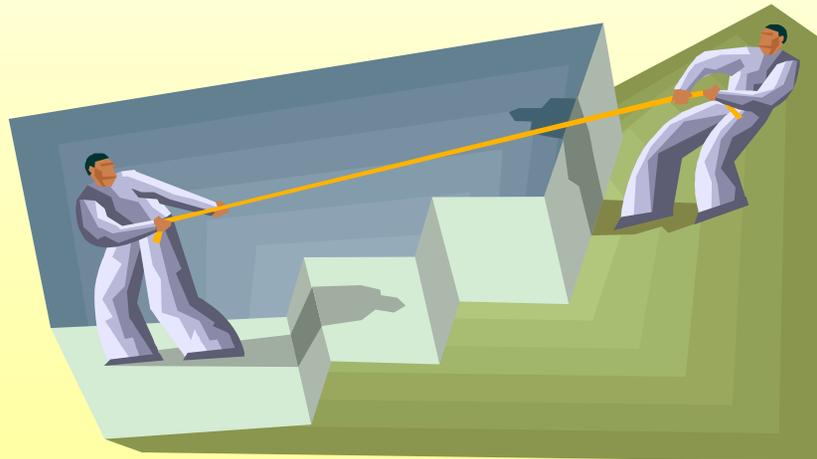
Despite years of effort by policy makers
"Parking Lot Negotiations" persist!



Lack of knowledge about ADR persists!



Advocates **can** acquire the communication skills needed to become “conflict resolvers”!

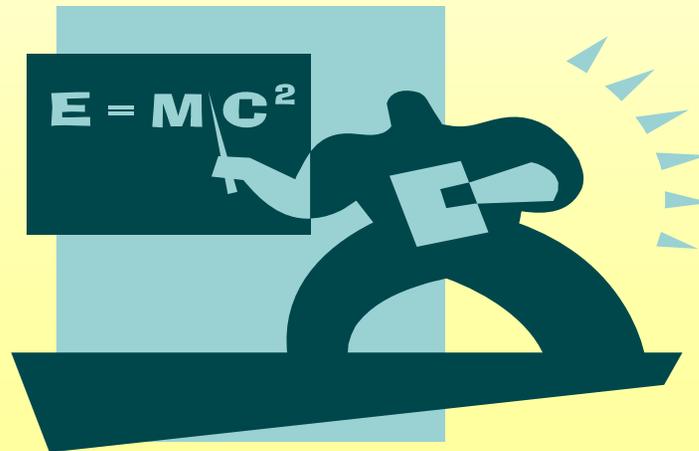


Interpersonal skills play a major role in conflict resolution and successful ADR activities.

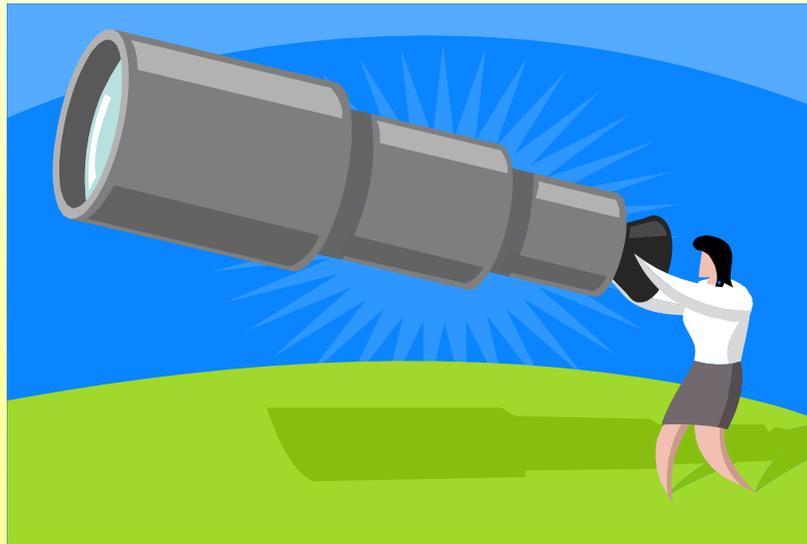


Advocates can assist families they work with by improving their **own** ability to work in groups, organize materials and communicate clearly.

It's challenging, but it's not rocket science!



Practice! Practice! Practice!
Seek out opportunities to attend
mediation and resolution sessions.

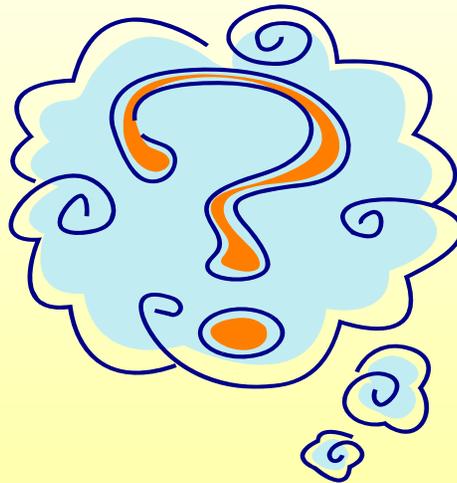


ISSUES TO DISCUSS



Who do you Represent?

Role as a support and guide to parents



Role as defender of children's rights

What are the pros and cons for
advocates in deciding to
attend or **not attend**



Mediation or Resolution sessions?

How do YOU deal with conflict?
Can you learn to see conflict as **natural**?



Everyone has their own experiences and feelings about conflict and disagreement

The Resolution Session
The two thousand pound



in Alternative Dispute Resolution?

Practices to Acquire



- Considering the IEP as an ongoing process that changes and is changed by the growth and year-by-year development of each child.
- Preparing parents and school professionals to accept responsibility for maintaining good team practices

Developing Productive Working Relationships



- “facts and opinions” are very closely associated with the **perceptions** and **beliefs** of each individual on the team.
- certain ways of behaving are likely to result in other team members becoming **defensive** and inclined to **reject the ideas** of the parent and other team members.

- There are other ways of behaving that make it **more likely** that team members **will be willing** to consider changes desired and needed.
- A bedrock principle of group dynamics and change research: those who are expected to implement special education strategies and services **must be involved** in the creation of the strategies and **feel** that their participation is **welcome and productive**.

- Parents need to be supported in providing accurate information and communicating openly with IEP Team Members

A DISCUSSION



Factors that Escalate
Parent-School Conflict
Discrepant Views of the Child
Knowledge
Service delivery
Constraints on Resources
Valuation
Reciprocal Power
Communication
Trust

STRATEGIZING



- When conflicts occur that are about the facts or **data**, seek **factual solutions**, either through obtaining more information or through new data collection.

- When conflicts arise over a **relationship** or over **communication style**, educational relationships can be improved by **clearly stating needs**, developing **clear expectations** and **writing agreements down** for everyone to follow.

- Conflicts can occur over **values**.
Where the members of the IEP Team perceive or actually do have incompatibility is their belief systems.

- Conflicts often occur over real or perceived **scarcity of resources.**

- Conflicts sometimes result from a **history** of slights or bad feeling about previous communications or encounters.

**Advocates cannot help
if they enter the conflict.**



In Conclusion



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