



Useful Ideas for Special Education
Advocates and Parents

A MINI-GUIDE TO ALTERNATIVE DISPUTE RESOLUTION

RESEARCHED AND DEVELOPED BY

The *Advocacy*
INSTITUTE

*A not-for-profit organization dedicated to services and projects that work to
improve the lives of children, youth and adults with disabilities.*

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INTRODUCTION

The purpose of this Advocacy Institute Mini-Guide is to provide special education advocates and parents with information about the policies in place to implement Alternative Dispute Resolution (ADR) activities as encouraged or required under IDEA 2004. In addition, this guide outlines some of the current issues advocates and parents have identified in using ADR provisions and offers practical ideas and strategies that may assist in overcoming barriers to resolving disagreements.

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.

In the early years of the Education of all Handicapped Children Act – now the Individuals with Disabilities Education Act, or IDEA – the US Congress adopted and continues to support requirements for **shared decision making** that are unique to special education. Parents – with their advocates or independent professionals of their choice – educators, administrators and allied professionals (i.e. therapists, psychologists, consultants, and social workers) and the students themselves work as a team. They identify the educational and functional needs and goals of each student and develop a program of services and supports that will meet those unique needs.

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.

Despite the opportunities for shared decision-making, or perhaps as a result of that shared responsibility, parents and school professionals often have an uneasy relationship. For that reason, the U.S. Congress has long sought to put policies into place that encourage parents and school districts to solve problems and disagreements without resorting to administrative Due Process hearings or litigation.

Conference Reports accompanying both the IDEA Amendments adopted in 1997 as well as those amending the most recent reauthorization of IDEA in 2004, make it clear that Members of Congress intend that mediation or some other form of Alternative Dispute Resolution be used when disagreements take place during the educational planning process for children with disabilities under IDEA.

“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”
(Report Committee on Labor and Human Resources, May 9, 1997)

IDEA Encourages or Requires Several Forms of Preventative, Early or Alternative Dispute Resolution:

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. Parents must be provided with notice of their right to participate and when the meetings will be held. 34 CFR 300.500(b)(1)(i)(ii) and 300.500(b)(2)

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. 34 CFR 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. The mediation process must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. 34 CFR 300.506(a)(b)(i) and (iii).

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. The session must be conducted within 15 days of the request for a hearing and the complaint must be resolved within 30 days of the request or a due process hearing may go forward.

If successful resolution is reached, a binding signed written settlement agreement must be developed and is enforceable in any State or district court of the United States. Either school representatives or parents may void the agreement reached in the Resolution Session within three business days. 34 CFR 300.510(a)(d)(e)

What do Parents and Advocates Tell Us about their Experiences?

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.

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 who 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, or that they had filed, but that, for one reason or another, the dispute was resolved prior to holding a hearing.

Only a third of the special education advocates surveyed have accompanied parents in formal mediation sessions. And even fewer have participated in Resolution Sessions.

The majority of advocates surveyed indicated that formal Alternative Dispute Resolution activities CAN assist parents and schools professionals to resolve their disputes in an equitable and timely way.

However, advocates indicated that most often parents and school staff members lack the information and skills needed to participate in ADR sessions effectively.

As part of the recent survey, The Advocacy Institute also conducted informal telephone interviews with experienced advocates located in California, Oklahoma, Indiana, Virginia, Connecticut and Massachusetts.

Advocates interviewed confirmed that school professionals are often “uncomfortable” with the ADR provisions and “don’t yet know what they mean”. They believe that this lack of knowledge and expertise poses a real barrier to the use of multiple meetings, Mediation and the Resolution Session to resolve disputes.

Unlike the parents surveyed, special education advocates are generally positive about the idea of mediation as

an opportunity for parents to come to an accommodation with the school professionals. However, advocates have found some mediation sessions set up in ways that seem “adversarial” to them, for example, having parents in one room and school professionals in another.

In addition, advocates report that even 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. And advocates worry that even though the current dispute may be resolved, there is likely to be more conflict in the future.

Advocates are most often self taught. That is, they seek out information on their own through reading materials and using the internet. This places a great deal of responsibility on the individual advocate in terms of self-evaluation and ethical and professional practice.

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 way the majority of disagreements were settled was in additional meetings with IEP members, principals or school administrators. And that these meetings were often continued informally outside of meeting rooms. One advocate referred to these activities as “parking lot negotiations”.

"Holding more meetings to resolve problems and disputes can be successful, but the endless meetings damage the relationship between parents and the teachers and therapists. They resent all the time taken away from the class."

- Advocate Interview

Themes that Emerged from the Experiences of Parents and Advocates

- The majority of disputes are resolved at the IEP table or during informal discussions, meetings in the parking lot or additional meetings with school personnel.
- School professionals and parents are generally not prepared with the knowledge and communication skills necessary to be effective participants in formal or informal Alternative Dispute Resolution meetings or sessions.
- Advocates can acquire the skills necessary to better communicate with parents and school professionals.
- Interpersonal skills are a factor in successful negotiations and resolutions of disagreements and disputes.
- Advocates can assist the families they work with by improving their own ability to participate in IEP Team meetings and by assisting parents to organize and communicate the important

information they have about their child.

- Advocates may need to seek out opportunities to participate with parents in ADR activities so that they can become familiar with formal mediation or resolution sessions.

Issues to Consider, Practices to Acquire and Strategies to Consider and Discuss

Who Do You Represent?

A well prepared advocate can help parents strengthen their problem solving skills, foster trust between school personnel and parents, and, with their presence during critical conversations, provide the additional support and knowledge that can contribute to the early resolution of conflicts.

Some would say that it is these three contributions that are most valued by families and where advocates should focus their skills. Others would disagree and would insist that the role of the advocate is to speak on behalf of the educational and civil rights of the child.

These different ways of viewing the role of the special education advocate are not mutually exclusive, but they do require an honest examination of how those sometimes competing roles contribute to conflict in educational planning.

Finding a useful way to both inform and empower families and, at the same time, do all that is possible to ensure that the rights of children with disabilities are protected is an issue that each advocate will have to struggle to clarify as they seek to be effective in assisting parents and school professionals to work together.

Attending Mediation Sessions?

One of the debates around the practice of Alternative Dispute Resolution in IDEA is the participation of advocates and attorneys. Whether the presence of an attorney or advocate enhances the possibilities for a "good" resolution or diminishes the collaborative or cooperative atmosphere needed for mutually satisfying agreements depends on the view of the individual making the judgment. There is some research that indicates higher parent satisfaction with mediation agreements developed when they are represented by an attorney.

Before attending a formal mediation session with parents, advocates will want to learn all they can about their state's process, how the mediation sessions are facilitated, the various roles that each person attending the mediation will assume in the session and how the presence of advocates and attorneys is viewed within the mediation system.

How Do You Deal with Conflict?

Education of children with disabilities is not exact, there are often many approaches and options that could be successful. In addition, parents and school professional view the same issues very differently and their perspectives often include a good deal of emotion on *both* sides.

Disagreement and conflict are to be expected. It is essential that special education advocates begin to see conflict as natural and something that can provide opportunities for exploring a number of solutions from a variety of opinions.

One of the keys to resolving conflict is to understand what the disagreement is *really* about. Generally speaking, most causes of conflict in special education are based on **the design** of the educational services, **the delivery** of the instruction or services and **the relationships** among the student, school professionals, administration and parents, or all three.

"People can seriously misunderstand what they are not saying to each other."
- Jack Rosenthal, 1984

The Resolution Session

To date, advocates and parents have little experience with the new "Resolution Session" provision of IDEA 2004. Members of Congress were persuaded by school representatives that they were often unaware of serious disputes between parents and school professionals until parents filed for administrative Due Process hearings. The Resolution Session was added as a final opportunity for disputes to be resolved.

Issues that have been raised to date are legion:

- The Resolution Session still doesn't solve the power disparity between parents and school personnel, i.e., the "Repeat players" vs. the "single-time player";
- No school attorney can be present unless parents bring an attorney, yet school attorneys could be on the perimeter of the discussion, allowing for frequent legal consultation by school personnel;
- No evidence to date that states and local school districts have put much thought into how the resolution session could work to the advantage of students.

Practices to Acquire

The IEP process has become, in the view of some parents and school professionals, a specified meeting. Special Education advocates can counter that incorrect view of the IEP process by helping parents understand the IEP as an ongoing *process* that changes and is changed by the growth and year-by-year development of their child.

In order for the IEP process to become as positive and dynamic as possible, advocates can prepare parents and school professionals to accept responsibility for maintaining good practices that will help the IEP Team members develop respectful and productive working relationships:

- The first of these is the understanding that the “facts and opinions” are very closely associated with the perception and beliefs of each individual on the team.
- Then, each member of the IEP Team needs to be reminded that certain ways of behavior are likely to result in other team members becoming defensive and inclined to reject the ideas of the parent and other team members. BUT that there are other ways of behaving that make it more likely that team members will be willing to consider changes desired and needed.
- It is a bedrock principle of group dynamics and change research that those who are expected to implement special education strategies and services be involved in the

creation of the strategies and feel that their participation is welcome and productive.

- And, finally, parents need to be supported in providing accurate information and communicating openly with IEP Team Members.

Factors that Escalate Parent-School Conflict - Discussion

1. Discrepant Views of the Child

The child not seen as an individual with unique strengths and abilities, or the child described from a deficit-model perspective by school personnel.

2. Knowledge

Lack of problem-solving knowledge and lack of strategies for communication among BOTH school officials and parents.

3. Service Delivery

Lack of program options/creativity and shortsightedness by school personnel.

4. Constraints on Resources

Lack of time, money, personnel, materials. Use of other excuses to mask these fiscal constraints.

5. Valuation

Parents feel devalued in the parent-school relationship, i.e., feeling of being lied to or lack of honesty.

School officials feel broadsided by parents who raise issues suddenly, without warning.

6. Reciprocal Power

Power misused by BOTH parents and school personnel.

7. Communication

Negatively impacted by the number of meeting participants. The "previous history" meeting participants have with one another can enhance or diminish chance of good communication.

No understanding of how teams build relationships and working "habits" over time.

8. Trust

Predictability and security about the actions of school personnel
Broken-trust relationships result in:

- parents expecting fewer positive outcomes, viewing personnel as uncaring, unresponsive, or detrimental to their child's well-being
- widening discrepant views
- unwillingness to take risks

"Whether a conflict remains unresolved, is resolved with good feelings on all sides, or becomes a protracted legal dispute with high emotional and financial cost depends primarily upon the skill the parties have as dispute resolvers."

-Windle and Warren

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**, improvement in educational relationships can be achieved by **clearly stating needs**, developing **clear expectations** and **writing agreements down** for everyone to follow. Most times, people are not aware how they come across to others.

Conflicts can occur over **values**. Where the members of the IEP Team perceive or actually do have incompatibility is their belief systems. Our values help us define what we believe is "right" or "wrong" about any situation. We have to live together and work together even though we have different value systems. Successful resolution involves **expanding tolerance, understanding, and acceptance** of the fact that others simply have different points of view.

Conflicts occur over real or perceived **scarcity of resources**. One concept that is useful to work with when resources are scarce is that of "expanding the pie". This involves brainstorming ways to **use existing resources more effectively**. Perhaps technology can be leased rather than bought. Perhaps it can be shared within the school. Possible solutions are always limited only by the flexibility and creativity of those involved!

Conflicts sometimes result from a **history** of slights or bad feeling about previous communications or encounters. In these cases, advocates can encourage some **person-to-person** communication, steer the team away from making "the rules" or "the law" the basis for decisions and keep working at improving the communication over time. People's histories took time to create and won't be resolved quickly. Building trust takes time.

OBSERVE CAREFULLY. Advocates cannot help if they enter the conflict.

Important Terms to Know

Due Process Complaint: A written complaint filed by a parent or a school district involving any matter relating to the identification, evaluation, educational placement or provision of a free appropriate public education to a student with a disability. Due process complaints must be filed within two years of the matter in dispute.

Due Process Hearing: A formal, quasi-legal procedure before an impartial hearing officer or administrative law judge (or panel of judges) who is not an employee of the state education agency or school district. Both the parents and the school district present arguments and evidence.

Mediation: A confidential, voluntary process that allows parties to resolve disputes without a formal due process hearing. An impartial mediator helps the parties to express their views and positions and to understand the other's views and positions. The mediator's role is to facilitate discussion and help parties reach an agreement – not to recommend solutions or take positions or sides.

Resolution Session: A mandatory meeting that the school district must convene within 15 days of receiving the parents' due process complaint. The resolution session includes parents, members of the IEP team relevant to the complaint, and a representative of the school district who has decision-making authority. If a resolution is reached to resolve the complaint, the parties shall execute a legally binding agreement which a party may void within 3 business days of the agreement's execution. The parents and the local educational agency may agree in writing to waive such meeting, or agree to use the mediation process under IDEA.

State Complaint: A written complaint that can be filed by any organization or individual claiming that a school district within the state has either violated a requirement of Part B of IDEA (the part that contains all requirements regarding the delivery of special education services) or the state's special education law or regulations. State complaints must be filed within one year of the alleged violation.

Resources

Securing Cooperation: An Essential Component of the IEP. Howard Margolis, Gary G. Brannigan, Daniel Keating, published in *Insight on Learning Disabilities* 3(2), 39-50. 2006.

Understanding Change: Diagnostic and Planning Tools
Handout developed by Larry Edelman, JFK Partners, Department of Pediatrics, University of Colorado Health Sciences Center

Crucial Conversations: Tools for Talking When Stakes are High
By Kerry Patterson, Joseph Grenny, Ron McMillan and Al Switzler
Published in 2002 by McGraw-Hill.

The Gentle Art of Verbal Self-Defense for Business Success
By Suzette Haden Elgin
Published in 1989 by Prentice Hall

Sincere thanks to the special education advocates and parents who participated in The Advocacy Institute Survey and telephone interviews that formed the basis for this publication.

These and many other publications are available on the CADRE website at www.directionservice.org

Collaborative Problem Solving and Dispute Resolution in Special Education: Training Manual Table of Contents
by Rod Windle and Suzanne Warren

Mediation and Options to Resolve Problems Underlying Disputes
By Lyn Beekman

The Role of Attorneys in Special Education Mediation
By Edward Feinberg and Jonathan Beyer

Basic readings for parents and advocates:

There is an overview of mediation at:
<http://www.directionservice.org/cadre/aboutmed.cfm>

The benefits of mediation can be found at:
http://www.directionservice.org/cadre/med_benefits.cfm

An example of mediation ground rules are found at:
<http://www.directionservice.org/cadre/grs.cfm>