

Negotiation and the IEP

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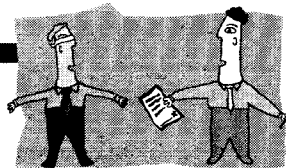
What is negotiation?



People have needs to be met, they need the cooperation and/or the consent of others to meet those needs. Negotiation is the process that we use to get what we want from others.

Because outcomes in negotiation need the cooperation of other parties, the outcomes tend to be ones that all sides can 'live with'.

Preparation.....



Negotiation is both an art and a science.

One important rule of thumb, a good negotiator has done their homework. A good negotiator is always a prepared negotiator.

IEP as a Negotiation ????

- When individuals disagree, negotiation is the usually the first way that we humans try to resolve those differences. As a result, in the fields of business and politics, negotiation is obsessively analyzed, studied, and improved.
- Special education lags behind the state of the art in using this vast database of knowledge about how to negotiate the best deal.
- But using the principles, process and practices of negotiation gives parents and advocates a less stressful, and more effective means of pursuing a their child's rights in special education, particularly the entitlement to a Free and Appropriate Public Education (FAPE) for their child.
- Negotiation offers a payout for parents and advocates – both in having a blueprint to follow and in getting better outcomes for children.

Outline

- Basics of the IEP Process
 - Rules of the IEP Process
- Basics of a Negotiation Stance
 - Understanding and Negotiating on Interests
 - Importance of Alternatives
 - Knowing when to walk away
- Effective Strategies in the IEP
 - Taking back your power
 - Anchoring and Logrolling



Basic Rules of the IEP Process

- Assessments document a student's needs (including whether the student is eligible for services under IDEA);
- Goals flow from assessments and should address all areas where a student needs additional support, specialized instruction or therapeutic services;
- Appropriate placement, supports and services are those which give the student a reasonable chance of achieving those goals.

When do we negotiate ?

- Yes at the IEP meeting(s) (Note that there can be as many as needed);
- And through letters we write to document events, information and requests;
- And through phone calls and meetings through out the year...

What do we negotiate about ???

- How and in what areas a child is assessed ?
- What the goals are for the coming year ?
- Does the offered placement, services and supports give the child a reasonable chance of achieving those goals?



What do we negotiate about ???

- Many times parents have not thought about the first two of these three elements, assessment and goals, and have focused primarily or even exclusively on placement, supports and services.
- However, frequently the roots of disagreements about placement, supports and services go back to differences in what are seen as the child's needs (assessment) and what are the next steps in progress (goals).

What do we negotiate about ???

- Therefore, it is extremely important that families as negotiators pay attention to all three of these elements – assessments, goals and supports/services/placement.



Basics of Negotiation

- Understanding and Negotiating on Interests
- Importance of Alternatives
- Knowing when to walk away



Effective negotiation and the crucial difference between interests and positions



- Interests:
- ...are the underlying needs that one side is seeking to fulfill
 - ... revolve around desires, concerns, fears, and aspiration
 - ...can be fulfilled in a number of different ways

People usually (and should) have a structure of priorities to their interests (i.e. paying the mortgage is more important than buying more CDs).

Positions

- ...are one means of fulfilling interests
- ...are overemphasized by negotiators
- ...tighten negotiating space
- ...can lead to deadlock



Positional negotiators work hard to get their position accepted, rather than consider alternative means of meeting interests.

Position and interests

Position: I want my child to receive 5 hours per week of Linda Mood Bell reading instruction every week paid by the school district.



Illustration: Difference between position and interests

Interests may be ...

- I am afraid that my child will never learn to read, be dependent and live with me the rest of my life.
- My child's self esteem is so damaged because she feels stupid.
- I am mad that you made me go for this outside evaluation and didn't give me what my child needed when I asked. So I want to punish you with a big bill.

Importance of Interests

- Negotiators need to identify their interests **before** a negotiation. They should separate them (wherever plausible) from their positions, and they should know how they rank order their interests.
- In IEP negotiations, interests that relate to child's needs must be documented to have any real weight in the negotiation. If documentation does not exist, then one of the interests of the family should be in creating a plan at the IEP to gather data and create documentation.

Alternatives

- The basic concept is that the desirability of your alternatives determines the strength of your negotiating position; and the desirability of your negotiating partner's alternatives determines the strength of their position. This is a concept that most of us get intuitively.
- If there is no real alternative to what is being offered, then people tend to take whatever they can get.

Thinking about Alternatives



The Smith family hired advocate Karen to help them to get Linda Mood Bell reading instruction for their daughter, Jean. The school district is taking the position that Jean is making significant educational benefit from her current reading program. Even though she is three years behind, she is making non trivial progress each year.

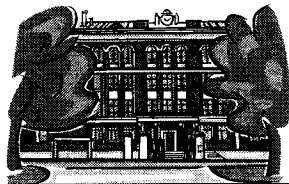
A Family's (possible) Alternatives

- Get an outside assessment at district expense and then try to convince the IEP team of the necessity.
- Call their friend on the district school board and ask them to help the district officials think 'out of the box'.
- Unilaterally decide to put Jean in the Linda Mood Bell program during the summer.
- Try to convince the district to pay for a summer program with LMB to show the need for Jean.
- Contact an attorney and file for due process.

Some of these are governed by the legal environment, some by the resources available to the family.

A district's possible alternatives

- Refuse the request.
- Try a different intervention.
- File for fair hearing if asked to pay for an independent evaluation



Alternatives

- So, one of the strategies we will talk a lot about is the development of alternatives for your side as well as influencing the way that the school districts see their alternatives.



Walk Away

- Families need to consider (before the IEP) – what is the minimal program they would accept.
- When would they decide to walk away (i.e. home school, file for due process, unilaterally place their child in a private school)?
- Knowing your walk away allows you to plan. You become proactive rather than reactive in the IEP.

Strategies and the IEP

Taking back your power: meaningful parental participation

- These are strategies to help to level the playing field, so that you feel that your voice (and where appropriate your child's voice) is heard and matters in the deliberations of the IEP team.
- This does not mean that the team will always do what you wish, but rather asserts the parents' legally mandated role as one important voice in the IEP deliberations.

The Power of Meaningful Parental Participation

- This does not mean that the team will always do what you wish, but rather asserts the parents' legally mandated role as one important voice in the IEP deliberations.
- These strategies rest on the right of meaningful parental participation in the IEP process.
- The IDEA upholds the right of parents to be equal participants with school personnel in developing, reviewing and revising a child's IEP. This means that parents can take an important role in scheduling the time, place, duration and frequency of IEP meetings: *parents have the right to understand and participate in the conversation about the child; and that the parents have the right to think about their decisions before making them on the IEP placement, supports and services offered by the school district.*

Great Books

- Pete and Pam Wrights, From Emotions to Advocacy
- Larry Siegel, The Complete IEP Guide
- Deepak Malhotra and Max Bazerman, Negotiation Genius
- Harvard Business Essentials, Negotiation

Strategies and the IEP

Anchoring the Discussion
 First party to put an issue on the table can shape the way that the discussion takes place

Logrolling Issues
 Need to know what you are willing to trade and what you need to keep

Taking Back Your Power

Examples

- Share control of logistics, when, where and how long
- End compressed Meetings and Team Atrophy
- Share control of agenda (having your agenda incorporated into the meeting agenda)

