

HOW
TO
NEGOTIATE
IN ARC MEETINGS

KENTUCKY PROTECTION AND ADVOCACY

How To Negotiate In ARC Meetings

P&A is a federally mandated program that receives its funding from the Administration on Developmental Disabilities, the Center for Mental Health Services, and the Rehabilitation Services Administration

Contents

If it's broken – Fix It!	6
Winning vs. Whining	7
Preparation for the ARC Meeting	7
Step One: Understanding your child's disability	8
Step Two: Determining your goals	9
Step Three: Determining what services and placements are needed	9
Meeting Negotiation Strategies	13
Anticipating Arguments	13
Common Arguments and Suggested Counter-Arguments	13
Mediating Strategy	16
Seating	20
What to do if you get upset/angry	21
Making a Record for Future Use	22
Using Audio Tape Recorders	23
Being Clear and Knowing When to Quit	24
Other Strategies	24
Short, To-the-Point Meetings	25
Data Strategies	26
Using Formal Complaints, Mediation and Due Process Hearings	27
Conclusion	28

This handbook was created to assist parents in advocating for their children with disabilities. We hope that the information and examples will help you be successful when faced with the variety of challenges you and your child may encounter with special education. All individuals have specific fact situations. Should you need specific advice, please call Protection and Advocacy at 1-800-372-2988 or seek the advice of an attorney who has knowledge of special education law.

There are three basic concepts that will be presented to you throughout this handbook:

- Parents can be great negotiators.
- Preparation improves the chances your child's needs will be met.
- How you ask for something affects whether or not you get what you want.

Watch for P&A's 7 Negotiation Facts!

If it's broken – Fix It!

Negotiation Fact #1

If a strategy does not work, stop using it.

A very common comment P&A advocates hear from parents is that they have argued with the school for years and nothing ever gets better.

Keep a list of the strategies you have used and the results so you don't keep doing the same things that have not worked. You should have a plan on what to do next or who to call to get some help in figuring out what to do next. Some steps you can take are:

1. Identify the problem
2. Identify the cause of the problem
3. Identify who can help with the problem
4. Know your legal rights
5. Develop a plan to solve the problem

Negotiation Fact #2

Different people are motivated by different strategies.

In selecting negotiation strategies remember that different people are motivated by different strategies. For example, some are motivated by praise, some people need constant instruction to stay on track, and others are more motivated by feedback on how things are going.

One thing you can do as a parent of a child with a disability is to learn what motivates each of the school personnel in ways that will help you to work with them more effectively to assure your child's needs are met.

Winning vs. Whining

The old adage "You'll draw more flies with honey than vinegar" is true when advocating for your child. Successful negotiation requires practice, even if it comes naturally to you. This is a skill that can be used by parents and professionals alike. Here are some tips for successful negotiation:

- Prepare for meetings (this is addressed in the following section)
- Speak calmly
- Listen without interrupting
- Be professional – stand up straight, shake hands, and dress accordingly
- Ask questions about things you don't understand
- Thank the school/teachers for doing things you think are good
- Express your concerns appropriately
- Take notes

Preparation for the Admissions & Release Committee (ARC) Meeting

Before the ARC meeting, you should prepare by doing your own homework.

For the meeting you should have

- The most recent Individual Education Plan (IEP) and an understanding of what is on it
- Evaluation information if applicable
- Information from outside providers if applicable
- Other information that the ARC needs to know about that might affect your child's education
- A list of parent concerns, or things you want to bring up in the meeting.

Supportive Person

Attending an ARC meeting can be stressful and sometimes emotional. It is a good to take someone with you. This person should know your child and be able to act in a professional manner during the meeting. You should tell them what role you want them to play during the meeting.

Some things they can do are:

- Take notes
- Make sure you have said everything on your list
- Call for a break if things get emotional
- Make sure all agreements are written down
- Help with negotiation strategies
- Provide additional information
- Sit next to you to provide physical support
- Help you say what you want

Step One: Understanding your child's disability

As a parent, you need to know how your child's disability affects academic and functional performance. Keep in mind that disabilities affect each person differently; so like clothes – there is no such thing as a “one size fits all” for IEPs. If you have questions about how your child is affected by a disability, then understanding the effect is the first step in planning. You need to understand the issue before trying to develop a solution.

One of the best sources of information on how your child's disability affects him/her is the evaluation from the school or other assessment center(s).

The three primary providers of psycho-educational testing are:

- Staff who work for your local school district
- Educational cooperatives that serve multiple school districts
- Independent multidisciplinary assessment centers

If your child needs additional assessment or testing, call an ARC meeting to request the evaluation.

Using Independent Evaluators (IEE)

When the ARC agrees to have educational evaluations completed on your child, the school may have school district staff that can do the job. Many parents feel someone from outside the local school district should complete these tests so that the school does not influence the results. You will need to give the school staff a chance to do it first. Keep in mind if you are not satisfied with the results, you may request that a new evaluation be done independently. This new evaluation must be agreed to in the ARC meeting and written into the ARC summary.

Step Two: Determining your goals

The second step is to determine what goals you want your child to accomplish. Consider the academic, developmental and functional needs of your child. These goals will represent skills your child will need to participate in the academic and daily life of school. Curriculum for children and youth including those with disabilities is based on Kentucky's learning goals, academic expectations and the content standards.

The measureable annual goals (written on the Individual Education Program (IEP) including academic, developmental and functional goals) meet your child's needs that result from his/her disability. They help your child to be involved and progress in the general curriculum.

Keep in mind that the ARC writes the goals as a team. It's not only up to you, as the parent, to do this. However the law does say that the concerns of the parents for enhancing the education of their children must be considered.

Step Three: Determining what services and placements are needed

Like goals, the ARC decides about services and placement. However, as a parent you need to have an idea of what services would best benefit your child.

One of the most common misunderstandings parents have when calling P&A is that special education is a specific place or classroom within their child's school. In reality, special education is not a place. It is an entitlement to specialized instruction and related services to meet the individualized needs of a particular child who has a disability which can be provided in the general education classroom. The Individuals with Disabilities Education Act (IDEA) requires each school district to provide a "Free Appropriate Public Education" (FAPE) to each child identified under this law as having a qualifying disability.

Simply put this means:

- Free = At no cost to you
- Appropriate = Designed to meet the individual needs of your child
- Public = Provided at public expense
- Education = Specially-designed instruction (SDI) to meet your child's individual learning needs

Services

The IDEA requires that services be determined before placement. This is to ensure the services are based on your child's individual needs and not on the limitations of the placement that is selected.

Many children may only need modifications and/or equipment to succeed in a regular classroom environment. These modifications may include different ways to demonstrate that they have mastered knowledge, such as verbal rather than written testing, additional time to complete assignments or reduced assignments.

Other students may need equipment, such as:

- Computers to assist with writing
- Special desks to provide needed support
- Magnification devices for the visually impaired
- Equipment that helps with communication

Students with severe physical disabilities may need assistance with daily living needs such as toileting, eating, and dressing. Whenever assistive technology can allow a child to perform these tasks independently, it should be provided. Para-professionals or aides may also help follow through with occupational, physical, or speech therapy recommendations.

Some children may require one-on-one or small group instruction to gain and retain important knowledge and skills. They may require specialized instruction techniques to match the teaching styles to their learning strengths. They may need additional learning time (ESS: Extended School Services) or summer school programming (ESY: Extended School Year) in order to ensure they do not lose gained skills during school breaks.

Related services

Many children with disabilities will need related services in order to meet their educational goals. Related services include:

- Occupational Therapy (OT)

- Physical Therapy (PT)
- Speech/Language Therapy
- Assistive Technology (AT)
- Special Transportation
- Vision Specialist Services
- Hearing Impaired Specialist Services

Common sense indicates that the best recommendation for the need for therapy services (OT, PT, and Speech) will come from a professional in that field. Some children receive these therapies at school for educational reasons and at home or a medical center for medical reasons. If you disagree with the recommendations of a therapist, refer back to “Using Independent Evaluators.”

Determining what related services are medically necessary and what are educationally necessary can be difficult. Your medical insurance may say the therapy services are educational, and your school district may claim the services are medical. Generally, related services that are needed so that your child can successfully accomplish IEP goals are considered educationally necessary.

Keep in mind that while your doctor may choose to write a prescription for the school to provide a service, the school DOES NOT have to follow it. The IDEA only requires the ARC to consider the recommendation.

Negotiation Fact #3

Always get professional opinions in writing

Sometimes, two or more therapists/providers may disagree on appropriate goals. All professionals who are involved with your child should be a part of your child’s ARC that develops the IEP, and they should communicate regularly with you to discuss progress.

If your child receives services outside of school, invite those outside providers to the ARC meetings. Let the other ARC members know of this invitation. If the provider cannot attend the ARC, ask for a written report that you can present to the ARC. **Always get professional opinions in writing.**

Placement

Once the ARC has decided what services are needed to provide FAPE, the ARC must decide the appropriate placement for your child. IDEA requires that your child be educated in the “Least Restrictive Environment” (LRE) in which the IEP

goals can be implemented successfully. LRE means that students with disabilities will be placed in regular classrooms with peers without disabilities and in schools that they would attend if they didn't have a disability. It also means the students cannot be moved to a more restrictive classroom environment unless they cannot be educated in the regular classroom with supplementary aids and services.

Remember: Special Education isn't a place!

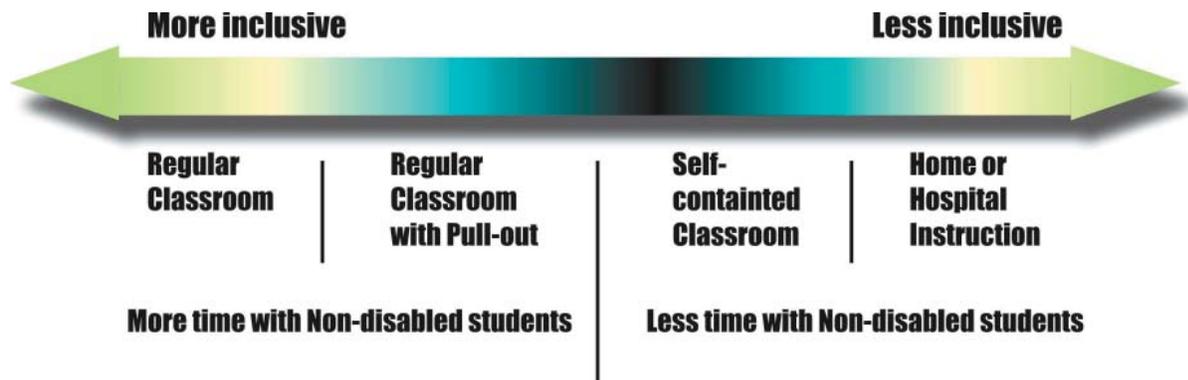
Students may receive specially designed instruction in:

- Regular classrooms
- Regular classrooms with collaboration
- Regular classrooms with pull-out to resource rooms for special instruction
- Self-contained classrooms with inclusion in appropriate regular education settings

Special education services may also be provided in:

- Vocational schools
- The community
- The student's home (for medical reasons)
- Hospitals
- Residential settings

Below is a chart that shows a continuum of placement:



Since the selection of your child's placement is critical, you should gather as much information and advice as possible before the ARC makes this decision. Sometimes there is fear or reluctance to educate children with disabilities in inclusive (regular classroom) environments. This may be caused more by a lack of adequate training among educators than actual difficulty.

Many of the regular education teachers at your school will not have received training while in college regarding how to educate children with disabilities in inclusive (regular classroom) settings. Some of the special education teachers may have received little training while in college regarding how to educate children with disabilities in inclusive settings. The Kentucky Department of Education (KDE) provides training in this area and private companies exist that can provide great assistance, also. There are some models of inclusive educational programs at different schools across the state. You may call KDE for further information (502) 564-4970.

We have discussed some of the basic decisions ARCs make. We have suggested ways you can prepare for the ARC meeting in order to improve your effectiveness as a negotiator. In the next sections, we will detail some specific strategies you can employ in the ARC meeting and how your child's circumstances impact the selection of each strategy.

Meeting Negotiation Strategies

Anticipating Arguments

In order to prepare for the ARC negotiation, it is helpful to anticipate any arguments that members might use. The lists below contain some of the most frequently used arguments, but by no means contain them all.

Common Arguments and Suggested Counter-Arguments

Your child is receiving passing grades

"Since your child is receiving passing grades he/she does not need additional assistance." (You know that given your child's cognitive abilities he /she should do much better and could with the desired assistance.)

Counter Argument: The entitlement to a Free Appropriate Public Education (FAPE) in the IDEA requires modifications to be in place that allow the child to benefit. "My child's goal is to attend college, Cs and Ds will not allow him/her to meet that goal. The IEP should allow him/her to be competitive with the other students."

We cannot afford to do ...

“The school system just can’t afford to pay for this (service/equipment/etc).”

Counter Argument: “I know that each school receives additional funds for children with disabilities. Where we choose to spend the money we have is a reflection of our priorities. Is educating students with disabilities a priority at this school?”

Counter Argument: “Contact the Kentucky Assistive Technology Service Network to loan equipment to the school.”

Counter Argument: “I know that each school receives additional funds for children with disabilities. I also know that no school district is over-funded. Unfortunately, federal law does not care about the district budget. Their only requirement is that the accommodation is provided. We have agreed that the accommodation is needed, so you need to figure out how to do it.”

We never provide this

“We never provide this service or technology to individual students”.

Counter Argument: “When it has been determined a service or assistive technology device is needed to provide a child with a free appropriate public education under the IDEA, the school district must provide it. Perhaps it is time you started to meet this need.”

We have a zero tolerance policy

“We have a zero tolerance policy at this school. Your child’s disability does not matter. We can expel him for inappropriate behavior anyway”.

Counter Argument: The IDEA provides procedural steps which must be followed in disciplining my child. Even if you are able to expel him/her, you will have to provide him/her with an education in an alternative setting. Why don’t we decide to fix this problem so it does not occur again rather than just moving him/her from school to school?”

They must check with someone else about funding

“I’m glad we agree on this service, but the funding needs to be authorized by _____ (someone who isn’t at the meeting).”

Counter Argument: “IDEA clearly requires that someone be present at every ARC meeting who is fully authorized to expend the school district’s resources. We need to make sure that it does not happen again in the future. Please record the ARC’s agreement that the service is needed, but that someone with authorization to expend the school district’s resources failed to attend the ARC Meeting in the conference summary.” You should record an objection on your Objection List regarding this issue. If you must wait to hear from the superintendent or some other decision maker concerning whether or not the service your child needs will be provided, you may want to discuss the case with an attorney to determine if your child’s rights have been violated.

We have to be fair

“We have rules at this school. Every student must follow those rules, or it’s not fair to the students who do follow the rules.”

Counter Argument: “We are here today to develop a plan under the Individuals with Disabilities Education Act to help my child learn to follow the rules. I know you want to maintain order in your school, but how the other students obey the rules is not important to my child’s IEP. What is important to my child is a plan that will help him/her follow the rules, and data that can tell us if the plan is working or needs to be changed.”

We just can’t do it

“We are just not equipped to serve children with your child’s severe disability. A residential facility would be better able to meet his/her needs.”

Counter Argument: “We want our child to live at home. We need a place for him/her to go to school and learn. What do you need to be equipped? The IDEA and this ARC process should be about seeing that you have it so my child can be educated along with non-disabled peers.”

Counter Argument: “We want our child to live at home and we’re able to meet his/her needs there. We need a place for him/her to go to school and learn. If we

did consider a residential placement for educational reasons, the school district would be responsible under IDEA for the cost, which would be considerable. What do you need to be equipped?"

Practice the counter arguments that you plan to use with one or more friends. Ask them to pretend to be the ARC members with opposing opinions, using the anticipated arguments, much as one would in a debating contest. This kind of practice helps you prepare for the ARC meeting. *Always try to take a supportive person with you to the ARC Meeting.*

Mediating Strategy

One of the most effective strategies for achieving the goals is the mediating strategy. This strategy requires much practice and a good understanding of the reasons behind the positions you are taking. Essentially the goal is to create the appearance that you are mediating a dispute between professionals or teachers to help the ARC coming to the best conclusion. In order to use this strategy you need at least one other person (this can be your supportive person described earlier) in the meeting who will support the goals you have for your child.

When using this strategy, it is important to make a statement that sets the tone you want. This does not, however, have to occur at the very beginning of the meeting.

After the parent rights have been explained and the ARC Chairperson has announced the purpose of the meeting and made introductions, take the next available opportunity to say,

"I have given today's meeting a lot of thought. I have some ideas that I believe will help my child do better in _____, but I want you each to know that I am hoping you will all participate. Each of you has knowledge that will help us as an ARC to make the best decisions."

Next, allow each member to give a brief report about what is going well with the child's education and what problems need to be corrected. Do not interrupt them as they speak or begin to argue against what they propose. If someone says something you disagree with, ask why he/she feels that way, after he/shes has finished talking.

Draw out as much information as possible about other options considered, restate what other members have said about positions you find agreeable and calmly go on to the next person.

Do not state your opinion at this time. Restating what others say ensures the point is understood and heard by everyone.

Once everyone has had a chance to speak, ask the person who has stated what you want to see occur to further expand on the subject.

Then discuss the position of the person you do not agree with in your own words. Allow the person you agree with to expose the flaws in what you just said and/or provide solutions.

By providing solutions, you will appear very open and fair to all of the ARC members.

Mediating Strategy Example:

Parent Action Plan: Keep Jill in the regular classroom by adding a teacher assistant to help with Jill's needs.

Regular education teacher, "I just can't keep Jill in my classroom anymore, I have 26 other students and I can't meet their needs if I always have to take care of Jill."

Special education teacher, "I do not see any reason why Jill should not stay in the regular classroom. She certainly is able to learn in that environment."

Parent, "I agree that it is unfair to expect the regular education teacher to serve Jill with so little help."

Parent or Supportive Person "We could add a teaching assistant to the regular classroom, and the three of you (regular education teacher, special education teacher and teaching assistant) could collaborate to provide the additional help Jill needs."

Negotiation Fact # 4

When confronting facts that may lead to undesirable conclusions, state the facts yourself and present your acceptable conclusions.

If you are asked to attend an ARC meeting about your child's behavior, consider **stating the facts** yourself. Some children have disabilities which contribute to behavior that are considered problematic by the school.

It is possible that the teachers and school administrators may not understand that your child's disabilities genuinely impact his/her ability to follow school rules. Good behavior planning includes accountability for one's actions and assistance in self-monitoring behavior. Simply punishing the student almost never works.

As your child's negotiator it is important to understand how frustrating it must be for teachers to deal with the seemingly constant disruptions which can occur. You have most likely developed strategies you use at home which help you manage the behaviors. You may have attended trainings, support groups or worked with professionals in developing your in home behavior management plan. Many teachers have not had these opportunities. They feel frustrated by your child when the problem behaviors occur. Frustration is a result of not understanding or not believing that your child's behaviors are based on his disability. Therefore, they may take your child's behavior personally.

P&A advocates have heard about school staff attacking parenting skills by implying that the child is spoiled or the parent has failed to provide a stable home environment. These attacks have been so intense that the parent eventually wears down and concedes that the child deserves a harsher punishment or a more restrictive placement.

In the beginning of the ARC meeting, you can:

1. State the facts by announcing that you understand that your child's behavior is unacceptable.
2. Add that you sympathize with how difficult it must be to provide instruction while constantly having to re-direct your child's behavior (after all, you may be only too familiar with these challenging behaviors).
3. Invite the teachers to vent some of their frustration.
4. Each time a teacher tells the ARC about a time when your child misbehaved say, "I understand your frustration and it's obvious that you need additional help in order to manage these behaviors in your classroom."
5. State, "I would like additional help in learning how to manage the behaviors at home," will defuse attacks on your parenting skills.

6. Announce again that, obviously, a problem exists and help is needed
7. Remind everyone that your child has a disability, and children with this type of disability often have difficulty managing their own behavior
8. Announce the strategies you and the team have determined that will help your child

At this point the solution may require that additional staff be added to the classroom or additional assessments be obtained, such as a functional behavioral assessment. A Functional Behavior Assessment (FBA) is a written description of what problem behaviors exist, the environments in which the behaviors occur, what motivates the student to engage in the behaviors, and how the student can be motivated to engage in positive behaviors instead of the problem behaviors.

The school may have staff (special education teacher or psychologist) who offer to complete the FBA. If you feel that school staff may not be able to be objective, you may ask that someone else complete the FBA. One option for an alternative person is a behavior specialist through the special education cooperative in which the school system is a member. The evaluator will assist the ARC in developing a plan that will be used within the current placement.

At times, ARC members argue that your child, not the school, is the problem, and he/she needs to be moved to another more restrictive setting. If this happens:

1. Calmly state that from earlier discussion you understood that the current plan was not working
2. Agree that they are not the problem, but rather this plan is broken.
3. Repeat that the ARC needs help in designing a plan that will work.

You may need to state that your child has a right to be educated in the least restrictive environment. You cannot agree to a more restrictive environment until more effort has been made to make the current placement work.

By using the ***stating the facts*** yourself strategy you will accomplish several things:

- Limit the period of time spent discussing your child's problem behaviors. They do not have to convince you a problem exists because you have already acknowledged the problem.
- Reduce the likelihood you or your child will be personally attacked because you have already acknowledged the problem.
- Change the focus of the discussion from punishment or more restrictive settings to behavior planning.

The use of the ***stating the facts*** yourself is not limited to behavior issues. For instance, if your child is receiving failing grades because she consistently forgets to turn in homework the same strategy can be used by:

- Acknowledging it is a problem that he/she does not turn in homework.
- Suggesting that a plan be developed to help he/she remember to turn it in. (Example: turn it all in at the beginning of the day to a designated person.)

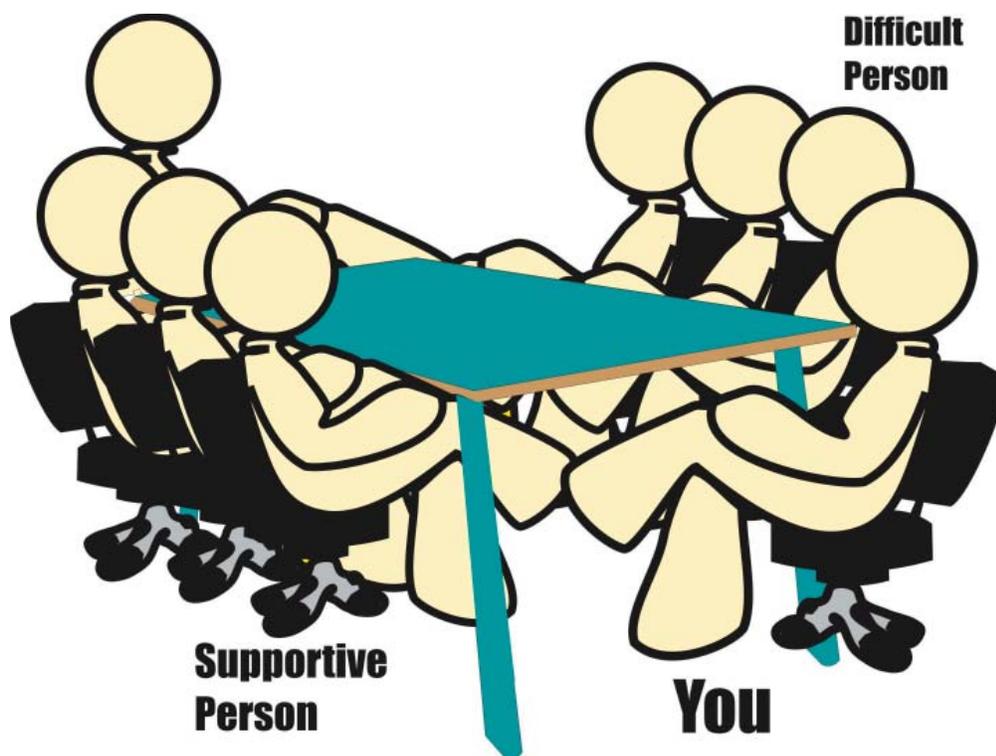
The central goal of the ***stating the facts*** yourself is to limit the time discussing the problem and focus the attention of the ARC on the solution.

Seating

You may have childhood memories of family dinners where your father sat at one end of the table and your mother at the other end. The seats at the end of the table were associated with power and respect.

The occupants of end seats also have the advantage of being able to see and hear all participants without turning their heads and losing sight of half the people. Always be one of the first to arrive at the ARC meeting so you can choose the “head of the table” position.

If there is a particular ARC member with whom you often disagree, encourage that person to sit close to you. It is much more difficult to be confrontational with someone who is sitting beside you, requiring you to turn your head, or even your entire body around to have visual contact. It is much easier to confront someone who is directly across from you, especially if there is some “safe” psychological distance between you.



As you can see from the above diagram, the seating strategy requires the difficult person to look away from everyone else in order to directly confront you. You can look past the difficult person, ignoring sarcastic or antagonistic remarks, and make your points to the supportive person and other ARC members.

What to do if you get upset/angry

Successful negotiation requires clear thinking and good communication. Both of these suffer when people get upset or angry. If you start feeling this way and start becoming either argumentative or crying, suggest that the ARC break for a few minutes. (Your supportive person could make this suggestion also). During the break, step outside of the room, take several deep breaths, and tell yourself, "I can do this". You should be able to go back into the meeting more focused. However, if the situation doesn't improve you may suggest that the ARC reconvene at another date to finish the IEP.

Negotiation Fact # 5

Ignoring argumentative or sarcastic statements in a negotiation is the best way to deal with them. If you attack back at them, you will also appear argumentative and sarcastic.

Making a Record for Future Use

Negotiation Fact # 6

Wise negotiators always keep good records

As previously stated, you need to take notes. Your supportive person should assist you with keeping an accurate record of the meeting too. When the ARC cannot agree or reach a consensus (consensus means a general agreement), parents have four options:

1. File a Formal Complaint with the Kentucky Department of Education
2. Request a Dispute Resolution
3. Request mediation, or
4. Request a Due Process Hearing.

You will need a good record of what happened during the meeting as support for a complaint, mediation or hearing request.

Have your supportive person (or yourself) bring paper to the ARC Meeting. Write Objection List at the top of the page and record all matters of disagreement in writing. Be sure to record the reasons why you object on the list as well. Do not worry if other members of the ARC see the document. It may actually help you successfully discuss your points if they know you are keeping this record. All decisions regarding special education services must be made in ARC Meetings. The ARC must document all of the decisions considered and the reason(s) that each was agreed upon or disagreed upon. Always make sure decisions are written on the IEP.

If it is not written down it does not exist!

If the ARC makes a decision that you do not agree with:

1. Describe the issue, the decision reached, and that you disagree with the decision.
2. State clearly in the meeting, "I disagree with the decision to place my child in an alternative high school" and
3. Write this on the Objection List.
4. When the ARC Meeting has concluded, you will be asked to sign the

- conference summary. Write beside your signature, "See Objection List."
5. Ask the ARC Chairperson to attach a copy of your Objection List to the other ARC Meeting documents.

Using the Objection List will help ensure that you have a good record.

Using Audio Tape Recorders

A commonly asked question by callers to P&A is, "Should I tape record the ARC Meeting?" There is no right answer to this question. The answer depends on what you hope to accomplish by recording the meeting. Two problems with audiotaping are:

- Listening to the tape(s) takes as long as the meeting took (perhaps hours).
- The presence of the recorder causes some people to be less open in discussing important issues.

Do not let audio taping substitute for the written documentation strategies ("Objection List" or ensuring ARC decisions are written into the conference summary). The written record is signed by all ARC members and is much easier for a KDE investigator or hearing officer to use.

If you decide to use a recorder consider the following:

- Buy a good recorder so the tapes are understandable.
- Place the microphone in the middle of the table so all participants' statements are recorded. (Many tapes have been sent to P&A on which only the parent could be heard).
- Take plenty of blank tapes to the meeting. Make sure you notice when the tape runs out and change to a new one.

If you do tape the ARC meeting, a copy might have to be shared with any ARC member who requests it. If the school staff records the meeting, it becomes part of your child's education record and you may request a copy of that tape.

Negotiation Fact # 7

One of the most common mistakes negotiators make is not stopping while they are winning.

Being Clear and Knowing When to Quit

You should be prepared to stay in the ARC meeting as long as necessary to accomplish your goals. Make sure your childcare responsibilities are taken care of and eat before the meeting so hunger does not become a factor for you.

Allow all ARC members who oppose the additional services to speak as long as they desire, expressing their opinions as to why your child does not need the desired service. Each time the conversation lulls, simply restate your reasoning as to why your child does need the service. Ask the ARC members if the service or level of service can be provided.

If most ARC members disagree with your position, make sure that the ARC Summary states that the ARC could not reach consensus and why. Also be sure to have your Objection List attached to the ARC documents.

If most of the ARC members seem to agree with your position, ask the meeting recorder to write in the ARC Summary that the services will be provided and close the meeting as quickly as possible. One of the most common mistakes negotiators make is not stopping while they are winning.

Other Strategies

The following strategies may be used in conjunction with other strategies to overcome chronic problems.

“The ARC always agrees with what I ask for but it is never written down.”

Solution: Bring a friend or relative (supportive person) to the ARC meeting. Let the ARC chairperson know in advance that the person is coming to the meeting. Have this person sit next to the ARC meeting recorder and gently prompt the recorder to write down each agreement as it is reached. This can be accomplished by simply stating, “I think we just agreed on how much speech therapy Johnny needs, did you get that down?” Most often after a few prompts the recorder will write decisions down rather than be embarrassed by the question.

If agreement on the amount of therapy to be provided has not been reached, then you need to continue the discussion until the ARC reaches consensus. The supportive person can also keep the Objection List described earlier in this hand-

book. If you wait until the end of the meeting to find out what has been written on the conference summary, everyone will be running out of the meeting and making changes, corrections, or additions is very difficult.

“Important people start leaving the meeting before we finish.”

As soon as the discussion at the ARC meeting reaches a critical issue, people start leaving indicating they have other appointments or must return to class.

Solution: Notify the ARC Chairperson in advance that there are several important issues to be discussed at the upcoming ARC meeting. Tell the chairperson that you want everyone’s input and would like everyone to be able to stay for the entire meeting. If they are unable to free up their schedules, ask the chairperson to let you know in advance so the meeting can be rescheduled.

You may want to remind everyone at the beginning of the meeting that the meeting may take some time and gain their agreement to stay as long as necessary or agree to schedule another ARC Meeting. If ARC members leave early anyway, object and make a record on the Objection List as described earlier in this handbook.

Negotiation Fact # 8

Keeping what is working well is easier than and just as important as getting new services.

Short, To-the-Point Meetings

If your ARC meeting calls for defending against the district’s attempt to take away or reduce services, it will be helpful to have a relatively short time scheduled for the meeting. Very simply, this reduces the period of time you will have to defend the current services. When you request the ARC meeting or receive notice of the meeting from the school, you may contact the ARC Chairperson and suggest a relatively short time period be set so everyone will stay on point. It is unusual for anyone to object to a short meeting.

As the meeting progresses, continually restate your opinion and refuse to agree to anything else. Having a supportive person helping you will prove to be most beneficial. If the other ARC members refuse to consider your viewpoint, be sure and record your disagreement on your Objection List.

Data Strategies

State regulations require that student progress toward achieving IEP goals must be monitored. This does not mean that every single time a teacher works with a student, detailed notes must be kept. It does mean periodically (weekly, maybe more often depending on the nature of the goal and what the IEP indicates) written records should be kept which show what goal was being worked on, what teacher was working with the student, and the results. For example, the IEP goal states, "When presented with 10 single-digit addition problems, Tommy will verbally state the correct sum for 80% of the problems within a two minute test period." The data collected should show:

1. The 10 problems which were scored
2. Who did the testing and when the testing was done
3. How long the testing took
4. How many were correct

The same type of data is required for any IEP goal whether it is academic, social, communication, vocational, or behavioral in nature. The collection of these data is essential because without the data there is no legitimate source of information for future planning.

Your child should not have the same IEP goals year after year. If the data show that he/she is not progressing appropriately, the goals, services, instruction techniques or modifications need to be revised. If the ARC wants to change your child's IEP or placement, the decision should be supported by the data. Without justification, or supporting data, you should not feel you have to agree to any changes.

Although it works best when the ARC can come to agreement sometimes negotiations fail. Parents have the option to use their due process rights as discussed below.

Using Formal Complaints, Mediation and Due Process Hearings

As discussed in the previous section, keeping an "Objection List" will help prepare your case if you need to make a Formal Complaint, request Mediation or a Due Process Hearing. The decision to use any of these strategies should be carefully considered, since they will probably result in straining relationships with school staff.

Formal Complaints

Formal complaints are filed with the Kentucky Department of Education. Formal complaints are most effective when the ARC has agreed to provide services (and this is documented) but the services are not being provided. Once the complaint is received by KDE, an investigator is assigned to determine if your and your child's rights have been violated. The investigator will send you a letter acknowledging receipt of the complaint and establishing a timeline for the investigation.

The letter will ask you to meet with the school district to see if the issues can be informally resolved. You are not required to do this, but it may be beneficial and may resolve the issue. Once the investigation begins, you may be asked for additional information to support your complaint.

When the investigation is complete, they will issue findings of fact (what occurred) and conclusions of law (were any rights violated). If the finding is that a rights violation has occurred, the school district will be ordered to convene an ARC within a short period of time to develop a Corrective Action Plan (CAP). The CAP will describe changes or services that will be provided to rectify the rights violation.

Mediation

Mediation is appropriate when both the parent and the school district believe there is room for compromise. It may also be beneficial if your child needs a service that would be helpful, but not necessary in order to provide FAPE. Mediation must be requested and agreed upon by both the school district and the parent. Requests for mediation are made to the Kentucky Department of Education.

Dispute Resolution

After receiving a notice of parental request for a Due Process Hearing the school shall convene a Dispute Resolution meeting. This will allow parents to discuss their due process hearing request so that the school district has an opportunity to resolve the complaint. Parents can choose to waive this meeting or agree to use mediation instead.

Due Process Hearing

Due Process Hearing requests usually are filed when the ARC cannot reach consensus about placement or service provision. Due Process Hearing requests are filed with KDE. This request is for the assignment of a hearing officer to convene a Due Process Hearing. Most parents obtain the services of an attorney to file for a hearing. P&A strongly recommends that parents consult with an attorney when considering filing for a Due Process Hearing.

Additional information on Formal Complaints, Mediation, and Due Process Hearings is available in the P&A publication, "Partners in Advocacy," and from KDE. Call P&A at 1-800-372-2988 or KDE at 502-564-4970.

Conclusion

In conclusion, let's talk about what winning really is.

Winning is:

- Having your opinions listened to and justly considered.
- Seeing the shine of self-esteem in your child's eyes as he sets challenging goals and accomplishes them.
- Knowing your child is happy and is learning.
- Being part of a team that has worked together to ensure your child's success.

We hope you will use these and other strategies to be an effective negotiator for your child. To be effective, you must be a part of the ARC team. Each member of the team will make mistakes along the way, including you. Success will be determined by how the team learns from each mistake, overcomes it, and goes on. Try not to dwell on mistakes, yours or others. Assume the mistake was an accident. There is no more destructive element to teamwork than to incorrectly assume that the mistakes of others were actually intentional.

The Realities of Negotiation

Power

Some people you deal with have the authority to grant or withhold whatever it is you need. You want what they have the power to give.

Respect

Some people you are dealing with may have special training, knowledge or experience. You do not have to agree with them, but it may help to show respect for their opinions. Respect given is often returned. Disrespect is almost always returned.

Compromise

It is inevitable, a certainty and a necessity.

Rights

The law provides mechanisms to protect your rights, but only to the point where others are not violated.

Politics

It is easier to get a friend to give you something than an enemy. Try to find a common ground with the people from whom you want services. Give credit to the other person for thinking of the solution to your problem. Be polite and always thank the people who helped you. A note or letter of thanks can be worth its weight in gold.

Attitude

Assume that you will get what you want; be positive. Remember that what you are asking for is reasonable and logical. Focus on the issues and not on personalities.

Know that the advocates of Protection and Advocacy are always ready to help you. Feel free to call 1 (800) 372-2988 for advice.

Notes

Notes



Protection and Advocacy
100 Fair Oaks Lane, Third Floor
Frankfort, KY 40601
(502) 564-2967
(800) 372-2988
<http://www.kypa.net>

P&A is a federally mandated program that receives its funding from the Administration on Developmental Disabilities, the Center for Mental Health Services, and the Rehabilitation Services Administration