Negotiations
2013 I'm Determined Parent Summit
Art Stewart, Coordinator of Mediation Services

“The greatest misunderstanding about the negotiation process is that it is adversarial in nature. It is not designed for those with a trial and debate mentality. It is a problem solving process in which each party may look across the table and regard their counterparts as potential advocates.”

— Tom Colosi, addressing the National Defense University

**Barriers in negotiations**

- “My way or the highway” attitudes
- Lack of trust
- Information vacuums
- Structural impediments
- Spoilers
- Cultural and gender differences
- Communication problems
- Attempts to add boiler plate language after the agreement has been reached

**Our cognitive biases**

- Need for closure
- Anchoring
- Simplifying
- Misidentifying frequency and recency

**Effective tactics in negotiations**

- Leave your ego behind
- Demonstrate genuine interest
- Empowerment: make others feel valued by recognition and close listening
- Paraphrase what you are hearing, reframe
- Label the emotions being demonstrated
- Mirror what you have heard
- Ask open-ended questions
- Use silence effectively
- Understand what is motivating them
- Develop a variety of possible solutions and invite critiques
- Use facts, logical reasons and data to persuade
- Determine who the parents identify as an ally
- Demonstrate a commitment to a reasonable outcome
- Identify people’s fears
- Build trust over time
- Focus on actively shaping the process of negotiation
- Take time to debrief
• Have an observer give feedback

Important concepts
• Zone of Possible Agreement
• BATNA, WATNA
• Variability of Value

How does conflict affect people in negotiations?
• Collapse of time
• Assignment of blame

What are some school errors in negotiations?
• Not listening to or valuing parents’ input
• Assuming all parents want the same thing
• Getting drawn into an adversarial stance

What can a third party do to assist negotiations?
• Reduce tension
• Provide a methodical approach to issue identification and problem solving
• Control the way issues are approached

What are the benefits of mediation?
• You have control over the outcome
• The issues get resolved at the local level
• The mediator attends to preserving and strengthening relationships

• Enhance implementation and enforcement by objectively verifiable means

• Interests vs. Positions
• Separate the people from the problem
• Shifts happen

• Taking and defending extreme positions
• Reduction of listening and trust

• Assuming the program speaks for itself
• Assuming words mean the same to everyone
• Failing to make player shifts

• Enhance communication, focus on speakers making positive contributions
• Pay attention to timing
• Highlight the desirability of certain decision criteria

• Outcomes can be maximized
• Dynamics of meeting are changed
• New information always emerges
• Mediator may help people develop a realistic point of view

• Mediators have skills to break impasse
• Mediators encourage the consideration of the merits of an offer

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**What should you expect the mediator to do?**

• Conduct the meeting maintaining civility
• Provide momentum
• Keep the discussion focused

• Disallow argument
• Elicit parties' best thinking
Should you try mediation?

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IEP’s and Consensus

Sometimes good people have honest disagreements. In the context in which we work, designing and negotiating Individualized Educational Plans, it has been required by federal law for twenty-nine years that consensus be reached in order for any plan to be completed and put into action.

This requires all sorts of things to be successful. People need to be looking at the issues in the same way, facing in the same direction, so to speak. That means their vision of the student and what he requires needs to be fairly similar, if not identical. Their goals have to be similar. Their priorities need to be in the same range. Negotiation styles of the TEAM need to be compatible. A conflict may arise here just from the different roles and views of the time horizon, which participants have. Time can be an element in a different way. The time demands in any public school building can make it difficult to allow a meeting to run for a sufficient length to identify and resolve all of the issues. Part of what people are doing in a negotiation over an IEP is informing and influencing each other in order to reach a point where they may exchange promises and commitments. Their views of the student and what he requires may be vastly different. If so, then listening to new information, understanding it deeply and weighing it may not be able to occur in the designated time. If the history of past negotiations has been difficult, that may cast a long shadow over current efforts, making it difficult for people to create a sense of new possibilities for an exchange of views and some fresh thinking about the student and what he needs.

Some people are not comfortable in a negotiation setting, so this is an added consideration. Some people mistake negotiation for combat and consequently, will say things which disrupt working relationships. The relationship between parents and school administrators is an ongoing one. Divorce is not an option in this relationship, so some degree of collaboration is necessary for success.

In summary, for all sorts of personal and structural reasons, honest and well-meaning people may have honest disagreements in the process of negotiating educational plans.

When conflict arises

If there have been difficulties in the negotiation to the point where conflict has arisen, agreement will become so much harder to reach. Conflict visits us each in the same way and takes the same hostages. We listen to each other less: we already know what the other person will say. We take positions and defend them, as if there were only one possible good outcome. We move from a collaborative mode to a competitive one. Our feelings about the people, with whom we’re negotiating, change. We remember all the times we felt this way before. Current issues lose focus as history is now remembered as if it just happened. We trust each other less. We feel defensive because we fear we’ll lose something and because the issues have become personalized. We draw a line in the sand.
We only talk with people who agree with us and don’t regard any other points of view as legitimate. We get reactive and may do things which irritate each other.

I could go on, but you get the picture. Experiencing conflict is the same for each of us. What does it do for us as negotiators? Compare the familiar conditions above to the frame of mind and feeling state, which successful negotiators need. In order to examine, consider and value new ideas, negotiators need to be unguarded, at ease, without their defenses engaged. In order to inform and influence others, they need to be engaging, not competitive or combative. This begins to suggest how people ought to approach each other during negotiations to elicit these behaviors.

**How conflict shapes the role of the mediator**

It also suggests some of the tasks, which mediators may have when working with people in assisting their negotiations. How can we help the negotiators to get to where they need to be to make the negotiations successful? How do we help people focus in on the issues, which they have or can obtain the resources to improve? How do we help them to regain a definition of what they’re disagreeing about to move it from a dilemma to a problem responsive to specific actions? What actions would result in changed circumstances? What needs to be acknowledged, grieved and left behind? How can people generate an issue definition, which engages their best thinking and motivation to resolve? How can the mediator assist people in generating options, assessing them and reaching an agreement. This is what mediators are trained to do. They know what conflict takes out of people and have a proven and successful method for helping people work through it.

**Agreement at a mediated negotiation is likely**

The incidence of agreement for people who come to the table with a mediator to work on special education issues in this state is between 78-83% over the past several years. It could be higher if people brought contested issues to mediation earlier. I have been suggesting to administrators in Virginia for a couple of years that they substitute mediation for a series of IEP meetings when agreement is not easily reached. There is almost no instance in which I would not recommend that people try it. Because fact-finding and proof are not elements in the process, the time and cost to prepare and participate in a mediation are minimal. The Virginia Department of education pays independent, mediators trained to assist with special education issues to work with parents and administrators. They work not as advocates for anyone, but as neutrals. They’ll work with you in a confidential setting. The outcome is self determined, which means they won’t tell you what to do. If you arrive at an agreement, it will be constructed by the people closest to the student: the parent(s) and the school staff attending.

**Outdated approaches to negotiation**

When I was trained as a contract negotiator in a labor-management context, over thirty years ago, here was the conventional wisdom. Keep your cards close to your vest. Never let the other side know what you are thinking. Try to keep them off balance. A little intimidation is OK. Try to figure out the weakest point in their position and hammer away at it until you get what you want. If you get what you want, never let them know.

Is there anything wrong with this picture? What we’ve learned in negotiations and assisted negotiations in the last thirty years is that relationships are important. You need to maintain them because when you least feel like doing that is when you’ll most need them! Even labor and management negotiators have abandoned what I’ve identified as outdated conventional wisdom as unproductive and they did that many years ago.
A challenge to successful negotiations is when one participant at the table, by his presentation, has everyone sitting with their arms crossed, pushed away from the table, intently studying the pattern in the carpet. An indicator of successful negotiations is that people are engaged in the process and are more motivated to work on things than when they walked into the room. You want the latter and not the former. How you frame the questions to be considered has everything to do with how you engage people and motivate them to do their best thinking.

**When you choose to involve an attorney**

It isn’t necessary to have an attorney at mediation and they are specifically excluded from resolution sessions by IDEA 2004 unless the parent brings one. If you wish to consult with your attorney, don’t do it after an agreement has been reached at the table. If your attorney advises you to add new terms to the agreement, you will return to the table appearing not to have had the authority to negotiate and your credibility as a negotiator will have been weakened. If you plan to consult an attorney, I recommend that you do it before and, if necessary, during the negotiations, but not as a summary consultation. If you establish any parameters ahead of time, you’ll avoid the element of a last minute surprise, which will threaten a valid and simple agreement.

**An acknowledgement of the negotiating climate**

It is worth acknowledging that differences between people in educational contexts are often strongly emotional because of the high stakes involved: the growth and development of a child. People’s identities and belief systems are engaged in a larger way than they are in contests where identity does not figure so strongly. Our mediators are trained to work with people in these circumstances.

**Requesting a mediation**

How do you request a mediation? A request form is on our website, [http://www.doe.virginia.gov](http://www.doe.virginia.gov) >special education>resolving disputes>mediation, and may be downloaded and printed. A request must be jointly submitted by parent and a school administrator with your signatures, addresses and telephone numbers. When we receive it, I’ll assign a mediator who will contact you to schedule a meeting at your earliest convenience.
Overcoming Barriers: Strategies to Get Unstuck

Art Stewart, VDOE

- Remove barrier hypothetically. Ask what would happen if it were not a consideration.
- Review BATNA and WATNA.
- Ask how offer could be amended to make it more acceptable.
- Compare forced choices. Ask for a single step which would be an improvement.
- Review needs, criteria for a good agreement. Ask people to envision changed circumstances. Now ask them to describe the changes concretely.
- Raise possibilities hypothetically.
- Seek agreements of different strengths.
- Help parties to save face. Help them to integrate changed circumstances into their values and sense of utility.
- Remind them of their stated grief over the dilemma. It is the source of their motive to change.
- If no movement, change the topic.
- Drop some issues; agree to disagree.
- Work on likely issues of agreement first. It allows people to find their voice and method in negotiation before they confront the tougher issues.
- Seek common ground, overarching themes. An agreement on a focus or goal may represent an essential shift in parties’ relationship and perspective.
- Change the process. Change the format. Take a walk. Allowing yourself and others to move may invite fresh perspective and fresh thinking.
- Sometimes it is fear of change which stands in the way. Draw out the fear and help people to envision positive change.
- Encourage a switch of positions. How much do parties understand each other’s points of view?
- Encourage examination of extreme positions. Probe them to assess commitment, level of flexibility, what interests they serve?
- Be flexible about what constitutes an agreement. Parties may feel most comfortable with a trial or interim agreement which includes timelines and a means of evaluating success.
- Don’t take “no” for an answer.
Field markings of effective negotiators

Art Stewart, VDOE

Good negotiators:

- Establish positive regard
- Seek allies not adversaries
- Are confident
- Are good listeners
- Ask questions
- Are always open to new information and new possibilities
- Seek clarity
- Encourage others to think
- Are fully present rather than giving intermittent, partial attention
- Genuinely want to understand the others, their thinking, how they know what they know, what experiences they have had and how that affects them
- Don’t personalize issues
- Bring heart and mind to the table
- Have a high tolerance for uncertainty
- Don’t get defensive
- Approach the issues seriously, but with a playfulness of mind
- Provide respect and social support
- Provide momentum
- Seek to motivate
- Are aware of the process
- Use timing effectively
- Possess unusual patience
- Keep the messages positive
- Pay attention to the verbal and nonverbal messages
- Respond personally, not institutionally
- Seek solutions collaboratively
- Bring emotional maturity and emotional intelligence to the table
- Don’t stop at a “no” answer
- Focus the spotlight on the person making the most sense
- Help people evaluate their own thinking and values
- Don’t start thinking that there is only “one best way” to resolve things
- Know that the presenting issue is not always the driving issue
- Recognize that fears may be informing people
What should I think about approaching negotiations?

Less successful negotiators think that:

- If I ignore it, it may go away.
- Issues left alone tend to self-repair.
- There’s just one right way this should turn out.
- If the other side doesn’t know what we think or want, then we’re ahead.
- If we can satisfy our demands, we’ll get a good outcome.
- A little intimidation is OK.
- Keeping people off-balance is a good strategy.
- If we keep hitting their weak spot, we’ll get the best gain.
- Winning is the only thing.
- Negotiation is like a hard sell.

More successful negotiators think that:

- The best outcome meets most of both side’s needs.
- The negotiation is better informed if we can quickly understand each other’s needs and reasoning.
- If we can keep each other focused, unthreatened and not defensive during the negotiation, we’ll have a better process and outcome.
- A good relationship is crucial to effective negotiations and the most necessary when you least feel like maintaining it.
- Negotiation is chiefly about listening and trying to understand people.
- Negotiations occur when people openly inform and influence each other, motivating insight and commitment.

What are the opportunities in negotiation?

- Parties determine the outcome themselves.
- The outcome yield for both parties can be maximized.
- Parties can influence each other’s thinking in a way that leads to productive change.
- People may establish a relationship, which is a strong foundation for this and subsequent negotiations.
- Parties can evaluate not just their separate positions, but the full terrain of interests and concerns, in order to explore optimal solutions.

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