

Positive Outcomes for Advocates Using Principled Negotiation

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Project HEAL (Health, Education, Advocacy, and Law) – Special Education Case Example

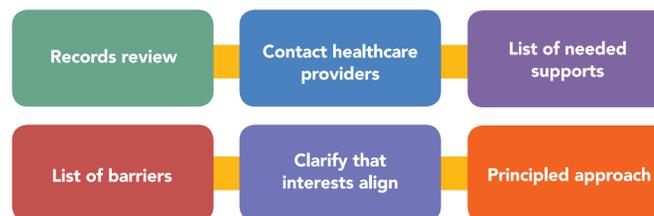
Background

- Cara is a 4-year-old child diagnosed with cerebral palsy, epilepsy, and severe intellectual disability.
- Cara had been hospitalized periodically for up to 25 days.
- Cara attended a public separate day school for children with disabilities; however, due to Cara's hospitalizations, she only attended school three days all last year.
- Cara's mom retained a Project HEAL attorney ("advocate") in order to ensure her child received an appropriate Individualized Education Program (IEP) and placement.
- Cara's mom alleged that last year, she was required to attend school with Cara to teach staff how to take care of her child, and that the school staff failed to properly feed, medicate, and educate her child as prescribed in Cara's medical orders and IEP.
- Cara's mom distrusts all school staff and is fearful of sending Cara back to school.



Negotiation Preparation

- The advocate reviewed Cara's medical records at Kennedy Krieger Institute to understand the full extent of Cara's medical conditions and educational needs.
- The advocate reviewed Cara's preschool IEP to determine what had been previously provided.
- The advocate contacted Cara's previous healthcare providers to identify their primary concerns for her successful return to school.
- The advocate created a preliminary list of what Cara would need to successfully return to school, and discussed the list with Cara's mom.
- By **preparing the client**, the advocate learned of numerous obstacles that might arise in the impending negotiation.
- Cara's mom expressed that she believed there was **poor communication** and **personality clashes** between her and the school staff.
- Cara's mom believed the school system had **hidden agendas**—specifically, that they would do or say anything to avoid over-exerting their staff or spending "frivolous dollars" on services for her child.
- Due to existing obstacles between the parties, this negotiation required the advocate to **repair relationships** in order to get the parties to **communicate effectively** to reach an agreement.
- The advocate acknowledged that if the parties continued to allow past issues to dominate the early stages of the negotiation, the parties would become **positional** and fail to see where their **interests align**. Utilizing this reasoning, the advocate used the **principled approach** to this negotiation, which is to **be soft on the people, hard on the problem**.



Adversarial Expectations

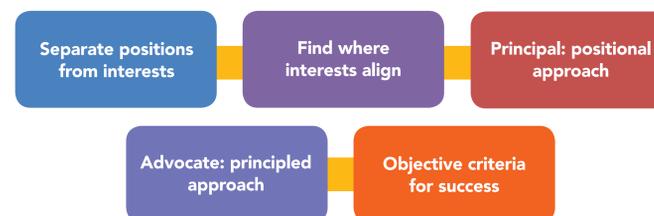
- Cara's mom indicated her ultimate goal was to obtain "every possible service Cara could benefit from."
- Cara's mom expected the advocate to be **insistent on her position**. The advocate tried to explain that this goal was not likely, which led Cara's mom to respond that Cara did not belong at that school.

- Cara's mom had created a **self-fulfilling prophecy** by thinking that if her **position** was not met, the negotiation would fail and Cara could not attend that school.
- Fearing that continued focus on this view would only hinder the negotiation, the advocate asked Cara's mom what she would want if the negotiation failed. Cara's mom said, "To keep Cara at home and have the IEP team recommend in-home services" (i.e., the services Cara was receiving when she was not hospitalized, but unable to attend school).
- The advocate acknowledged that although this was feasible, she believed giving Cara the opportunity to attend school would be more beneficial in the end.
- What the advocate and Cara's mom had identified was their **best alternative to a negotiated agreement (BATNA)**—the course of action taken by a party when current negotiations fail and the parties cannot reach an agreement.



Overcoming Obstacles to Reach an Agreement

- The school's principal reiterated the parties' viewpoints, but separated the **positions from the interests**.
- When addressing the "alleged training," the principal expressed that she could only assume the nurses merely sought to obtain additional information on how Cara best responds to feeding, and not that they were incapable of feeding Cara themselves.
- The principal then stated that through this inquiry, the nurses, like Cara's mom, just wanted to make sure Cara was comfortable and properly fed. Thus, the nurses and Cara's mom had the same interests.
- The principal suggested that instead of showing the nurses what to do, Cara's mom could write down her suggestions for successfully feeding Cara. That way, the nurses could refer to the document and implement the suggestions, if necessary.
- The advocate furthered this proposal by referring to documentation provided by Cara's Kennedy Krieger Institute healthcare providers, which explained how to best feed Cara. She stated it would be more appropriate if the nursing staff referred to the licensed professional's advice and training, in addition to Cara's mom's suggestions.
- While the principal **focused on interests**, she still stood by her **favorable position** by not wanting to admit any fault of her school staff. In comparison, the advocate demonstrated an enhanced **principled approach**, because she was **soft on the people, but hard on the problem** by not placing blame and suggesting direction be taken not from one party to another, but from third-party licensed specialists whose only concern was Cara's health and safety in school.
- The advocate insisted on using **objective criteria**, as the healthcare providers neither supported Cara's mom's position, nor the school's. Instead, they provided an objective source for the school nurses, or whoever needed assistance with keeping Cara healthy and safe at school.



Resolution

- After this matter appeared settled, the principal continued to go through the points outlined in the advocate's letter, but at every pause, Cara's mom interrupted and brought up the past. All parties became frustrated, so the advocate asked for a break.
- During the break, the advocate discussed the dichotomy of **creating versus claiming value** to Cara's mom. Cara's mom's interjections, in which she sought to gain the largest share of disputed goods by pointing out the school's past indiscretions, illustrated the **value-claiming view**. Here, the "goods" equated to the "required services" the school ought to provide for Cara. The advocate explained that using a **value-creating viewpoint** by increasing available resources to find joint gains would best serve Cara.
- Thus, the advocate had to juggle managing Cara's mom's "wants" and Cara's "needs," while striving to negotiate within the advocate's **comfort zone** (i.e., value creating viewpoint).



- After the advocate reassured Cara's mom that she had Cara's best **interests** at heart, she effectively negotiated on her behalf. As a result, the school agreed to provide all the services in the previous IEP plus 45 days with a one-on-one aide, while Cara transitioned into the school-day routine.
- A follow-up IEP meeting after 45 days would also be scheduled to address any necessary revisions to Cara's IEP, in an effort to ensure her health and safety.
- Although there were obstacles, the meeting ended with an agreement supported by all parties.

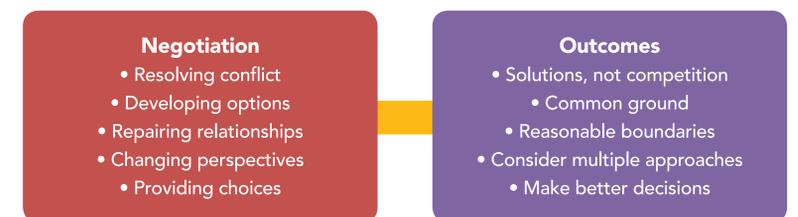
Conclusion: Principled Negotiation Style Benefits Advocates

The general goals of negotiations:

- resolving conflict
- repairing relationships
- providing choices for solutions
- developing options for mutual gains
- changing perspectives
- reaching an agreement

By invoking the **principled negotiation style** as opposed to the traditional, adversarial approach to negotiations, parties and advocates will:

- find solutions rather than competing;
- find common ground to work toward specific goals;
- set boundaries that are reasonable and acceptable to all;
- consider multiple approaches; and
- make better decisions.



The client's actual name has been changed.

Reference: Fisher, R., Ury, W., & Patton, B. (1991). *Getting to yes: Negotiating agreement without giving in*. New York, N.Y.: Penguin Books.



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