



Alternative Dispute Resolution

Working it out:
**Alternative
Dispute Resolution**

Brought to you by:
ECAC and the NC Department of Public Instruction,
Exceptional Children Division

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It may take
"two-to-tango"
but it only takes
one party to
declare a conflict.



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How Conflict is Created



Conflict occurs when one party decides that
the way things are going is not okay and
seeks change,
***but that change is not agreed to
by the other party.***



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IDEA '04

The Individuals with Disabilities Education
Improvement Act of 2004

"To ensure that all children with disabilities
have available to them a free
appropriate public education
that emphasizes special education and
related services designed to meet their
unique needs and prepare them for
*further education, employment and
independent living.*"



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To begin resolving conflict understand the difference between interests and positions.



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Interests

INTERESTS are the real underlying needs that we want to address.



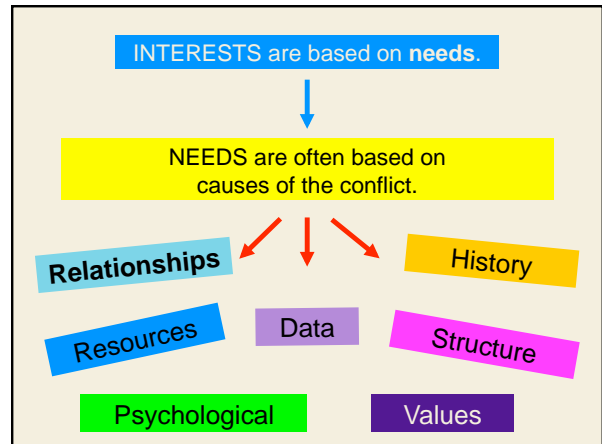
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Positions

Positions are the specific solutions (sometimes demands) that we propose to get our interests met.




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Conflict may happen along the way ...

- when there is confusion or a misunderstanding of the roles and responsibilities;
- when effective communication is lacking; or
- when there is a genuine fundamental disagreement about services and programs



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To resolve conflict, be willing to move away from a firmly held position and explore other options that meet your needs.



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Begin simply and move up...


- ✓ Identify the problem and underlying causes.
- ✓ Identify acceptable ideas for solution(s).
- ✓ Communicate your concerns and ideas in writing to the right person(s):
 - Your child's teacher;
 - Your child's IEP Team;
 - Your child's Principal; and
 - Your Local Special Education Director (EC Director).



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If you get stuck, ask.....

- Do we have enough data to make a good decision?
- What other data or information do we need?
 - Have you shared all available information with the Team **in writing**? (Diagnosis, educational impacts, changes, reports, etc.)
- Who else should be included in this discussion?
 - Consultants, last year's teacher(s), service providers, central office personnel, etc.



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If you get stuck..... 

- Ask for a trial period if you would like to try something new that the other IEP Team members are not willing to commit to at this time.
- Try to identify the reasons for the “refusal” or resistance
 - Can the Team address that barrier?
- Make sure discussion is accurately and thoroughly documented in writing
- Remember, you can have another meeting when needed.

Look before you leap!

Get your facts straight ***before*** you take an action!

- What else do you need to know?
- How and where will you find that information?



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Before you take formal steps....

- Speak to the appropriate person(s) about your concerns:
 - Your child, if appropriate
 - Your child’s Teacher
 - Related Service Personnel
 - IEP Team
 - Transportation officials
 - Principal or Assistant Principal
 - Local Special Education Program Director
- Put ***all*** requests in writing and keep a copy for your records



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Find out WHO has the POWER



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And Who can say
YES?

- Classroom level.
- School Building level.
- School District level.
- State Educational Agency level.



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Learn how the **SYSTEM** Operates
(The school system)




- ✓ READ the school handbook!
- ✓ Find out who is in charge. (Of what?)
- ✓ What is the “chain of command?”
- ✓ What are your options for resolving disputes or disagreements?

The goal is to resolve issues at the lowest level first and work your “way up” as necessary

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Reality Check!



- Some people are just more difficult to work with than others.
- Take the high road - and respectfully but effectively work around them!

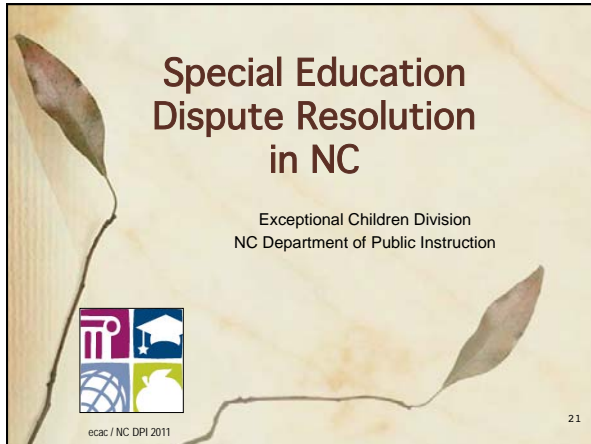
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Steps for success...

- Look for solutions rather than placing blame
- Acknowledge interests and ask the questions that will help identify any underlying barriers
- Stay positive and “future focused”


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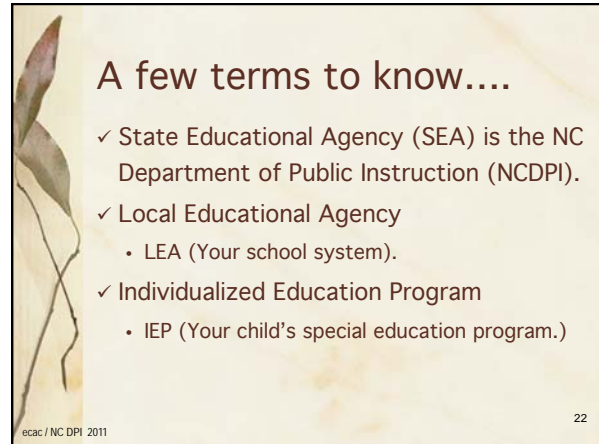


Special Education Dispute Resolution in NC

Exceptional Children Division
NC Department of Public Instruction



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A few terms to know....

- ✓ State Educational Agency (SEA) is the NC Department of Public Instruction (NCDPI).
- ✓ Local Educational Agency
 - LEA (Your school system).
- ✓ Individualized Education Program
 - IEP (Your child's special education program.)

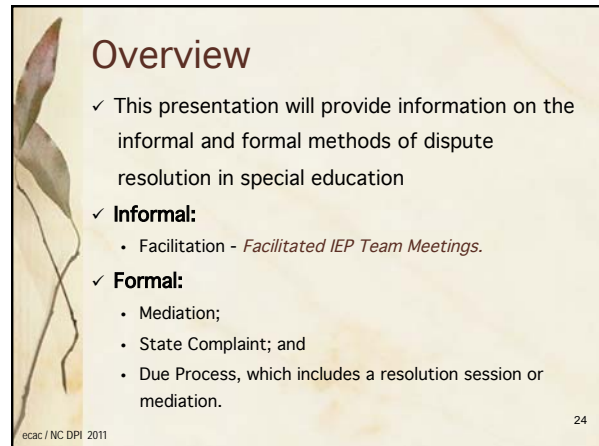
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Consultants for Dispute Resolution in Special Education

- ✓ Pollye Pruitt, 919.807.4024 (complaints & facilitation)
- ✓ Kate Neale, 919.807.3979 (complaints & mediation)
- ✓ Gay Lytton, 919.807.4059 (complaints)
- ✓ Lynn Smith, 919.807.3978 (complaints and due process)

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Overview

- ✓ This presentation will provide information on the informal and formal methods of dispute resolution in special education
- ✓ **Informal:**
 - Facilitation - *Facilitated IEP Team Meetings.*
- ✓ **Formal:**
 - Mediation;
 - State Complaint; and
 - Due Process, which includes a resolution session or mediation.

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What is Facilitation? 

- ✓ Facilitation is the process of helping the IEP team complete a task, solve a problem, and come to agreement to the mutual satisfaction of the participants. There does not need to be a conflict between the parties.
- ✓ The program in NC is also to model an effective meeting process for IEP Teams.


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When/Why would I want someone to facilitate the meeting?

- ✓ School personnel want to focus on the concerns and content without also having to be in charge of the meeting process.
- ✓ Parents want to ensure they will be given the opportunity to participate.
- ✓ Communication is tense.
- ✓ Relationships are strained.



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Who are the facilitators? 

- ✓ Impartial professionals trained in effective meeting processes, effective communication, and special education laws.
- ✓ Initial training 40 hours; continuing ed. 15 hrs./yr
- ✓ Contractors with NCDPI, not employees.
- ✓ Not advocates or IEP Team members.
- ✓ Not the decision-makers.

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What is the role of the Facilitator?

To:


- ✓ Plan and design the meeting process, in partnership with the parties.
- ✓ Set a positive and welcoming tone for the meeting.
- ✓ Clarify the purpose of the meeting, the ground rules, the desired outcomes, the process to be used, and the roles of each person.
- ✓ Keep the discussion focused on the child.
- ✓ Draw out opinions and encourage full participation from all IEP team members.
- ✓ Monitor the pace of the meeting.
- ✓ Maintain neutrality, reflecting content and process back to the group.



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What are the Benefits of Facilitation?



- ✓ Focus remains on the student.
- ✓ Team members control the outcome.
- ✓ Positive working relationships between school representatives and the student's parents are maintained or improved.
- ✓ Team members are able to discuss facts, feelings, and desired outcomes.
- ✓ Opportunities for creative, win-win solutions are possible.
- ✓ No cost for either party.


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Where will the meeting be held?

- ✓ Usually at the child's school.
- ✓ Sometimes at a neutral location.

How do I request facilitation?

- ✓ Parent or LEA/school personnel send signed facilitation request form to Facilitation Coordinator.



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Mediation

The mediation process is specifically designed to settle disputes, e.g. when an IEP Team cannot come to consensus.



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Mediation Process



- ✓ Voluntary, private, and confidential.
- ✓ Process where both the parents and the school have control and ownership over the settlement; nothing is decided unless the parties agree to it.

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Why/When would I request Mediation? 

- ✓ When IEP Team meetings do not resolve disagreements about the child's identification, evaluation, programming or educational placement.
- ✓ Parties are unable to resolve the dispute at the local level.
- ✓ Discussions are ending with the parties feeling angry and frustrated.
- ✓ Discussions break down and the parties stop listening to one another. 

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Why/When would I request Mediation?


- ✓ When the issues are left unresolved, they can escalate and damage working relationships.
- ✓ Mediation may assist the parties in resolving the dispute before further misunderstandings occur.



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Who are the Mediators?

- ✓ Impartial third-party professionals who lead the mediation process.
- ✓ Training involves 40 or more hours, includes observations and co-mediating, and 15 additional hours each school year.
- ✓ Contractors with NCDPI, not employees.




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What is the role of the mediator?

To:

- ✓ Identify the issues;
- ✓ Ensure full discussion from both parties; and
- ✓ Assist in problem-solving to reach resolution.



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What are the benefits of mediation?


- ✓ Provides an impartial new face, a new perspective, a new avenue of communication, and a means to resolve the dispute quickly without escalation.
- ✓ Can restore lost communication links, empower the parties, and encourage reasonable discussions so that the dispute can be resolved fairly and equitably.



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What are the benefits of mediation?


- ✓ Concentrates on satisfying the interests of each party.
- ✓ Provides a win-win resolution for each party and the student.
- ✓ Fast with a high level of success.
- ✓ Less time consuming than other actions, e.g. the State complaint process and due process.
- ✓ Can help to maintain or restore relationships.
- ✓ No cost to the parties.



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Where will the mediation be held?



- ✓ Usually at the child's school.
- ✓ Sometimes at a neutral location.





How can I request a mediator?

- ✓ Parent or LEA/school personnel send signed mediation request form to the Mediation Coordinator.

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<p>State Complaint</p> <ol style="list-style-type: none"> 1. Any individual or organization may file. 3. Allegations of procedural violations of IDEA, Article 9 of the NC General Statutes 115C, and/or Policies 4. May resolve by meeting together or via mediation. 5. Must file within one calendar year of alleged violation. 	<p>Due Process</p> <ol style="list-style-type: none"> 1. Parents of a child, an adult student (age 18 or older), or an LEA may file. 3. Disputes about the identification, evaluation, educational placement of a child with a disability, FAPE, or a manifestation determination. 4. Must try to resolve in a resolution meeting or mediation. 7. Must file within one calendar year of disputed activity. 
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<p>State Complaint</p> <p>5. Sixty (60) calendar days for investigation to be completed and report sent to you and the LEA.</p> <p>7. Decision made by NCDPI staff after investigation of evidence.</p> <p>8. Decision is final and cannot be appealed.</p> 	<p>Due Process</p> <p>5. Resolution period 30 days if making progress. 45 days for hearing and decision. (Hearing officer can grant an extension of the timeline.)</p> <p>7. Decision by impartial Administrative Law Judge (ALJ) after a hearing.</p> <p>9. Decision is final unless appealed.</p> 
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“Avoid fight or flight, talk through differences.”

Stephen Covey, psychologist and business author

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Be Prepared to Participate!


- ✓ Written list of issues to discuss and questions to ask.
- ✓ Keep your records organized.
- ✓ Listen carefully and consider all possible solutions and options.



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Watch your emotional pressure gauge

- ✓ Focus positively on your goals.
- ✓ Keep negative thoughts of past or present issues from creeping into your mind.
- ✓ Be positive about succeeding.
- ✓ Be assertive, speak up for what you believe in *directly, honestly and appropriately.*



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Ask yourself....

Why do you want what you want?



This will help you get a better understanding of what your real goals are and could open up possibilities of even better ideas.

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It is hard to shake hands with a clenched fist.

Make sure you are prepared and have the knowledge and skills to be part of the solution for your child!

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ecac, the exceptional children's assistance center, is a private non-profit parent organization committed to improving the lives and education of ALL children through a *special emphasis on children with disabilities.*



As North Carolina's full-service Parent, Training, Information and Resource Center, **ecac** assists more than 50,000 parents, families, educators and other professionals each year.

All ecac services for parents and families are provided at no charge!

1-800-962-6817
www.ecac-parentcenter.org

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