

Successful!

Resolution Meetings
under IDEIA

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Workshop Objectives

To develop the skills necessary
to assure that resolution
meetings achieve their
intended purpose of
early resolution of conflict.

IDEA: Foundation of IEP Teams

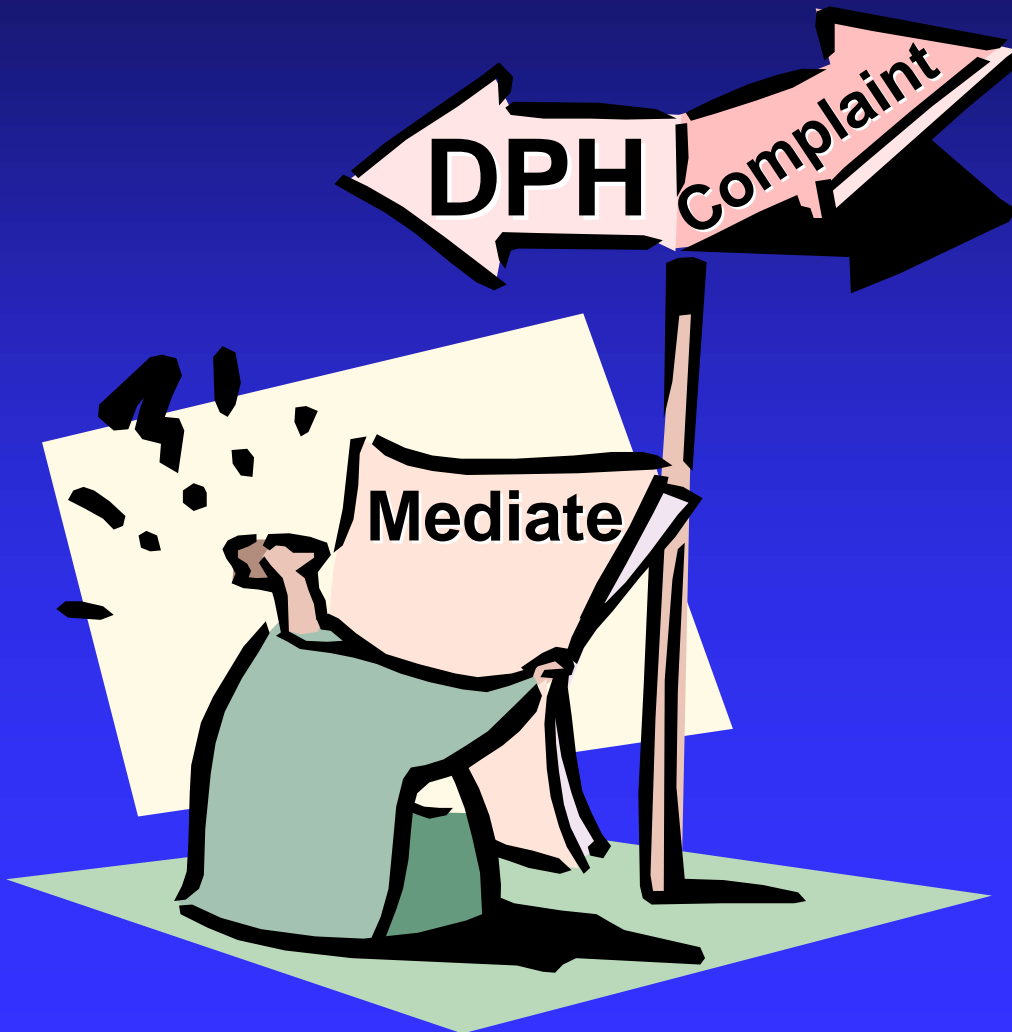
requires public schools to make available
to all eligible children:

a free appropriate public education
in the least restrictive environment
appropriate to their individual needs.

FAPE LRE IEP

Everything follows from these.

When IEP team participants have differences, what can they do?



Formal Options (under law)

- Due Process Hearings*
- Formal Complaints
- Mediations

Note that a DPH can no longer be requested before a:

“RESOLUTION MEETING”

DPHs cost school districts
an average of more than
\$50,000 each in legal fees.

School districts nationwide
spend about \$90 million a
year in conflict resolution.



Examples of DPH Issues:

Whether the school district:

1. provided **timely and appropriate** eligibility determination
2. provided a free, **appropriate** public education
3. **failed to implement** student's IEP services
4. denied parent right to participate as **equal member**
5. failed to provide FAPE in **least restrictive** environment
6. **failed to develop** a transition plan prior to school year
7. denied FAPE by failing to implement **substantial portions** of IEP

Whether student:

8. is **entitled** to an independent evaluation
9. was **eligible** to receive extended school year services
10. is **entitled** to residential placement

Implications

FACT: DPHs are expensive in time, stress, money, and relationships. Cost about **\$50,000** each in legal costs.

FACT: typically ~75% of requests don't go to hearings; parents have about a 20% chance of winning a DPH, but costs to districts remain very high either way.

QUESTIONS: Who wins? Who loses?
Who suffers?

Are there any better ways?

ADR: the better ways (alternative dispute resolution)

mediation

resolution meetings

prevention

(not mutually exclusive)

The Reauthorization of 2004: IDEIA, effective July 1, 2005

20 U.S.C. Sec. 1415 - Procedural Safeguards Key Elements Relating to Conflict Resolution

(e) (1) disentangles mediation from DPHs

(f) (1) (B) (i) mandates resolution meetings

(i) (3) sanctions frivolous legal action

The Reauthorization - Procedural Safeguards

(e) (1) disentangles mediation from DPHs: the requirement is removed for mediation to be available whenever a due process hearing is requested, making it available now whenever it is requested as a means of resolving disputes.

The Reauthorization - Procedural Safeguards

(i)(3) frivolous legal action:

school districts may recover attorneys' fees from the parent and the attorney of a parent who files a legal action that is deemed to be without foundation.

The Reauthorization - Procedural Safeguards

(f) (1) (B) (i) **resolution meetings:**

“Prior to the opportunity for an impartial due process hearing...the local education agency shall convene a meeting with the parents” and the relevant members of the IEP Team within 15 days of the complaint, without attorneys (unless the parents bring one) to discuss the complaint and give the agency an opportunity to resolve it, unless both sides waive the right to such a meeting or agree to mediation. If not resolved within 30 days of receipt of the complaint, due process hearing timelines commence.

Oh, and another thing....

(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), **the parties shall execute a legally binding agreement**

- 1) Do they know **how** to write a well-conceived, comprehensive, and lasting settlement agreement?
- 2) Do they know how to save attorney costs by writing it well before submitting it for legal review?

Oh, and before I forget....

(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), **a party may void such agreement within 3 business days** of the agreement's execution.

- 1) Imagine a day of meetings, a signed agreement, and a party decides to nullify!
- 2) Do we understand how and why this can happen?
- 3) Do we recognize the risks involved if that does happen?
- 4) Do we know how to prevent this from happening?

Planning the Meeting

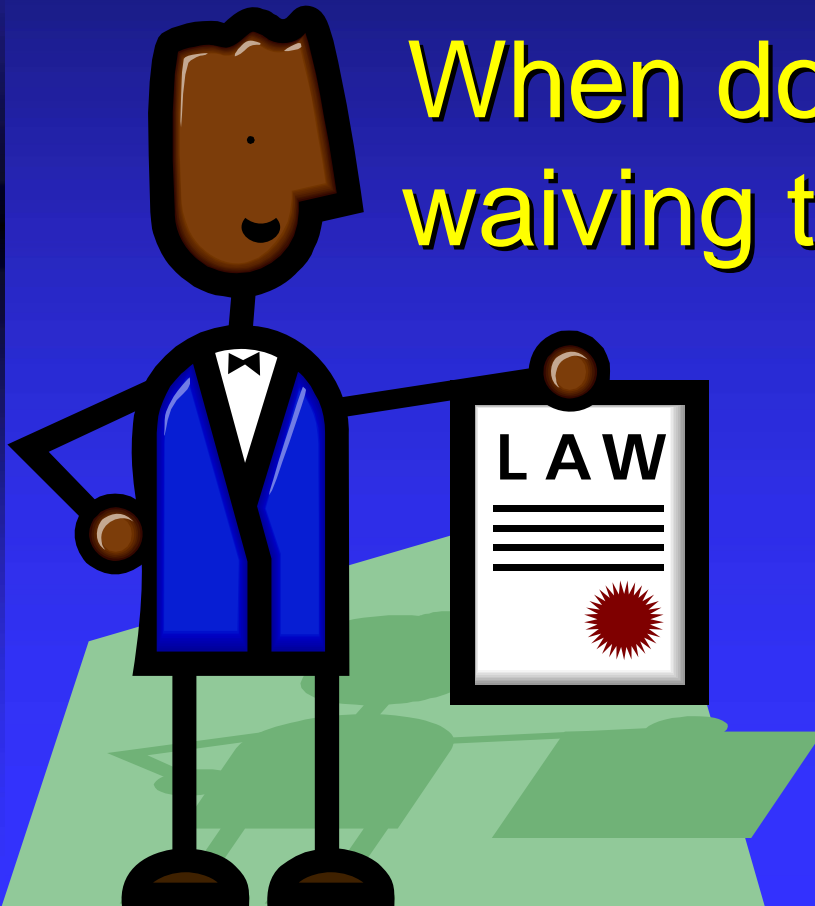
Whether
When
Where
Who



Planning the Meeting

Whether

When does the law allow waiving the requirement?



The Reauthorization - Procedural Safeguards

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Why might you choose to waive your right?

- 1) Ignorance and “culture.”
- 2) Want a legal precedent.
- 3) Mediation adds a neutral 3rd party.
- 4) An agreement to mediate may be an outcome of the resolution meeting.
- 5) Others?

Planning the Meeting

When and Where

Any recommendations?



When and Where: Recommendations

Conducive to success:

1. mutually agreed
2. mutually convenient
3. comfortable
4. free of distractions

Planning the Meeting

Who will participate?

What does the law require?



The Reauthorization - Procedural Safeguards

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Including Attorneys: When We Should

- 1) When the parents insist.
- 2) When the issues really hinge on points of law.
- 3) When the expense and mood can be justified.

Note: before the meeting: advisory role, after the meeting: right of review.

Good and Bad Meetings



Think of meetings you have attended that you really enjoyed.

What made them effective? What did you like about them?



Good and Bad Meetings

Think of any meetings you have attended that you dreaded.



What made them ineffective and what did you not like about them?

Good and Bad Meetings

How can we use these insights to make our resolution meetings the best they can be?



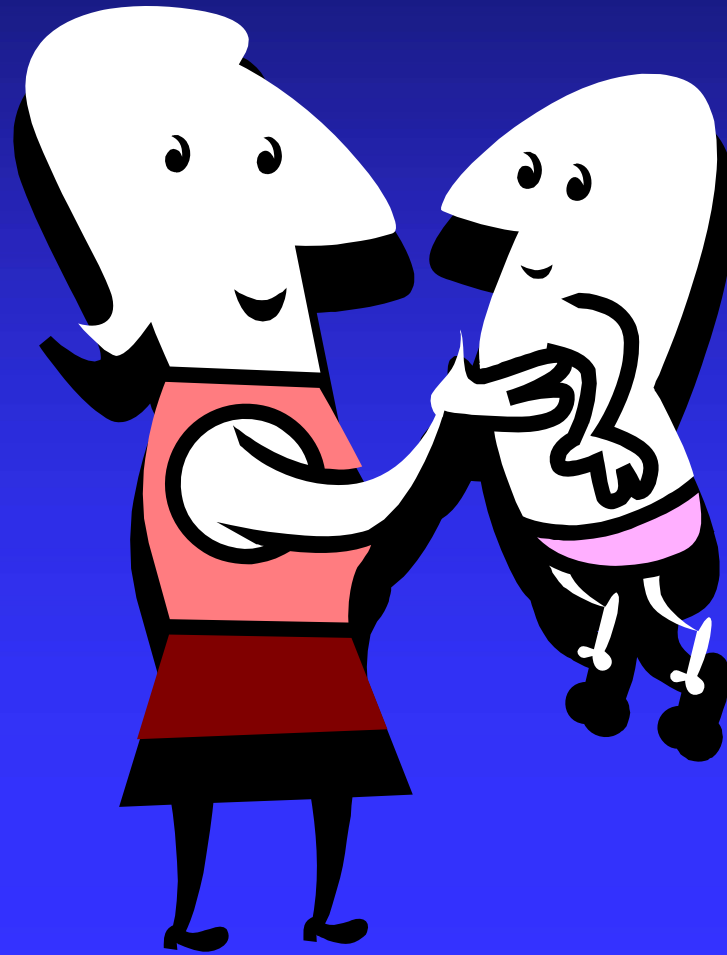
Characteristics of Ideal Meetings

1. pre-conferencing occurs to assure adequate preparation by all participants



Characteristics of Ideal Meetings

2. child care has been arranged in advance



Characteristics of Ideal Meetings

3. all participants are introduced to each other



Characteristics of Ideal Meetings

4. a written agenda is visible to all participants, on paper or posted



Characteristics of Ideal Meetings

5. round table seating in a comfortable setting, free from noise and distractions



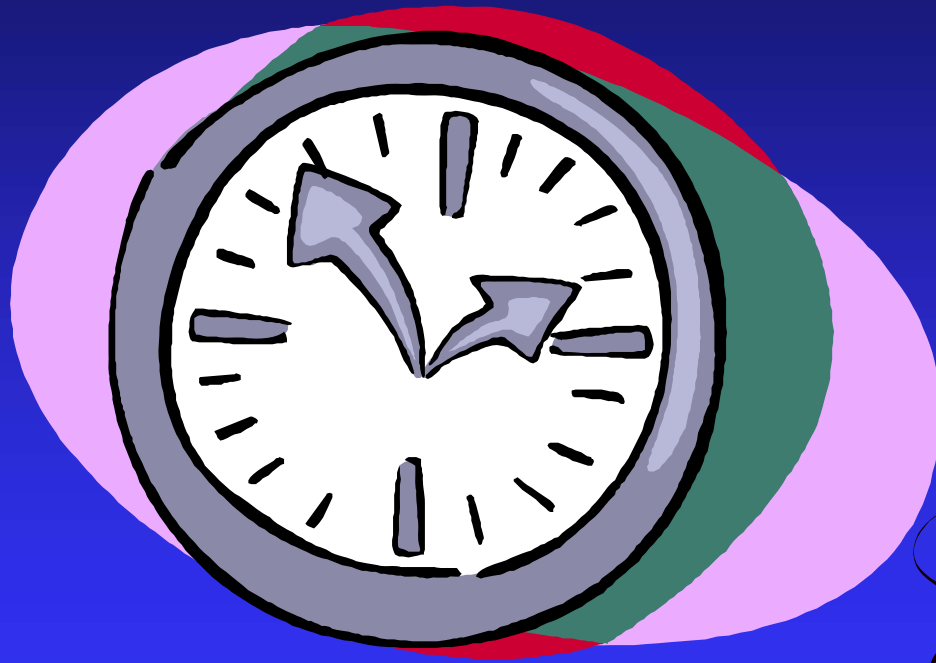
Characteristics of Ideal Meetings

6. refreshments are provided to promote comfort and a welcoming atmosphere



Characteristics of Ideal Meetings

7. each member is time conscious



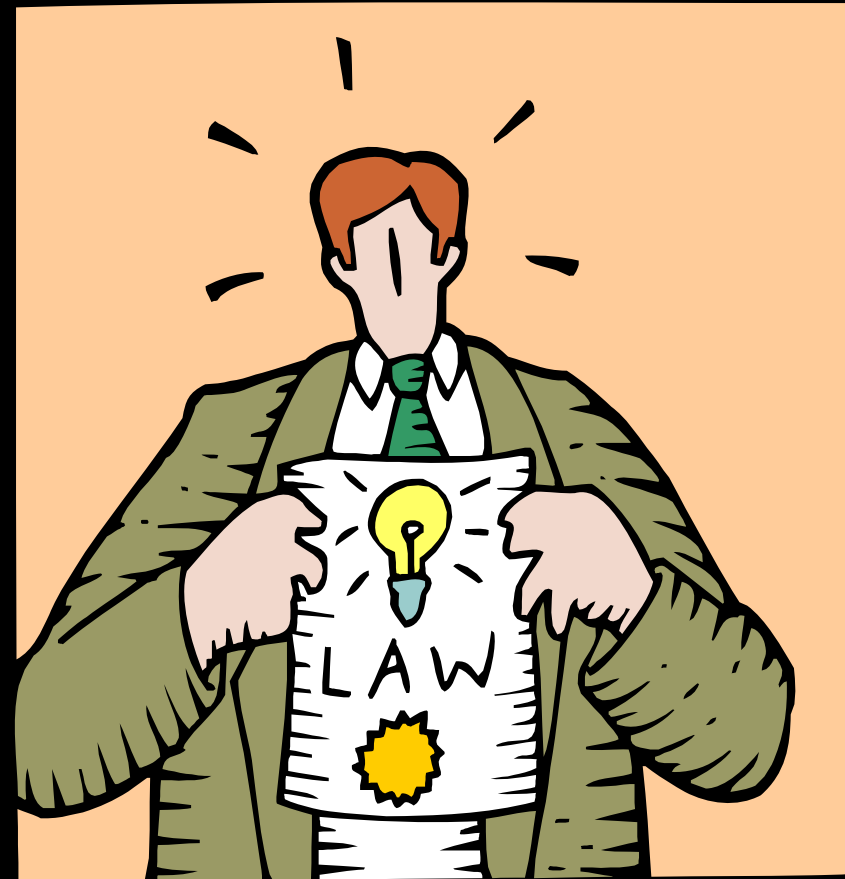
Characteristics of Ideal Meetings

8. the chairperson budgets the available time and politely redirects participants who wander



Characteristics of Ideal Meetings

9. ground rules are agreed (re. civility, interrupting, leaving, phones, etc.)



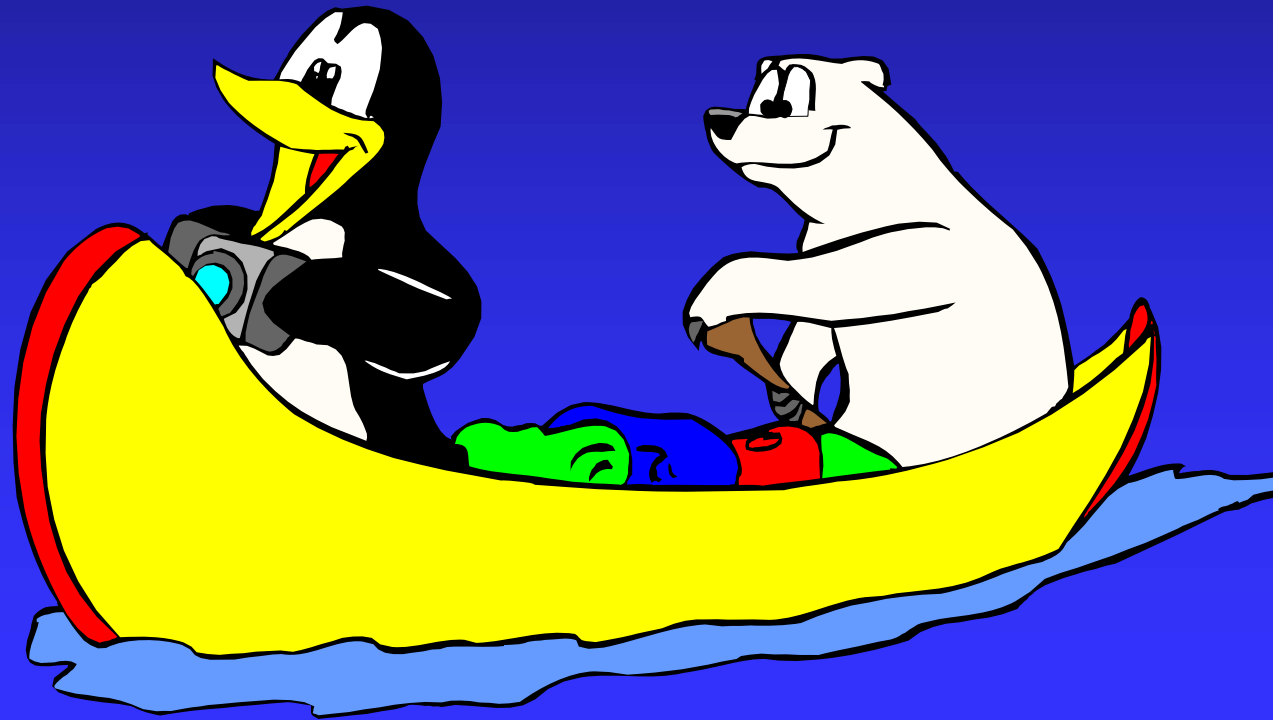
Characteristics of Ideal Meetings

10. an atmosphere of mutual respect exists



Characteristics of Ideal Meetings

11. participants share in and contribute to a clear and common purpose



Characteristics of Ideal Meetings

12. breaks are taken as needed



Characteristics of Ideal Meetings

13. the outcome of the meeting is restated at the end for clarity and any necessary correction



Characteristics of Ideal Meetings

14. the meeting ends on a positive note, and participants are thanked for their time and contributions



The Process

How will this team make
its decisions???

~~Authority figure?~~

~~Vote?~~

Collaboration leading to
consensus.

What Helps People Reach Consensus?

1. Remembering common goals
2. Remaining calm and respectful
3. Listening
4. Communicating openly
5. Exploring underlying interests
6. Avoiding demonizing
7. Trusting the process

Questions that Probe for underlying Interests

*If you are trying to change their minds,
the starting point is to find out where their minds are now.*

Fisher and Ury

You must have good reasons - tell us some of them.

Help me understand where you're coming from.

Tell us more about that; how will that address the issue?

What do you see happening if we go that route?

How might that idea be helpful?

What benefits do you think we could expect if we did that?

What harm would come if we tried it *his* way?

How can we convince them your idea is best?

Shared Interests

to achieve the best interests of the child, and

to be heard

to make good use of time

to be understood

to be treated fairly

to be respected

to be productive

to have a voice

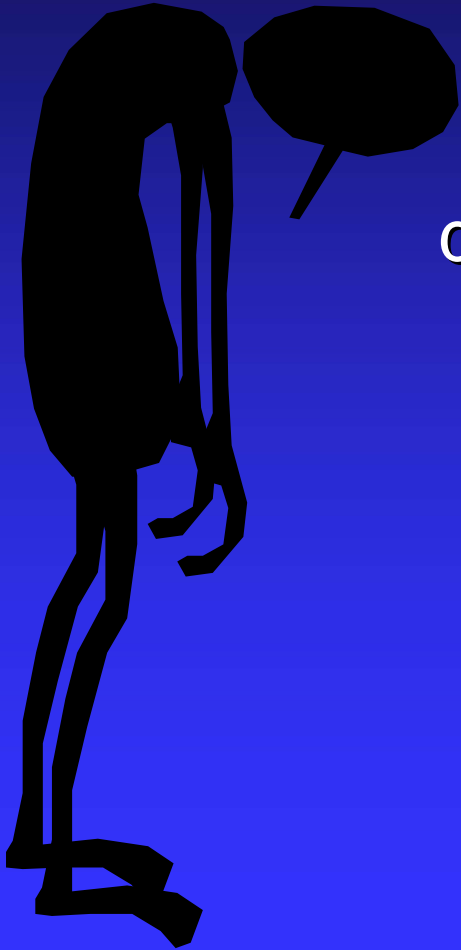
to feel safe and comfortable

NB: avoiding a shared risk is a shared interest

wasted time, damaged future relationships,
escalating tensions, due process hearings, etc.

Two Defining Hallmarks of Conflict

1) Negative Feelings



hurt, fear, disrespected,
mistrust, overwhelmed,
disappointed, ashamed, grief,
injustice, anger...



Two Defining Hallmarks of Conflict

2) Oppositional Stance

self/other, us/them, friend/enemy, parent/school

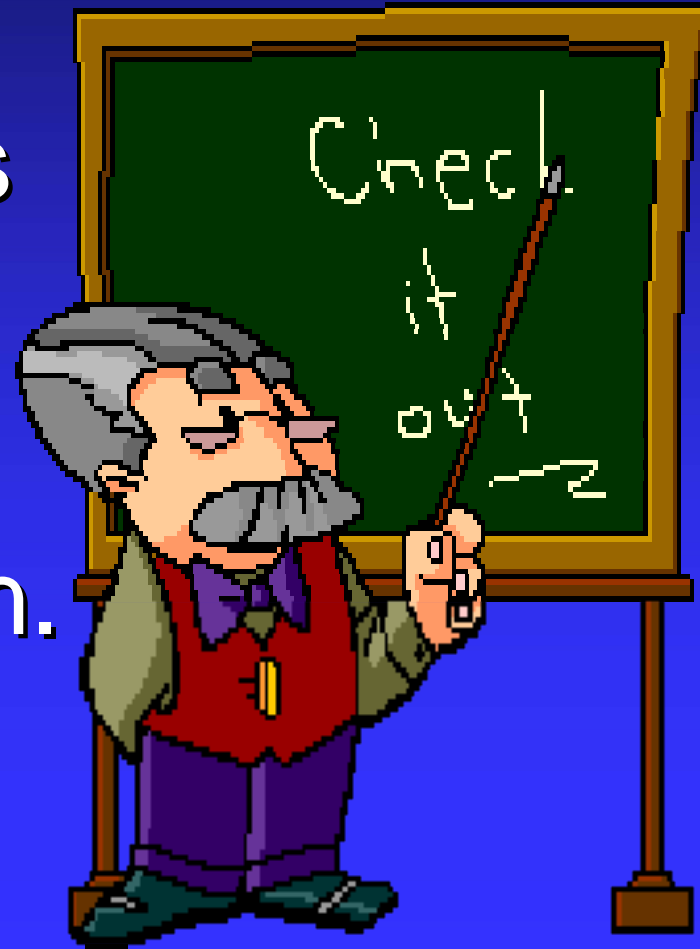


versus

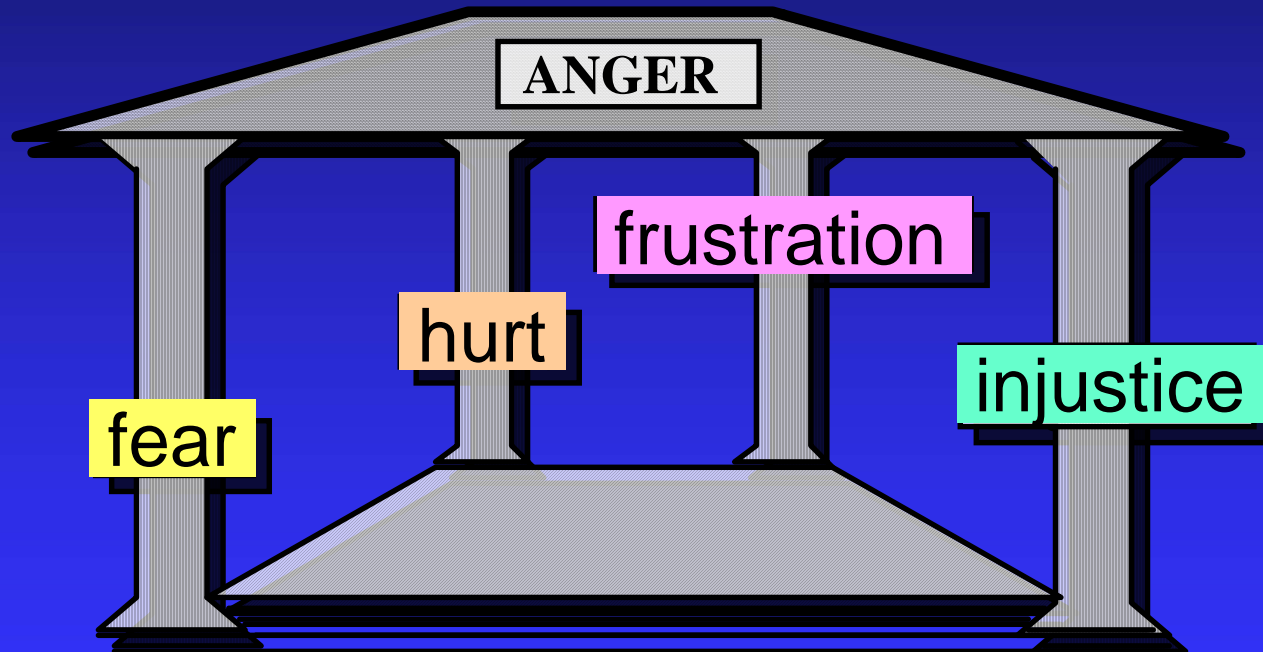
us, team, togetherness, collaboration, synergy

The point:

We need to
resolve bad feelings
and
restore collaboration.



THE FOUR PILLARS that hold up the roof of



So what?

Expressing anger tends to:

- 1) mask the underlying feelings
- 2) leave the underlying feelings unresolved
- 3) promote distance and defensiveness in others
- 4) hinder productive problem solving



Don't Get Fooled by Anger



Alternatives

recognize anger as a secondary emotion,
explore underlying feelings;
avoid demonizing; respond versus react.

And remember:

However obnoxious
someone is on the surface,
underneath that somewhere
they're hurting,
and underneath *that* is
a worthwhile person.



Turning Conflict into Cooperation

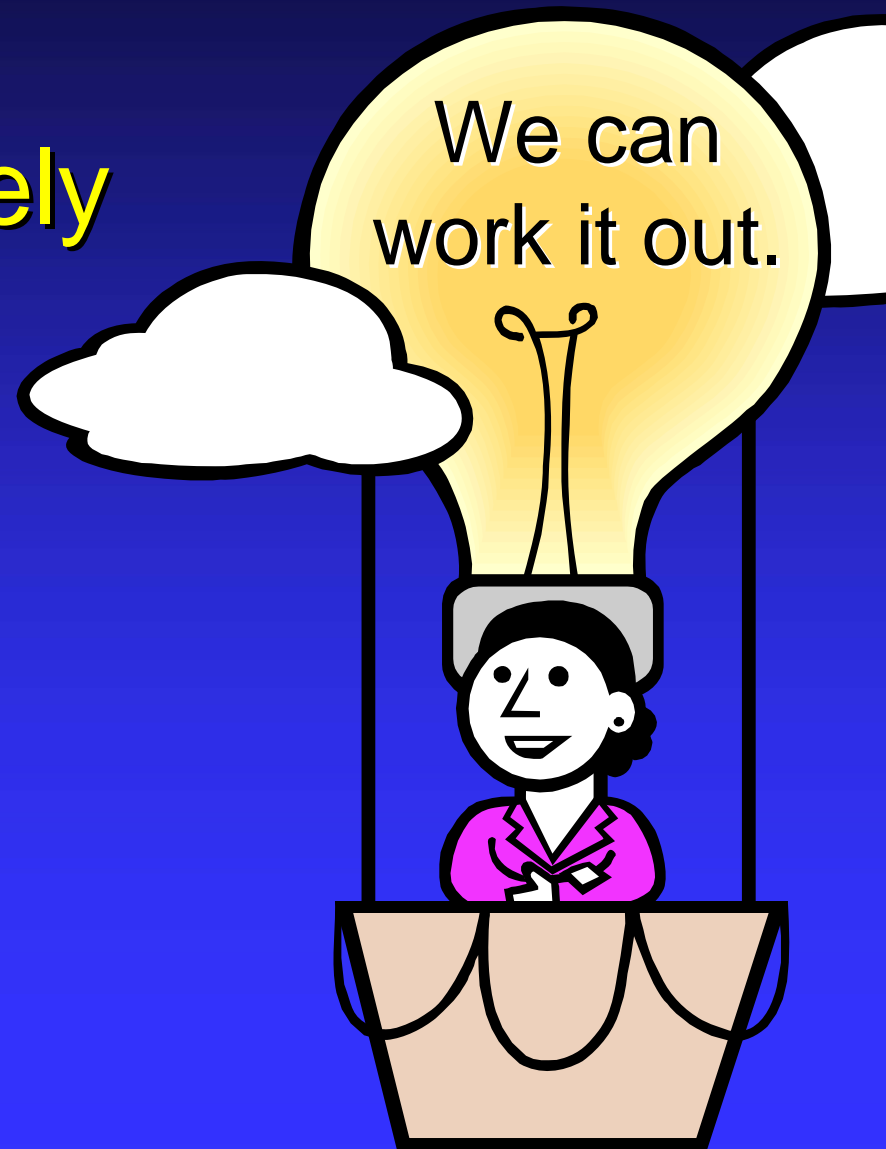
KEYS TO SUCCESS

1) relax and breathe



Turning Conflict into Cooperation

2) think positively



Turning Conflict into Cooperation

3) communicate effectively



4) trust the process

together we *can* work it out

Impasse

1. Momentary

Settlement is still possible.

Counters:

1. Take a break.
2. Confess and invite suggestions.
3. Caucus and/or change the people combinations.
4. Retrace progress and agreements made.
5. Ask for clear statements of what has you all stuck.
6. Review benefits of success and costs of failure.
7. Play with the “time shape” of a proposal.
8. Have ally or attorney (in private!) forecast strengths and weaknesses if this proceeds to hearing.

Impasse

2. Fatal

Settlement is not possible today.

Counters:

1. Agree to reconvene with more information or different participants.
2. Narrow the issues in dispute – put the agreements that have been made into writing.
3. Make agreements about the disagreements: where will you go from here? – mediation, independent expertise, further testing, settlement conference, arbitration (advisory or binding)... or due process hearing? And how is that in best interests of child?

The Durable Agreement

Penny for your thoughts???

We hereby agree that Johnny will receive additional attention as needed, and his parents will be treated with appropriate respect by staff of the Blissful County Public Schools.

The Durable Agreement

What about:

We the undersigned, as a means of resolving dissatisfactions and concerns, and avoiding the need for further conflict resolution action, hereby agree to the following terms:

- 1) Johnny will receive tutoring two hours per week in any areas of academic deficiency as indicated by: 1) a report card grade of 75% or less; 2) any of his teacher's reporting in writing to the parents their observations of Johnny's performance significantly below that of peers; or 3) standardized test scores more than a standard deviation below the mean. Unless otherwise agreed, such tutoring will occur after school, Mondays and Wednesdays, from 3-4, and will be provided by a competent person mutually selected by parents and school staff; if such selection cannot be made, then Asst. Principal Mrs. Green will decide on their behalf.
- 2) Mrs. Smith will apologize in writing to Johnny's parents for remarks made on November 18th, when she allegedly referred to Johnny as "lazy and just letting his barrio attitude block his performance."
- 3) In the event that disputes arise over the fulfillment of these terms of agreement, and agreement cannot be reached through timely and respectful discussion within 10 calendar days of alleged violation, the parties agree to mediation as a first recourse; only after all reasonable efforts to resolve areas of concern have been tried without success would legal action be pursued.
- 4) The parties have the right, under law, to review of the terms of these agreements by any additional party and within 3 days may nullify this agreement with or without reason; at the same time, the parties recognize the potential costs of such a decision and agree to first return to continue this conference in the event of reservations about the terms hereby agreed. If no objections are made within three calendar days, then the terms of this agreement as here stated will be accepted as a full and final settlement of the issues in dispute.

Signed _____ date: _____

Signed _____ date: _____

The Durable Agreement

Who?

What?

When?

Where?

How?

What if?

Include a conflict resolution clause.