

Slide 1

**ADVOCACY STYLES**



Infe

Advocacy Styles: Adversarial Vs. Aggressive and what's the difference?


Slide 2

## Before We Start

This is an interactive presentation. Some participants like to talk directly to Brice While others may want to write their questions to the moderator. Either way is fine. Remember the presentation is being recorded. The final presentation will be placed on the website after being edited. We will only identify you in the final recording by first name

- **Look the top of your screen to find a menu that says “Mood”** Click on the menu and send yes to the screen when if you find it.
- **Under the Mood Menu you can also select “Raise your hand”**  
**When you raise your hand the moderator will unmute your mic. If for some reason (noise in the back etc.) there is interference with your mic the moderator will mute you – But you can still send the question in the chat window instead. To take your hand down – select “I’m Fine”**
- **Does anyone have a question (Yes, No, Raise Hand?)**

Slide 3

About the Author


**Brice** is a special education advocate who works with parents across the country. He has practiced, taught and written about special education advocacy since 1995. His articles have appeared in *The Beacon Journal*, published by Harbor House Law Press, *Autism Asperger's Digest*, published by Future Horizons, Inc., *Family Focus*, the quarterly newsletter published by Families for Russian and Ukrainian Adoption (FRUA), and various articles appearing at [www.wrightslaw.com](http://www.wrightslaw.com).

Some of the Wrightslaw articles are: *Do the Documents Speak for Themselves?* *How to Prepare Your Case*, *Learning To Negotiate Is Part of the Advocacy Process*, and *How and Why to Tape Record Meetings*.

Brice lives out in the woods near Benson, Vermont. You can reach him by phone at: (802) 537-3022. Brice also answers questions on the [Advocacy Forum on INCIID](#) or you can [Email him](#).

Brice

Slide 4

incid

## Introduction

### *Reviewing Previous Articles*

We've talked about:

- Getting and maintaining education records
- How to analyze an IEP;
- Comparing the IEP or 504 plan with the relevant facts and the regulations;
- That a school district's lawyer looks at an IEP as if that IEP is going to wind up in front of a hearing officer; and
- How a hearing officer reaches a decision about whether to rule in favor of the parent or the school district.

Each of these topics goes to the heart of how we argue

**You might be wondering why the first INCIID articles in this series were about**

• Getting and maintaining education records

How to analyze an IEP;

Comparing the IEP or 504 plan with the relevant facts and the regulations;

That a school district's lawyer looks at an IEP as if that IEP is going to wind up in front of a hearing officer; and

How a hearing officer reaches a decision about whether to rule in favor of the parent or the school district

Each one of those subjects go to the heart of how we argue about why an IEP or 504 plan should be changed or why they deny the student of a free and appropriate public

education (FAPE). Or, why the school has discriminated or retaliated, or both, against the student based on the student's disability

*Infertility Information & Support*

Slide 5

incid

## Ruby's Rule for Team Meetings



Let's face it – When your child gets the short end of the stick, we want to take the “Junk Yard Dog” approach! We Argue. . . But let's talk about what we mean by “ARGUE”

Arguments are not brawls – they are framed by rules of process and procedure .

These are legal arguments.

REMEMBER: You don't need to be a lawyer --- you just have to learn to think Like one!

Let's face it. When our child is getting the short end of the specialized instructions and related services stick we want to take the junk yard dog approach with the Team.

**Ruby's Rule of Team Meetings**

***When the stuff hits the fan, the stuff is not distributed evenly.***

So how do we get the stuff to be distributed evenly? We argue. Wait a minute. Argue? Well yes. But an argument here is not the same kind of argument we might have with a cruddy neighbor or someone at work who tics us off.

We are talking about arguments that are framed by the rules of process and procedure. These are legal arguments. And no, you don't have to be a lawyer to learn how to make

legal arguments at a Team meeting or when you write a complaint. As we said in an earlier article, you just have to learn how to think like a lawyer. And yes you can because if I learned how to do it — you can too.

*Infertility Information & Support*

Slide 6



incid

## Some History of Legal Disputes

- Transport yourself to Feudal England
- Settling a land dispute with a duel
- Stand-in for land owners
- What-if..... The stand-in yelled across the field and said, "Wait a minute... Hey, can't we talk this over?"
- The stand-ins meet later and begin to put together a set of rules to protect themselves from bodily harm and still settle disputes
- Over time the rules evolved and continue today: rules of evidence, professional codes of conduct etc. Every licensed attorney is bound by these rules.

### A little history about settling disputes

Transport yourself back in time to feudal England. Imagine that you are standing in a grassy field where a duel is about to take place. The duel is between one landowner and a neighboring landowner. The outcome of the duel will settle the dispute between them. But wait. The two people who will do the dueling are not the landowners.

No. The people who will settle the dispute in the duel are standing in for the landowners; in other words, the landowners each hired champions to fight the battle for them.

Imagine that this system of stand-in dueling had been going on for several centuries.



As you visualize this feudal dueling scene, imagine that one of the stand-ins vigorously waved at the other one and yelled across field,

**"Hey, can't we talk this over?"**


And so it came to pass that those first two stand-ins met later and began putting together a set of rules about how to "talk this over" instead of exposing themselves to severe bodily harm to settle disputes for whomever hired them. The rules include the rules of evidence, criminal and civil procedure, court procedure, and procedures for appeals developed slowly as the centuries passed. To this very day, tweaking the rules continue.

These rules and procedures are what define the adversarial model of legal disputing. Over time, other rules about how the stand-ins should conduct themselves evolved. These rules are the present day Rules of Professional Responsibility and Codes of Professional Conduct that every licensed attorney is bound to follow. Adversarial, then, is not a word that describes one's attitude or demeanor. It is simply a way to say that a legal conflict exists between two or more parties, and that the conflict will be resolved by using a set of procedural rules.

*Infertility Information & Support*

Slide 7

## How Does the History Reflect on Parent Advocacy?



### Adversarial Relationships

- Exist the minute the parent asks the district to evaluate for eligibility under IDEA or 304
- The district represents its own interests
- The parent represents the interest of their child.
- School Districts have duty under Child Find
- **Section 504 child find is at 34 CFR § 104.32**
- **Child find under the IDEA is at 34 CFR § 300.111.**

### What does all this have to do with Parent Advocacy?

#### Everything

An adversarial relationship exists the moment a parent asks the district to evaluate for eligibility under the IDEA or Section 504, or, the district has reason to believe the student may be a child in need of special education. Why? Because once the suspicion of whether the student is in need of special education under the IDEA or may be qualified for protection under Section 504, the district represents its interest and you, the parent, represent your child's interests. The school has a duty under the Child Find regulation and when a parent asks for an eligibility determination.

**Section 504 child find is at 34 CFR § 104.32**

**Child find under the IDEA is at 34 CFR § 300.111.**

Slide 8

## Conflicts in Special Education

- Most solved informally (& there is a formula)
- Some resolutions (IEP meetings, or with mediation or as a result of a state administrative complaint.)
- Formal resolution comes as a result of either the parents or school district filing for due process.

Whether formal or informal an adversarial relationship is present between the parties. There are parental rights & procedural safeguards for IEP's and 504 plans that are very different.

IEP Procedural safeguards at

**34 CFR Part 300, Subpart E.**

**504 procedural safeguards are at 34 CFR § 104.36.**

Most conflicts in special education are resolved informally. That is, they are either resolved in IEP meetings between the school district and the parents, by mediation under the state special education regulations, or as a result of a state administrative complaint (which is not a request for a due process hearing) and investigation report. Formal resolutions come about after either the parents or the school district request a formal impartial hearing (due process hearing).


Whether the school district and the parents resolve a dispute informally or formally, an adversary relationship between the parents and the school district exists during the resolution process because special education disputing rules are present throughout the federal and state laws for special education. They are the parental rights and procedural safeguards. The IDEA procedural safeguards are significantly different from the 504 procedural safeguards.

Procedural safeguards at **34 CFR Part 300, Subpart E.**

The Section **504 procedural safeguards are at 34 CFR § 104.36.**

*Infertility Information & Support*

Slide 9



## Aggressiveness

- The adversarial process (for this discussion) means procedural rules
  - Emotionally Neutral
  - Theoretically Objective
- Must argue within ethical and responsible standards
- When is Zealous Representation unacceptable aggressiveness?
- Disputes frequently displace the collaborative cornerstone of parental involvement in the IEP process

Once a party requests a formal hearing, other rules also govern the disputing process. These are the rules about evidence, civil procedures, and so forth that will control how the formal hearing will proceed from beginning to end.

**Aggressiveness**

The adversarial process, which for this discussion means the procedural rules, is theoretically objective and emotionally neutral. Yet, when our child's educational welfare is on the line, we want to be, or we want our advocate to follow, the junkyard

dog model of advocacy. Be honest. Any advocate must operate within the bounds of ethical and responsible standards as they argue for a student's needs.


***The question is, at what point does acceptable zealous representation become unacceptable aggressiveness?***

As a starting point for discussion, we can say that whenever a parent disagrees with a school district about an IEP problem, the parent has a complaint. So a complaint that is not formally filed with a department of education for a hearing or in a court of law is merely a disagreement about how the local education agency has identified, proposed, or is implementing, something related to child's individualized special education program.

Even though the IDEA contains an elaborate collaborative assumption, disputes frequently displace the collaborative cornerstone of collaborative parental involvement in the IEP process.

*Infertility Information & Support*

Slide 10

Complaints: The Natural Process


- Keep the legislature informed
- Necessary and Proper Advocacy Methods to get better services
- More likely to get results starting at the lowest level first (i.e. the IEP meeting).
- Using the least amount of pressure first.
- By beginning lower – you have more options later.
- Best chance of success without breaking the bank
- How to go about this with Zeal (assertive) but not escalate to the point of no return.
- REMEMBER: the point is services for the child – repair or destroy the collaborative relationship

Complaining is a normal and anticipated factor in special education. One reason complaints are normal and anticipated is that without complaints, the legislators would have no way of knowing what parts of the law should be adjusted or corrected. In other words, complaints keep the legislators informed about how well or how poorly the law is working.

Complaints are necessary and proper advocacy methods for getting better services, correct disputable situations, or getting reform. However, complaints are more likely to get results by beginning at the lowest level possible, and by using the least pressure necessary. The reason is that beginning here gives you more options later and the best chance of success without spending a huge amount of money.

Ok, so we have talked about what complaints are, why they exist, and a few things about trying to resolve a special education dispute at the lowest level possible (in the Team meeting, for example). The real question is how to go about it with enough zeal to be assertive, and pull the emergency brake before our complaint escalates to a contest to see who can hit hardest and keep standing longer.

Here are some guidelines that will keep you on track to get what the student needs – and – either repairs the collaborative relationship with the school district or creates one that has been destroyed.

*Infertility Information & Support*



Slide 11

incd

## What To Do?

The real purpose of the complaint is NOT revenge, or assert power over the district. **The real purpose is to get a specific result.**

- Be Diplomatic – no matter what the circumstances
- Work with the districts from the perspective of shared interests.
- Protect your own points while acknowledging the school district may have a legitimate perspective
- Emotional Complaints risk **TOTAL LOSS** of credibility

**A list of Things to Do:**

The real purpose of a complaint should not be to satisfy the advocate's or a parent's ego. It is not to get attention, nor is it intended to get revenge for a situation by nettling the school folks. The purpose is also not simply to assert power over the larger, more powerful school district and their attorneys.

Be direct, diplomatic and personable,  
Work with the school district with a perspective of shared interests.

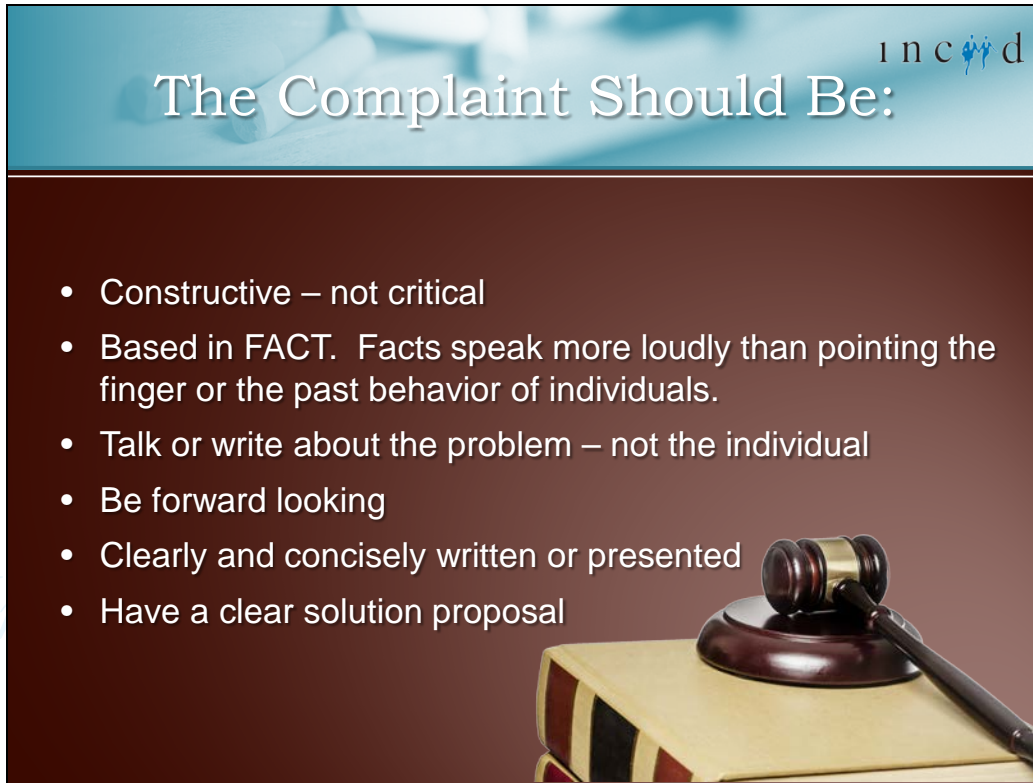
Project your own point of view while also acknowledging that the school district folks may have a legitimate difference of perspective.  
Acknowledge that you appreciate the difficulties the school district folks have.

**The purpose of the complaint should be to get a specific result.**

When a complaint is made, how we behave as we make it can make or break a case. We do not gain anything by merely satisfying some emotional need. Emotional complaints risk total loss of credibility and any purposeful result. Our priority must be getting a fair and just result with as few delays for the student as possible.

*Infertility Information & Support*

Slide 12



The Complaint Should Be:

- Constructive – not critical
- Based in FACT. Facts speak more loudly than pointing the finger or the past behavior of individuals.
- Talk or write about the problem – not the individual
- Be forward looking
- Clearly and concisely written or presented
- Have a clear solution proposal

**In the beginning, there was a complaint.**

A complainant should be constructive, not critical. Facts speak more loudly than harping about individual past behaviors or attitudes. Talk, or write, about the problem, not individuals. Be forward looking. Prepare yourself to be convincing and clear about how the solution you proposes can make the future better for everyone involved.

Remember that our objective is to get what the student needs. We are not there to show anyone how great we are. Our job is to do heroic things, not to be heroes.


Slide 13

inc d

## Things NOT to do

- Do not be argumentative
- Do not be sarcastic
- Do not be abusive
- Do not play lawyer unless you are one
- Do not ridicule the school district members of the IEP team
- Do not fail to appreciate school team members may have "higher ups" yanking their chain
- Do not get into a shouting match with the school district's attorney. You will lose
- Above all, do not lose your temper.**

Losing your temper will lose services for the student because the result is the substance and merit of the problem you are trying to fix becomes secondary to a power struggle. **Focus on the problem at hand.**




A cartoon illustration of a meeting. Five people are seated around a table. Two charts on the wall are labeled 'Grades' and 'IEP Goals'. A speech bubble from one of the participants says, "What if we don't change at all ... and something magical just happens?"


**A List of Things Not To Do:**

- Do not be argumentative
- Do not be sarcastic
- Do not be abusive
- Do not think this is a game of one-upmanship
- Do not play lawyer unless you are one
- Do not ridicule the school district members of the IEP team
- Do not fail to appreciate that the school district IEP team members may have problems and restrictions handed down by someone higher up on the food chain.
- Do not get into a shouting match with the school district's attorney. You will lose because attorneys make a living taking abuse.
- Above all, do not lose your temper. Losing your temper will lose services for the student because the result is the substance and merit of the problem you are trying to fix becomes secondary to a power struggle. Focus on the problem at hand.

Slide 14



## The Principals: A Review



What if, and I know this sounds Kooky,  
we communicated with the parents?

**The real purpose of the complaint is to get something changed.**

- Know how to define the problem
- Understand a practical solution
- What solution will take care of the problem?

**Be Credible**

- Know the facts and know the difference between facts that matter & those that don't
- Appear Reasonable

There are no Perry Mason Moments during Special Education Due Process Hearings  
When the stuff hits the fan, the stuff is not distributed evenly.  
The "argument" with the school is not about you. **It is about your child's education**

**Principles:**

(1) The real purpose of a complaint is to get something changed.

Know how to define the specific problem;

Know what solution is practical (Can the school district do what you want done?);

Know what solution is possible (Is the solution allowable under the IDEA or State law?);

and

What solution will satisfy you? (Will it fix the problem?).

(2) Be credible.

Know the facts (Know the difference between facts that matter and those that don't),

Appear "reasonable,"

Be sure that the solution you are wanting is within the ability of the school district to provide.

**Platitudes:**

There are no Perry Mason Moments during Special Education Due Process Hearings  
When the Pin is pulled, Mr. Grenade is no longer your friend.

When the stuff hits the fan, the stuff is not distributed evenly.

The fight with the school is not about you. It is about your child's education.

**A few words about aggression:**

Aggression and pressure are related. As human beings, we tolerate some aggression and pressure as a matter of living. However, the line between excessive aggression and too much pressure relate in an interesting way.

Imagine for a moment that you and a lifelong friend are in a restaurant eating with a group of people who are not known to either of you. Imagine that the bill comes and you discover that you did not bring any money with you, and you need twenty dollars to pay your part of the bill. You trust your friend, and your friend trusts you. Twenty dollars is no big deal to either of you.

As you discover you left your money at home you say to your friend, "Give me twenty dollars." If your friend has an extra twenty dollars, there is no pressure. But – what if your friend does not have an extra twenty dollars, and does not want to admit that in public? Pressure? You bet it is.

Pressure soon becomes aggression when you say, "Oh, come on. Just give me twenty dollars."

Aggressiveness, then, is a matter of degree, an attitude, a state-of-mind. Adversary, on the other hand, is a process, which has nothing at all to do with state-of-mind. The adversarial process is, in the United States, the accepted process for sifting out the truth and settling disputes between opposing (adverse) parties.

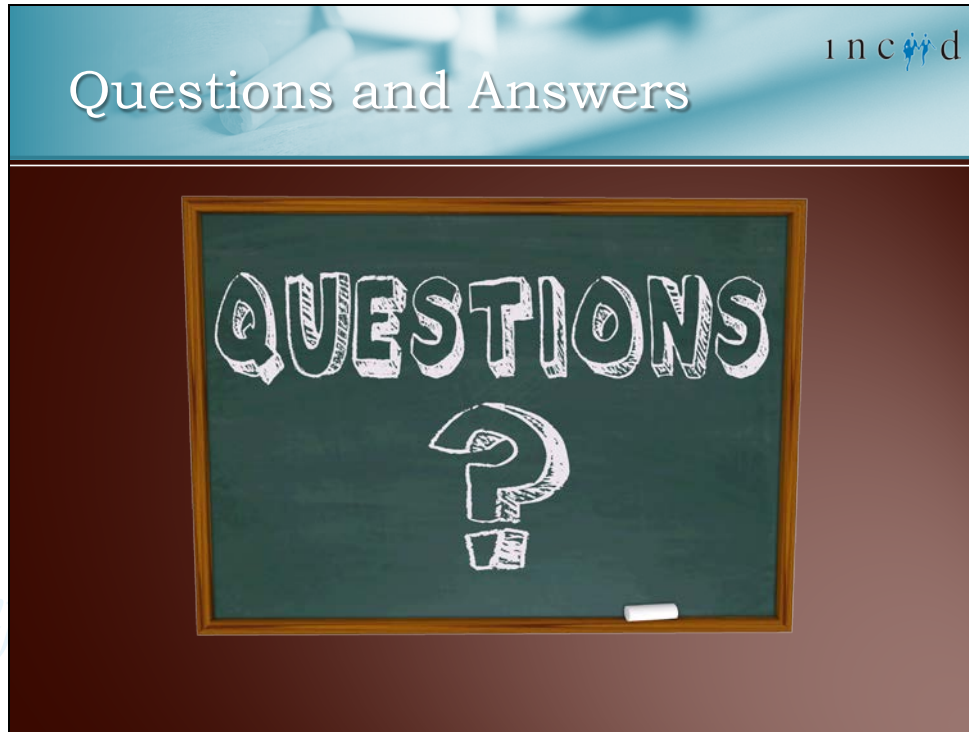
You are invited to post questions for Brice about this article or any other special education question on the **[INCIID Ask The Advocate Forum](#)**

**About the author:**

Brice is a special education advocate who works with parents across the country. He has practiced, taught and written about special education advocacy since 1995. His articles have appeared in *The Beacon Journal*, published by Harbor House Law Press, *Autism Asperger's Digest*, published by Future Horizons, Inc., *Family Focus*, the quarterly newsletter published by Families for Russian and Ukrainian Adoption (FRUA), and various articles appearing at [www.wrightslaw.com](http://www.wrightslaw.com). Some of the Wrightslaw articles are: *Do the Documents Speak for Themselves?*, *How to Prepare Your Case*, *Learning To Negotiate Is Part of the Advocacy Process*, and *How and Why to Tape Record Meetings*. Brice lives out in the woods near Benson, Vermont. You can reach him by phone at (802) 537-3022.

Brice also answers questions on the [Advocacy Forum on INCIID](#) or you can [Email him](#).

Slide 15



Questions: [INCIIInfo@inciid.org](mailto:INCIIInfo@inciid.org)

Slide 16

## INCIID Inc.

Contact INCIID by Email: [INCIIDinfo@inciid.org](mailto:INCIIDinfo@inciid.org)

or Phone: (703) 379-9178

INCIID is a nonprofit corporation in the Washington DC Metropolitan area.  
[Donations and contributions](#) are always appreciated.

Inc