

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 2

Advocacy Skills

From a 17-Chapter Manual
Available by Chapter and in Manual Form

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Written by:

DISABILITY RIGHTS CALIFORNIA

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DISABILITY RIGHTS CALIFORNIA, is a private, nonprofit organization that protects the legal, civil, and service rights of Californians who have disabilities. Disability Rights California provides a variety of advocacy services, including information and referral, technical assistance, and direct representation. For information or assistance with an immediate problem, call:

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ACCESSING ASSISTIVE TECHNOLOGY

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ACCESSING ASSISTIVE TECHNOLOGY

Chapter 2

ADVOCACY SKILLS

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Chapter 2

ADVOCACY SKILLS

This manual has information about specific service systems. However, you may need to advocate in order to obtain the services and benefits you need. This section will describe general advocacy strategies that may help you be successful in doing so.

1. What is advocacy?

As you will see in the following chapters, there are laws and rules that public and private agencies must follow. Some of the rules concern the assistive technology devices and services you need. If you are entitled to assistive technology benefits, but the agency refuses to provide them for you, you can speak up and fight for your rights. This is advocacy.

You can appeal or file a complaint against most decisions you disagree with as long as you meet the deadlines. The laws, and sometimes agency policies, create different deadlines for different programs. You need to ask what they are.

2. Who can be an advocate?

Anyone can be an advocate. You can be an advocate for yourself. You can be an advocate for someone else. You can ask someone else to be your advocate. Be sure that when you advocate for someone else, or someone advocates for you, both of you agree on what you want to accomplish. It is best to write down any such agreement. Write down the goal you want, such as getting a new assistive technology device or service, or repairing the device or service you already have. You should also write down the steps you intend to take to reach your goal. Sometimes there may be more than one way to reach a goal. Write down all of the alternatives that you can think of. Planning is important.

3. Do I need a lawyer?

In some cases you can be just as effective as a lawyer. Sometimes, you can be even more effective than a lawyer. If your case is complicated, you may want to ask an advocate to help you. The advocate does not need to be a lawyer, even for a fair hearing before an administrative law judge. You can get advocacy help from a number of agencies in California, including Disability Rights California. You can find a list of some of these agencies in Chapter 17 of this manual. Disability Rights

California can help you advocate for yourself, represent you in some cases, or refer you to other lawyers or advocates. If you need to take your case to court, you will probably need a lawyer to do that.

4. What do I need to know to be a good advocate?

Common sense is a good guide to being an advocate. Think about what you would want to know about the case if you were a neutral person hearing the facts for the first time.

- Gather all of the evidence and information that is important to your case. You can get evidence by looking at all the documents about the dispute that are in your file at the agency. You can review your own file at any public agency. You can get copies of anything in your own file. You may have to pay to copy the papers. California law says that the charge for copying cannot be more than 10¢ per page unless a different amount is set by statute. Cal. Civil Code § 1798.33.
- The charge must be for the copies only and not the time it takes for someone to do the copying. You should copy all the documents that are important to the case, even if they may not support your position. You will want to refer to them later.
- Learn the rules. Educate yourself about the standard the agency is using to deny your request. Use that standard to develop your argument for why the agency should change its decision. In the following chapters, you will become familiar with some of these standards. Standards such as “medically necessary,” “appropriate education,” and “reasonable accommodation” are some of these. If you do not know what the standard is, you will need to learn it by talking with an experienced advocate or reading about the standards that apply yourself. Also ask the agency what procedures you need to follow to protect your rights. Public agencies are required to tell you. The procedures vary from one agency to another. If you don’t follow them correctly, you may lose your right to challenge the decision with which you disagree.
- Keep a diary or log. List everything that you and other people say in a telephone conversation or a meeting. Include a list of the people who were at the meeting and what was said. It will be important to remember these statements accurately later.
- Ask questions about anything you do not understand. You have the right to have all of your questions answered in a way you can understand.

Generally, public agencies must communicate with you in the language you are most comfortable with. If there is something you still don't understand, ask more questions. There is no such thing as a "dumb question."

- Be a good listener. It is important to listen to arguments by the other side. Each side should be talking about the same issues. What facts does the other side have or say it has? You should try to argue about only those things that are important for this dispute. Try not to bring up past disagreements. The clearer the issues are, the more likely it is that your arguments will be heard.
- Be prepared. Learn all that you can that is important to your case. You might want to draw a line down the middle of a piece of paper and list your facts and evidence on one side and the agency's facts or evidence on the other side.
- Be assertive. Try not to become angry, but you do need to speak up for yourself.
- Get help when you need it. If you feel uncomfortable about going to a meeting alone, don't go alone. You always have the right to take someone with you. That person can help keep you focused on the issues and take notes at meetings. Some moral support always helps.

5. Where do I find the laws and other rules that apply to a particular agency or program?

You will find the laws and rules that apply to different agencies in a variety of places. Both federal and state statutes govern most agencies. Federal and state regulations, which are also law, must be consistent with the governing statutes. However, court decisions are also important because they interpret the statutes and regulations. Finally, most agencies have established policies. Agency staff sometimes pays more attention to policies than to statutes and regulations. However, these policies do not have the force of law. They are secondary to statutes and regulations, and cannot conflict with them.

A list of the laws and other rules cited in this manual and in similar manuals is at the end of this Chapter. See Attachment at page 2-11. If you do not have access to these laws and cases, you can ask the agency if they have a copy, or go to a law library. The agency should provide you with a copy of any policies it is relying on. The staff of the library can help you find materials you want to see.

6. What is evidence?

Evidence is anything that tends to prove or disprove a part of your case. In meetings and in most hearings, you will be able to present any evidence you believe is important. Statements people make, written records, reports from doctors, occupational or physical therapists, speech pathologists, schools, etc., are evidence. It is important to focus on the evidence that is necessary to prove a part of your case and to not be distracted by evidence that is not.

As an example, let's say that you need to prove that you are eligible for an item of durable medical equipment from Medi-Cal. You would submit the reports of evaluations and assessments done by someone like an occupational therapist. If an assistive technology evaluator testifies at a hearing, what he says is evidence. The judge gives some evidence more weight. For example, a person's testimony has more weight than the same person's written report alone.

Because there is a disagreement about facts, the other side will probably submit evidence to prove their version of the facts. You will want to know in advance what kinds of evidence the other side has. Getting that information is called "discovery."

7. How can I "discover" what the agency's position is?

There are a number of ways to get the agency to state their position on the facts and their reasons for their position.

- Have someone from the agency state or write down the facts he believes support the agency's position.
- Have someone from the agency write down what laws or regulations the agency is basing its position on.
- Have the agency explain its decision in your native language. You are entitled to have the appeals procedure explained in your native language. Title VI of the Federal Civil Rights Act guarantees these rights.
- If you filed an appeal and are going to a hearing, in most cases you and the agency must exchange a list of witnesses and the documents you may introduce **several days** prior to the hearing. Ask the agency or an advocate how many days in advance you need to exchange your lists of witnesses and documents.
- In most agency appeals, you have a right to get copies of the documents the agency intends to introduce, a list of the witnesses they expect to call,

and a statement about the nature of their testimony **several days** before the hearing.

8. What steps can I take to protect my rights?

- (a) *Be assertive.* You have a right to receive services in accord with the law. Agency staff are there to help you receive the services you are entitled to.
- (b) *If you don't understand, ask questions.* You have a right to get information from every agency in a form you understand. Ask the agency to give you information in the language that you understand best. If you don't understand what someone tells you, ask for a further explanation. Ask as many questions as you need to ask in order to fully understand.
- (c) *Share information.* Your opinions are valuable. You know your needs at least as well as the professionals who conducted the evaluations. Don't be afraid to voice your opinion.
- (d) *Be prepared.* Before going to a meeting, review your case file. Be sure you know what you want, and the reasons you want it. Make a list of questions you want answered.
- (e) *Be willing to listen.* After you request an assistive technology device or service or ask a question, listen to the agency's response. As you listen, ask yourself if the response answers your question. If you are unsure of the response, ask more questions.
- (f) *Keep records.* Keep all the papers concerning your case together in a file. Keep a diary or log of verbal contacts. Write down the name of each person you talked to and when you talked to that person and the nature of your discussion.
- (g) *Get help.* If you feel uncomfortable about going to a meeting alone, don't. Take a friend, a relative or a representative from an advocacy organization. You always have the right to take someone with you. That person can often keep you focused on the problem, take notes about what was decided, and give you support.

9. How can I become a better negotiator?

Essentially, all the meetings you have with the agency involve negotiation. Negotiation is simply the effort of two parties to reach an agreement. It generally includes discussion, offers or proposals, and give and take. You may not always be able to resolve disagreements using negotiation. In that case, you can use the

formal hearing or complaint process discussed in this manual. You can use the approach outlined below to help you prepare for a negotiation.

Step 1: Write a one-paragraph description of the problem. Include the causes of the problem as you understand them. Then, clearly set out the changes that you want made. Include a statement of your “bottom line” for a negotiated settlement. This is the point you will not go below, but will go to a hearing or file a complaint instead. Do not share this with the agency. These are your notes to help you negotiate.

Step 2: To identify the person you need to begin negotiating with, look for the authority closest to the problem. For example, if the problem is a disagreement with a case manager over the need for assistive technology, you may be able to negotiate with the case manager. If the case manager is denying a service because of an agency policy, you will need to negotiate with someone with more authority, such as a supervisor or higher administrator. It will do no good to negotiate with someone who cannot give you the device or service you believe you need. Demand to speak with someone who has authority to settle the dispute.

Step 3: Analyze the strengths and weaknesses of the agency’s position. These depend on:

- Its consistency with the law;
- The facts as you can present them;
- Whether you can identify other circumstances where the agency provided similar assistive technology;
- Whether you can develop popular support for your issue among other consumers and family members; and
- Any influential support (news media, elected officials) you may be able to get.

List the strengths and weaknesses of the agency’s case and the strengths and weaknesses of your case.

Step 4: Identify the stated reasons and what you believe to be any other unstated reasons for the agency’s opposition. Make two separate lists. These are the agency’s stated and unstated interests. Among others, they could include:

- Does not agree that I need the device or service;
- Does not want to grant an exception to a policy;

- Is afraid to set a precedent;
- Is afraid of potential liability;
- Does not really understand my needs;
- Has not seriously considered my request;
- Is overwhelmed by my request;
- Is committed to long-established habits and procedures; and
- Feels the cost is too great.

Step 5: Plan and carry out your strategy. Your strategy is your plan for action. It sets out how you will try to get the agency to agree to what you want. Focus your strategy on what you think the agency's interests are, especially its unstated interests. If you can satisfy the agency's interests and still get what you need, it is likely your negotiation will be successful.

As part of your plan, you may also want to research facts; bring an expert; prepare an agenda and questions; select possible negotiators; determine negotiable and non-negotiable points; set a convenient date, time, and place for negotiation; anticipate the agency's concerns and strategies; prepare your responses; and set deadlines. Always have a contingency plan to use if your first plan fails.

You will find a work sheet that you can use to plan your negotiation at the end of this chapter. See Attachment at page 2-11.

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ATTACHMENTS TO CHAPTER 2

Negotiation Planner

Parties	Interest	Issues	Initial Position	Fallback Positions	Bottom Line	Alternatives to a Negotiated Agreement

Legal Authority

STATUTES

United States Code (U.S.C.). These are federal statutes. They are divided into a number of titles by subject. For example, Title 42 of the United States Code concerns health and welfare programs, Title 29 concerns labor, including rehabilitation services. You will see a citation written as 42 U.S.C. § 1396. The “§” is an abbreviation for “section,” which refers to one statute or regulation.

California State Statutes. California state statutes are divided by categories as well. Categories include the Education (Ed.) Code, Welfare & Institutions (Welf. & Inst.) Code, Government (Gov't.) Code, and several others. A section of the California Education Code would be cited as Cal. Ed. Code § 56000.

Code of Federal Regulations (C.F.R.). These are also divided into titles that correspond with subjects. For example, 42 C.F.R. § 483.25 is a Medicaid regulation.

California Code of Regulations (C.C.R.). California state regulations are divided into titles based upon subject. Title 22 covers health services such as Medi-Cal. Title 5 covers education. For example, Title 22 C.C.R. § 51521 is a Medi-Cal regulation.

CASES

Federal Cases. Federal cases are decisions of the federal district courts, federal appellate courts, and U.S. Supreme Court. They are divided into volumes. Cases are cited by name, volume, the page the case begins on, the page the reference section appears on, the year of the case, and the district or appellate circuit the court belongs to. For example, *Friedman v. Berger*, 409 F.Supp. 1226, 1228 (S.D.N.Y. 1976) refers to the case of Friedman versus Berger, in the 409th volume of the Federal Supplement, beginning on page 1226, referencing a citation on page 1228. It was decided by the Southern District of New York in 1976. Federal appellate court cases are cited as, *Myers v. Reagan*, 776 F.2d 241, 243 (8th Cir. 1985). This citation refers to a case decided by the 8th Circuit Court of Appeals in 1985. U.S. Supreme Court Cases are cited as *Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1981).

California State Cases. Only cases decided by the California appellate courts or the California Supreme Court are published. Those decided in the county superior courts are not. Appellate court cases are cited as *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 8. Cases from the California Supreme Court are cited as *Lucia Mar Unified School District v. Honig*, (1988) 44 Cal.3d 830, 835.