



A Congressional Insider's Guide to Influencing Disability Policy

*General Guidelines for
Disability Policy Change Agents*

By Robert Silverstein, J.D., Director
Center for the Study and Advancement of Disability Policy
Washington, D.C. 20006

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Publications for Independent Living

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ABOUT THE AUTHOR

Robert “Bobby” Silverstein, J.D., is the Director of the Center for the Study and Advancement of Disability Policy (CSADP). Mr. Silverstein has over 25 years of experience providing policy analysis, research and technical assistance to policy-makers and negotiating and drafting public policy at the federal, state and local levels.

At CSADP, Mr. Silverstein gives keynote speeches; conducts advocacy training; assists disability groups, federal, state and local officials in drafting disability policy and conducts action-oriented research. His areas of focus include civil rights, education, work incentives, workforce investment and welfare reform from a disability perspective.

From 1987 to 1997, Mr. Silverstein was the principal advisor to Senator Tom Harkin (D-Iowa), who served as chair of the Senate Subcommittee on Disability Policy (1987-1995), ranking member of the subcommittee (1995-1997) and lead member on disability policy issues on the Committee on Labor and Human Resources (1997). In this capacity, Silverstein played a central role in all important disability policy legislation produced between 1987 and 1997, including the landmark Americans with Disabilities Act, 15 other pieces of legislation and numerous disability-related amendments to other bills concerning, health, civil rights, education and job training.

From 1985 to 1987, Silverstein served as counsel to the Subcommittee on Select Education, Committee on Education and Labor of the U.S. House of Representatives. The subcommittee was chaired by Congressman Pat Williams (D-Montana). Silverstein’s responsibilities were similar to those undertaken during his Senate tenure. Among the bills

Silverstein was responsible for P.L. 99-457, which added early intervention programs for infants and toddlers with disabilities to the Individuals with Disabilities Education Act. This program is landmark because of its family-centered focus and its interagency orientation.

Silverstein has won respect from Republicans as well as Democrats, leaders of the disability community and representatives from state and local governments and the business community for his commitment to developing bipartisan consensus legislation that is based on sound research.

Between 1978 and 1985, Silverstein was a principal in the law firm of Long and Silverstein, P.C. The firm's focus included conducting public policy research and analysis and providing technical assistance and training to policy-makers. Projects included directing and serving as the principal investigator of a congressionally mandated policy study and researching and drafting policies, regulations, manuals and handbooks for state and local agencies concerning implementation of various pieces of federal legislation.

In 1978, Silverstein worked for the Office of Civil Rights, Department of Health, Education and Welfare, where he drafted policy interpretations concerning three civil rights statutes: Section 504 of the Rehabilitation Act of 1973 (disability), Title VI of the Civil Rights Act of 1964 (race and national origin) and Title IX of the Education Amendments of 1972 (gender).

Between 1975 and 1978, Silverstein worked at the National Lawyers Committee for Civil Rights under Law as director and principal investigator of a congressionally mandated study of Title I of the Elementary and Secondary Education Act. This multi-billion dollar program provides compensatory education for educationally disadvantaged children residing in low-

income areas. In this capacity, he conducted policy research and prepared six comprehensive policy analyses of the Title I legal framework. At the request of the chairs and ranking members of the House and Senate education subcommittees, Silverstein drafted bills and report language used for reauthorizing Title I. In addition, he was invited as an expert witness to testify at subcommittee hearings regarding the findings, conclusions and recommendations of the research study.

Mr. Silverstein received a B.S. in Economics from the Wharton School of Finance and Commerce, University of Pennsylvania, and his J.D. from Georgetown University Law Center.

PREFACE

As a congressional committee staffer for 13 years (1985-1997), I witnessed the enactment of over 20 bills related to disability policy. The bills included:

- the Americans with Disabilities Act (ADA), omnibus civil rights legislation protecting people with disabilities from discrimination;
- several reauthorizations of the Individuals with Disabilities Education Act (IDEA), including the bill creating the program for infants and toddlers with disabilities and their families and the 1997 reauthorization focusing on quality and outcomes in addition to access for children with disabilities;
- several reauthorizations of the Rehabilitation Act, including the reauthorization in 1992 increasing consumer choice and involvement in the vocational rehabilitation program; and
- several reauthorizations of the Developmental Disabilities Assistance and Bill of Rights Act, promoting the independence, productivity and integration and inclusion into the community of persons with developmental disabilities.

These historic pieces of legislation were the result of effective interaction with policy-makers (elected and appointed officials and their staff) by persons with disabilities, family members, advocates and national, state and local disability organizations. (See *A Congressional Insider's Guide to Influencing Disability Policy: Effective Strategies for Interacting with Policy-Makers* by Robert Silverstein, 1999.)

Effective interaction did not occur by happenstance. Each piece of legislation described above resulted from the efforts of a broad-based organized coalition working in conjunction with policy-makers. The efforts of the coalition were guided by a strategic plan.

The purpose of this guide is to describe the critical characteristics, roles and functions of organized coalitions and the strategic steps necessary to bring about change in public policy.

The approaches suggested in this Guide reflect the best practices used in enacting the ADA, IDEA, the Rehabilitation Act and other disability-related legislation. The principles outlined in this guide are generally consistent with much of the research conducted by John W. Kingdon in *Agendas, Alternatives and Public Policies* (Harper Collins College Publishers, 1995); the experience of the Advocacy Institute (*Building a Coalition* Washington, D.C., 1995); and the descriptions of the policy-making process by Walter J. Oleszek in *Congressional Procedures and the Policy Process* (CQ Press, 1996).

I hope this Guide serves as a resource for those interested in affecting public policy that fosters the independence, inclusion and empowerment of persons with disabilities and their families.

—Bobby Silverstein

CHAPTER 1

Introduction

THE NEED FOR DISABILITY POLICY CHANGE AGENTS

The process of making public policy includes formulating solutions to problems of general concern to the public and transforming these solutions into law. Disability policy includes those laws specifically targeted at addressing the needs of persons with disabilities and their families and generic laws that address the needs of nondisabled persons as well as persons with disabilities. There is a need for people to get involved in the policy-making process (disability policy change agents) to ensure that our laws foster the inclusion, independence and empowerment of people with disabilities and their families.

THE IMPORTANCE OF SKILLS

Passion, anger, frustration and commitment are often necessary but not sufficient characteristics of a disability policy change agent. In order to advance progressive disability policy, an effective disability policy change agent must channel these emotions and beliefs and develop the skills and understanding described in this publication.

AN ART, NOT A SCIENCE

The process of developing, negotiating, securing enactment and overseeing the implementation of public policy is a dynamic process. Rarely, if ever, do the same exact situations recur. Thus, it is impossible to describe a “how to” or “paint by

the numbers” approach. There are, however, guidelines, principles and strategies that can guide one’s actions.

THE CULTURE OF DISABILITY POLICY

Historically, disability policy has enjoyed strong bipartisan support. “Bipartisan,” however, does not mean unanimity in approach on any given issue. There certainly have been “battles” over specific provisions. Bipartisanship means a general willingness to discuss and debate issues on the merits in order to reach a broad-based consensus rather than engage in political posturing for the purpose of political expediency or seeking political gain for one party or the other. Thus, the guidelines for disability policy change agents described in this document reflect the specific culture of disability policy, although many of the guidelines may have applicability to other issues.

KEEPING THE DISABILITY COMMUNITY TOGETHER

Pogo, the comic strip character, said: “We have found the enemy and they is us.” It is critical that various factions within the disability community learn to work together and iron out differences in positions “behind closed doors” while staying true to one’s principles. If this is not accomplished, the disability community becomes its own enemy. Every major disability policy success in the last decade and a half is the direct result of the disability community sticking together.

BEYOND THE TRADITIONAL DISABILITY COMMUNITY

In addition to policies that are specifically designed for people with disabilities (e.g., The Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973), more and more

efforts are being made to include the needs of people with disabilities in generic services (e.g., job training, child care, health care). Therefore, it is critical that the disability community begin developing closer relationships with stakeholders working on generic services.

AN OPPORTUNITY, NOT A BURDEN

To succeed and stay engaged in policy change over the long run, attitude and perspective are key. Participation in the policy change process must be seen as an opportunity, not a burden. At times, participation in the policy-making process can be frustrating, aggravating, infuriating, boring, tedious, disappointing, thankless and humbling. It can, however, also be exhilarating, rewarding and fun. Changes may be small and incremental, and sometimes policy-makers may even take steps backward. But, if every day is seen as an opportunity to make a difference, burn out is unlikely.

PEOPLE MAKE A DIFFERENCE

Policy does not appear out of the blue. It takes people to bring about change. Every public policy has its champions and advocates. Every one can make a difference in the process—whether it be sharing a problem with another person, joining an organization, conducting research, lobbying, running for office, serving as staff for elected or appointed officials, supporting candidates or simply voting.

COALITIONS AND STRATEGIC PLANNING

Major change in the policy arena comes about when an idea is backed by skilled people performing a range of roles in a coordinated fashion (organized coalition) in accordance with a pragmatic strategic plan.

CHAPTER 2

Politics, Power, Self-Interest and Compromise

A disability policy change agent must recognize that public policy is proposed, debated, modified and adopted in a political environment where politics, power, self-interest and compromise are the standard “tools of the trade.”

POLITICS

For many people, the term “politics” has a negative connotation—dirty, dishonest, gamesmanship. In fact, Webster’s dictionary defines the term to mean “the science and art of government.” Synonyms found in Roget’s Thesaurus include judicious, diplomatic, prudent and discreet.

POWER

The word “power” has become synonymous with corruption and immorality. In fact, the World Book defines the term to mean “the ability to do or act,” or a “person or thing that has authority or influence.”

SELF-INTEREST

The term “self-interest” is often associated with negative characteristics such as narrowness, self-seeking and self-centeredness. In short, self-interest is the opposite of altruism. But the reality is that we all operate in one way or another on the basis of self-interest. If people reach an agreement based on mutual self-interest, it is more likely that the agreement will stick.

COMPROMISE

The term “compromise” sometimes connotes weakness, vacillation, betrayal of ideals or surrender of moral principles. In the arena of public policy, compromise means reaching an agreement, moving one’s agenda forward by securing sufficient support to ensure enactment. The art of negotiating an acceptable compromise includes agreeing on changes to positions while staying true to one’s underlying principles.

CONCLUSION

If individuals want to bring about change in the public policy arena, they must become comfortable with the concepts of politics, power, self-interest and compromise.

William Clay, an influential African-American Congressman (D-Missouri), established simple and blunt ground rules for getting involved in the policy-making process. Although his message is directed towards the African-American community, the ground rules are equally applicable to the disability community:

“If blacks are to unshackle the chains of bondage that bind us to a status of economic and political slavery, we must learn the basic rules of the political game. Rule number one is take what you can, give up what you must. Rule number two is take it whenever, however and from whomever. Rule number three is, if you are not ready to abide by the first two rules, you are not qualified for a career in politics!”

CHAPTER 3

Vision, Values and Guiding Principles

Those involved in public policy make thousands of decisions along the way from germination of a policy idea to enactment and implementation of a policy. Formulation of a vision and articulation of values and guiding principles enable individuals to participate in the policy-making process because they have a set of standards to judge when they are compromising on positions without compromising on fundamental principles.

Every piece of disability policy legislation enacted into law over the past decade includes important statements of findings and policy. The following are statements that describe our nation's vision for people with disabilities and their families:

- millions of Americans have one or more physical or mental disabilities, and the number of Americans with such disabilities is increasing.
- disability is a natural part of the human experience and in no way diminishes the right of the individual to:
 - live independently,
 - enjoy self-determination,
 - make choices,
 - contribute to society,
 - pursue meaningful careers, and
 - enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.

- The goals of the nation properly include the goal of providing individuals with disabilities with the tools necessary to:
 - make informed choices and decisions, and
 - achieve equality of opportunity, full inclusion and integration in society, employment, independent living and economic and social self-sufficiency, for such individuals.
- The goals of the nation also include the goal of providing families of children with disabilities the support necessary to enable families of children with disabilities to:
 - nurture and enjoy their children at home, and
 - make informed choices and decisions regarding the nature of services, supports and resources made available to such families.
- It is the policy of the United States that all programs, projects and activities shall be carried out in a manner consistent with the principles of:
 - respect for individual dignity, personal responsibility, self-determination and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;
 - respect for privacy, rights and equal access (including the use of accessible formats) of the individuals;
 - inclusion, integration and full participation of the individuals;
 - support for the involvement of a parent, a family member, a guardian, an advocate or an authorized

representative if an individual with a disability requests, desires, or needs such support; and

- support for individual and systemic advocacy and community involvement.

CHAPTER 4

Planned Spontaneity

The term “spontaneity” brings to mind words like impulsive, instinctive, automatic and unpremeditated. To the uninitiated, many of the “events” that constitute the process of moving or advancing public policy appear to be spontaneous.

- A witness at a hearing makes a compelling point in response to a pointed question by an elected official.
- An elected official from one political party offers an amendment and a member from the other political party compliments the member, asks a few questions and then offers to co-sponsor the amendment.
- A committee mark-up of a pending bill is scheduled and members from both parties speak in glowing terms about the bill, no amendments are offered and the vote on the bill is unanimous.

Often, these ostensibly “spontaneous” events are actually the result of painstaking planning by elected officials, staff and others. The most effective “players” in the public policy arena are masters of this planning. A colleague once remarked that you know you are a “significant player” when you are invited to a “pre-meeting” to plan what will happen at the meeting, negotiation session, or mark-up. And you know that you have truly arrived when you are invited to the “pre-pre-meeting” to plan the pre-meeting.

The point is this—things generally don’t just happen; they are often the result of careful planning. Thus, it is critical to

know who the key players are and when the decisions are really being made. *Planning is essential. Timing is critical.*

The planning strategies used by elected officials and staff are likely to work as well for disability policy change agents who wish to influence policy. For example, securing a meeting with or presence of an elected official at an event is no small accomplishment given the pressure for an elected official's time. Those who plan and strategize about who should make the contact with the elected official and what should be the spin (e.g., recipient of award, press coverage) are more likely to secure a meeting or official's presence at an event. Once the meeting or event is scheduled, those who identify clear objectives for the meeting, determine who will be the spokesperson, what the message will be, what information will be shared with staff ahead of time and other matters are more likely to have meetings or events that achieve the identified objectives of the group.

CHAPTER 5

The Three P's: Preparation, Patience and Persistence

We live in an age of instant gratification. Some believe that if a problem is identified, decision-makers will adopt a public policy that addresses the need. Unfortunately, that's not the way it works. There are no guarantees that policy changes will be made. Three characteristics of change agents maximize the likelihood that positive change will occur. These characteristics are preparation, patience and persistence.

PREPARATION

Preparation may be boring and tedious, but it is certainly not a waste of time. Preparation is the linchpin to success. Some preparation simply involves organizing one's papers before a meeting. Careful, meticulous preparation includes such tasks as knowing current law, identifying the problem, developing viable solutions and data to support them, knowing who supports you and why and who opposes you and why.

PATIENCE

Nothing in the public policy process happens overnight. Change is slow and often incremental. Sometimes it takes years, sometimes decades, to bring about change. Sometimes we go backwards. Change agents never give up.

PERSISTENCE

Sometimes elected officials or staff respond negatively but you believe that “yes” is possible. Sometimes policy change agents get a “yes” from elected officials and walk away from the issue feeling secure, only to find out the elected officials voted the other way because someone else got to them in the interim and you didn’t follow up. Those who eventually succeed have the persistence to try new or different strategies or to keep trying next year and the year after. Those who enjoy the most successes never take no for an answer, follow up to make sure that promises are kept and follow up after decisions have been made to ensure that there is no change of heart.

CHAPTER 6

The Power of Personal Stories Linked to a Policy Objective

Since there is intense competition for the attention of elected officials and their staff, there are many strategies employed to garner attention. For the disability community, one of the most effective strategies is *personal stories linked to a clearly defined policy objective*. The purpose of telling a personal story is not to illicit sympathy or empathy; the purpose is to get the listener engaged and willing to fight for or accept change.

It is also critical that the right person tells the story. Often the person telling the story is as important as the story content. It is also essential to link the story to a policy objective. For example, the U.S. Senate Subcommittee on Disability Policy held a hearing on disciplining children with disabilities. Those who wanted to defend children's rights were given the opportunity to select two witnesses.

EXAMPLES

Two parents were selected to testify. The first parent had a child who had been a discipline problem as a result of receiving inappropriate services and supports. The parent resisted efforts to remove the child from school and instead insisted on receiving appropriate services. The school system capitulated and provided "appropriate services." The child became an honor roll student who has no problems whatsoever.

Note that the witness selected was able to demonstrate two key policy points:

- some students misbehave because of lack of appropriate services, and
- good things happen both for the child and the school if appropriate services are provided.

The second parent was selected because she was also a member of the school board in a large city. She testified in her role as a school board member that the current law did not hamstring school officials from disciplining children with disabilities and that her school system had been able to devise strategies that resulted in a reduction of antisocial behaviors and the reduction in suspensions and expulsions of children, including children with disabilities.

By having a witness who was a school board member, the message was heard that parents are not alone in their belief that there are effective strategies that can be employed for reducing dangerous and disruptive behavior without removing the current protections for children with disabilities.

CHAPTER 7

Organized Coalitions and Strategic Planning

ORGANIZED COALITIONS

The dynamic nature of politics and public policy require timely responses to pressing needs of policy-makers by stakeholders involved in the process. It is therefore critical that stakeholders establish a permanent or ad hoc organization that works closely with policy-makers who share a common vision. Characteristics of effective coalitions include understanding and respecting individual organization's constraints, effective communication among members, trust, delegation of tasks, establishing an agreed-upon decision-making process and keeping everyone informed.

It is also critical that the organization clearly delineate roles and functions that must be performed, including identifying leaders as well as persons responsible for, among other things, developing policy alternatives, collecting supporting data, identifying legal issues, devising political strategy, ensuring rapid response, using media, organizing the grassroots and evaluating the efficacy of the strategy.

DEVELOPING A STRATEGIC PLAN

Major progressive changes in public policy don't occur by happenstance. Most often they are the result of an organized, coordinated effort by policy-makers and other stakeholders. The roadmap for a successful effort is a strategic plan.

In the public policy arena, a strategic plan consists of a brutally honest and realistic appraisal of the political lay of the land, including:

- what the coalition stands for (values and guiding principles);
- reality check: starting with what currently exists, assessing the capacity of coalition and the nature, degree and extent of opposition;
- where the coalition wants to go (identify the “prize” and “keep your eye on the prize”);
- steps necessary to achieve the coalition’s goals/objectives; and
- an assessment of the coalition’s progress.

WHAT THE COALITION STANDS FOR: VALUES AND GUIDING PRINCIPLES

In the course of a campaign to achieve a public policy objective, there are thousands of decisions that must be made along the way. In order to avoid misunderstandings among your coalition membership and to ensure that coalition members “stay the course,” values and guiding principles must be articulated.

REALITY CHECK

Change is the process of getting from where you are now to where you want to be. Thus, it is critical to start from current law and policy, not where you believe policy ought to be. Problems must be identified in the context of current law and policy. Existing resources and expertise must be identified, e.g., direct access to policy-makers must be assessed.

In developing a strategic plan, it is also essential that idealism and creativity form the cornerstone of the effort. It is also critical that one or more people play the role of “pragmatist” or “devil’s advocate.” Too often the dynamics of a group are such that like-minded people will develop “group-think” or a “holier than thou” mentality and no one is willing to ensure that the strategy is specific, immediate, realizable and actionable (reality check).

WHERE THE COALITION WANTS TO GO

It is essential that the policy “prize” you are trying to “win” is clearly identified. It is also critical to “keep your eye on the prize,” i.e., distinguish between the policy that you are trying to achieve and the positions you may take. Knowing the policy you are trying to achieve helps guide your actions. The positions you take may change along the way.

Be realistic in your goals. Remember you can miss the target by aiming too high as well as too low.

WHAT IT WILL TAKE TO ACHIEVE YOUR GOALS

The core of the strategic plan identifies what it will take to achieve your goals.

Components include:

- controlling the dynamics/language of the debate,
- identifying problems and collecting supporting data,
- identifying policy options and supporting data that justify the options,
- selecting political strategies and “champions,”
- garnering support from the Executive Branch,

- identifying additional resources and necessary expertise,
- strategies for keeping the disability community together,
- planning strategies for developing coalitions beyond the traditional disability community,
- strategies for working with grassroots members,
- strategies for using media, and
- developing capability to respond rapidly to statements by the opposition.

ASSESSING PROGRESS

A continuous feedback loop is valuable to assess your progress and determine what changes, if any, need to be made. Frequent feedback on progress assists in keeping morale and persistence at high levels. Although it is important to stay the course, adjustments may need to be made along the way.

CHAPTER 8

Knowledge Is Power

The public policy process entails translating an idea into law and assessing its implementation. The process is often complex, dynamic and uncertain. Tens of thousands of ideas are competing for a place on the policy agenda. Once an idea is on the agenda, it competes with other ideas for a chance to become law. Most ideas go nowhere for various reasons, e.g., competing interests favor the status quo, limited time, or the press of other matters.

Some issues become law because of the effective use of power. One component of power is knowledge—knowledge about the subject matter, the legislative process, negotiation skills and strategies that facilitate interactions with and between policy-makers.

KNOWLEDGE OF THE SUBJECT MATTER

By definition, elected officials are decision-makers, i.e., they vote for or against a policy. But someone else usually develops and drafts the language of a bill or an amendment or the words that go into a report accompanying a bill, a speech, or a floor statement. Staff working for elected officials are paid agents. Sometimes they make decisions on behalf of elected officials (e.g., negotiate bill language, agree to report language). Political appointees in the Executive Branch and career bureaucrats, academics and interest groups all try to influence the decisions of elected officials and their staff by offering specific language for inclusion.

Those with expertise in the content of the policy can become formidable “players” in the decision-making process. Sometimes the “players” are:

- elected officials to whom others come for guidance,
- elected officials’ staff upon whom other staff and other elected officials rely,
- political appointees in the Executive Branch or their staff, and/or
- interest groups who propose language for inclusion in bills, amendments, committee reports, floor statements, or speeches.

This is especially the case for those who:

- understand the history of the legislation (its evolution, the battles that were fought, who took what position and why);
- know current law, regulations, guidelines and interpretations;
- can identify current problems, issues and concerns with supporting data; and/or
- can devise viable policy options (including disability specific and generic options).

KNOWLEDGE OF THE LEGISLATIVE PROCESS

The content of policy ideas is one component of the decision-making process, but joining it with knowledge of the legislative process is essential. According to Walter Oleszek in his book *Congressional Procedures and the Policy Process* (CQ Press, 1996) “the policy-making process is inextricably linked to legislative procedures.” First, parliamentary procedures affect policy outcomes—they define, restrict, or expand the policy

options available to members. Second, often policy decisions are expressed as procedural moves. Third, the nature of the policy can determine the use of certain procedures. Fourth, policy outcomes are more likely to be influenced by people with procedural expertise.

Those who not only understand the content and substance, but also understand the legislative process, are at a distinct advantage and are more likely to become effective “players.” For example, a well-crafted amendment suggested by an interest group on the day of a committee mark-up will have little or no impact when bipartisan negotiations among key players have been going on for weeks and a bipartisan agreement (which includes an agreement opposing all amendments) was reached the day before the scheduled mark-up.

KNOWLEDGE OF NEGOTIATION SKILLS

Knowledge of the subject area and the legislative process is critical to exerting power in the policy process. But skill in the fine art of negotiations is also critical. On every issue, there are always two or more “sides.” Appointed officials and career bureaucrats “negotiate” among themselves before adopting a proposed approach. Individual organizations “negotiate” with other organizations with common agendas to develop their own set of recommendations. They also negotiate with other stakeholders in an attempt to broaden the coalition interested in bringing about change. Elected officials and their staffs negotiate with interest groups at the same time elected officials and staffs are negotiating among themselves before the bill or amendment is actually proposed, debated, revised (again through negotiations) and finally adopted or rejected.

The ability to be a successful negotiator is not an innate skill; it can be learned. There is literature in the field of negotiations that teaches basic tenets. Roger Fisher and William Ury (*Getting to Yes*, Penguin Books) describe an approach called “principled negotiations,” which includes the following core components:

- decide issues on the merits rather than through a haggling process. Focus on the underlying policy objectives both parties are trying to achieve rather than on “positions” taken by the parties to the negotiation.
- look for mutual gain, i.e., meeting the legitimate concerns of each party where interests conflict, base resolution on some fair standard independent of the will of either side (win/win).
- be hard on the merits and soft on the people.

Instead of focusing on “bottom lines,” principled negotiations focus on identifying your BATNA, i.e., your Best Alternative To a Negotiated Agreement. In the public policy arena, this includes assessing the outcome of going into a committee “mark-up” of a bill or going to the House or Senate floor not knowing the outcome of a vote because a broad-based negotiated consensus has not been reached.

KNOWLEDGE OF EFFECTIVE STRATEGIES FOR INTERACTIONS WITH POLICY-MAKERS (ELECTED/APPOINTED OFFICIALS AND STAFF)

People with the requisite knowledge of the subject area, the legislative process and the art of negotiations will still not be true “players” in the public policy arena unless they also understand how to develop relationships and interact with policy-makers. The ultimate goal of any person interested in

getting involved in changing public policy is to develop a long-term trust relationship with key policy-makers so that when important decisions are made, the policy-makers rely on this individual for advice, counsel and support.

Elected officials are faced with myriad decisions every day, including whether to sponsor a bill, vote for/against an amendment/bill, attend a hearing, speak at an event, provide constituent services, or engage in fundraising activities. Similarly, staff working for elected officials are faced with making recommendations on many of these questions. How are these decisions made by elected officials and recommendations made by staff? Several factors are critical: the merits or content, framing of the message, the timing, conformity with reality, the form and who delivers the message.

CRITICAL FACTORS AFFECTING THE DECISION MAKING PROCESS

- **Merits or contents of the proposal.** Certainly, the merits or contents of a proposal or a request are critical—the proposal must be well thought out and include an appropriate rationale.
- **Framing the message.** The message must be simple, personalized and reflect the target audience you are trying to reach using language your target audience can relate to while staying true to one's principles.
- **Timing of the proposal.** Timing is frequently a critical factor in any determination, e.g., did you reach the elected official before or after the official makes a public statement supporting the opposite position.
- **Reality check.** Another critical factor is the extent to which the request recognizes the various “realities” which affect the proposal, including political realities

(are elected officials asked to abandon their party or long-standing positions) as well as logistical realities (how much time will the request take to carry out).

- **The form of the message.** “Time” is one of the most sacred of all commodities for elected officials and staff. Thus, the form in which issues, policy alternatives and supporting data are presented is critical (keep it simple). Materials must be presented so that staff and elected officials can easily translate the contents into the types of materials they use, such as “talking points,” memoranda, statutory provisions, report language and floor statements.
- **Who delivers the message.** Who delivers the message is often the difference between whether or not the message is heard and acted on in a favorable manner. Policy-makers (elected officials and their staff) rely on other policy-makers and staff, academics, consultants, interest groups and others to provide ideas and supporting information. The number of ideas and documentation of positions is sometimes overwhelming. Thus, policy-makers develop and then depend on relationships with other policy-makers (elected officials and staff) and others to help them sort through the clutter.

The individual who sponsors a bill, offers an amendment, speaks for or against an amendment/bill or makes a motion to table is often key to whether a particular elected official votes for or against an amendment/bill. Similarly, the person who delivers the message to an elected official may be key. For example, a parent of a child with a disability who is also an active member of the member’s political party may have more impact than an activist of the opposing party.

CHARACTERISTICS OF EFFECTIVE STAKEHOLDERS

Policy-makers tend to rely for advice on others with whom they have developed a personal relationship. These people often have certain characteristics:

- status as a spokesperson or representative of a significant number of groups or individuals (e.g., head of an influential interest group or religious leader, a principal investigator of a major research project, friend of the elected official, or party activist);
- demonstrated knowledge about the legislative process, including political and logistical constraints;
- demonstrated knowledge about the needs of members and staffs;
- demonstrated knowledge of the subject matter under consideration (i.e., clear understanding of current law, ability to articulate problems and present viable policy options);
- dependability—able to deliver on promises (e.g., timely preparation of substantive memos or garnering grassroots support for position in the form of letters, calls and faxes);
- trustworthiness—honest about what can and cannot be said or done, including willingness to go “off the record” when necessary (e.g., establishing priorities, vetting alternative approaches, sharing which concerns are real and which are political posturing);
- understanding—recognize that agreement on a given issue is not always possible;
- forcefulness and honesty yet respectful—policy-makers appreciate people who straightforwardly tell

them where they stand and what they want, but resent threats and personal attacks; and

- demonstrated understanding of the critical role, politics, lobbying, compromise, self-interest and power play in the policy-making process.

APPENDIX A

AN IMPORTANT NOTE ON LOBBYING AND INDEPENDENT LIVING ORGANIZATIONS

... by Richard E. Petty, IL Net Director

This guide describes highly effective techniques for influencing public policy, many of which constitute lobbying. Centers for independent living may engage in lobbying. They are, however, required to follow federal and state laws and regulations governing nonprofit lobbying activities. There are also certain prohibitions and specific requirements related to the use of federal funds in lobbying. Statewide independent living councils (SILCs) that have established themselves as nonprofit organizations are also covered under these same laws and regulations. There may be additional state prohibitions and requirements related to lobbying which apply to statewide independent living councils.

Centers and SILCs are encouraged to secure the advice of a competent legal professional. Appendix B of this book contains Frequently Asked Questions on Lobbying. Below is a listing of several excellent publications on the topic.

PUBLICATIONS ON NONPROFIT LOBBYING

- *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.* Alliance for Justice, 2000 P Street, NW, No. 712, Washington, DC 20036, (202) 822-6070, www.afj.org. A comprehensive guide to the IRS rules on lobbying by 501(c)(3) organizations. Price: \$15.

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- *The Nonprofit Lobbying Guide—Advocating Your Cause and Getting Results. Second Edition.* Independent Sector Publications Center, P. O. Box 343, Waldorf, MD, 20604-0343, (888) 860-8118, www.indepsec.org. A comprehensive, practical guide on how to lobby and lobbying laws. Price: \$24.95.
- *Living with A-122: A Handbook for Nonprofit Organizations.* OMB Watch, 1742 Connecticut Avenue, NW, Washington, DC, 20009, (202) 234-8494. This handbook, published after major changes to lobbying rules in OMB Circular A-122, is available in three parts: Part I is a technical analysis of the lobbying rules; Part II describes how to cope with the rules; and Part III is a comparison to other lobbying rules. Price: \$20/complete set. \$8/part.

APPENDIX B

FREQUENTLY ASKED QUESTIONS ABOUT LOBBYING AND CILs

...by Bob Michaels, Laurel Richards, Cynthia Dresden and Dawn Heinsohn

“It’s easy to tell if a center’s doing strong advocacy. Someone from the state is telling them they’re not allowed to lobby.” —Ed Roberts

This FAQ addresses lobbying questions that have been raised during our training programs, technical assistance calls and consultant work. It was originally developed in May 1997. We have just revised it in response to amendments made to OMB Circular A-122.

In developing this FAQ, a study was conducted of pertinent regulations of the Internal Revenue Service and the Department of Education, and then the answers were reviewed with an attorney specializing in lobbying issues and with John Nelson, chief of Independent Living Branch of Rehabilitation Services Administration, and other officials of the Department of Education. We hope you find this FAQ useful, and we welcome any recommendations for improving it that you care to offer.

1. Are centers for independent living allowed to lobby?

Yes, CILs may lobby; however, the types of lobbying activities that are permissible vary, depending on whether they are supported with federal or non-federal funds. In addition, a CIL’s lobbying activities may be further limited by Internal Revenue Service regulations applicable to nonprofit organizations.

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2. What statutes or regulations do centers need to follow with regard to lobbying?

- The federal government requires granting and contracting agencies, such as the Department of Education, to follow guidelines set out in the *Office of Management and Budget (OMB) Circular A-122* (as amended in August 1997) when awarding federal funds. Additional restrictions may be found in Department of Education regulations 34 CFR Part 82.
- Centers may elect to follow guidelines set out in regulations developed under the *Internal Revenue Code, Sections 501(h) and 4911*.
- Centers that employ lobbyists or direct considerable funds to lobbying activities must meet reporting requirements set out in the *Lobbying Disclosure Act of 1995 (P.L. 104-65)*.

While requirements contained in these three documents will be covered in the remainder of this FAQ, there may be other federal, state, or local laws or regulations that affect the lobbying activities of a center. Center staff should contact the agencies in their states that regulate activities of nonprofits and request provisions related to lobbying activities.

It is imperative that center staff has a thorough understanding of these laws and regulations whenever issues of compliance are raised—and *always* get a second opinion.

3. I have been told that centers that receive Title VII funds are restricted from lobbying. Is this true?

Except as described in #5 below, CILs that receive Title VII funds are restricted from using Title VII as well as other federal funds to engage in lobbying activities. However, as

stated above, centers may use nonfederal funds to engage in lobbying activities.

4. What lobbying activities may not be supported with federal funds?

Briefly, lobbying activities that cannot be supported with federal funds include:

- Attempts to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure;
- Supporting in any way a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcome of elections;
- Any attempt to influence the introduction, enactment, or modification of federal or state legislation, including efforts to utilize state or local officials to engage in similar activities;
- Any attempt to influence the introduction, enactment, or modification of federal or state legislation by trying to gain the support of part or all of the general public;
- Legislative liaison activities in support of unallowable lobbying activities;
- Any attempt to influence an executive or legislative branch official with respect to any grant, contract, loan, or cooperative agreement.

It is important to note that activities that may not be supported by a center's federal funds may be supported by its nonfederal funds.

5. What lobbying activities may be supported with federal funds?

Non-restricted lobbying activities (that is, those lobbying activities which can be supported with federal funds) include:

- Providing a presentation through hearing testimony, statements, or letters in response to a *documented* request, if the information needed for the presentation is readily available. Costs for travel, lodging and meals are not allowed unless testimony is given in response a written request from the chairman or ranking minority member of a congressional committee or subcommittee;
- Lobbying to influence state legislation, in order to reduce directly the cost of performing the grant or contract or to avoid impairing the organization's ability to do so;
- Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

6. Will we jeopardize our center's 501(c)(3) status if we lobby?

There are really two questions that must be answered: Is the activity under consideration really lobbying and does lobbying constitute a *substantial* portion of what the center does, under IRS rules.

Question One: Are the center's activities *lobbying* or something else?

Direct lobbying is defined in the *Internal Revenue Code* (IRC) and regulations as "any attempt to influence any legislation through communication with any member or employee of a legislative body or with any government official or

employee who may participate in the formulation of the legislation.”

This includes such obvious activities as contact with a legislator about a specific piece of legislation, advocating for increases in funding in the budget, opposing a candidate for appointive office and encouraging the general public to support or reject an initiative, referendum, or board measure.

Direct lobbying does not include activities such as educating decision makers about issues of importance to people with disabilities, administrative lobbying, surveying candidates for office, attending public hearings, or even testifying if requested by a legislative committee in writing. Nonpartisan analysis and self-defense lobbying also qualify as exceptions under IRS rules.

A communication (with the general public or any segment thereof) will be treated as grass roots lobbying if and only if the communication (1) refers to specific legislation, (2) reflects a view on such legislation, and (3) encourages the recipient to take action with respect to such legislation (for instance, through a “call to action”).

Question Two: Is lobbying a substantial part of what the center does?

Centers can either elect to comply with IRC Section 501(h), which requires filing papers with the IRS and reporting annually on lobbying activities—or elect not to file under the law. Compliance with the law allows 501(c)(3) corporations to expend as much as 20 percent of their funds for lobbying activities depending on the size of the organization. Those choosing not to file may only spend an amount that is not “substantial.” One court ruled

that devoting more than five percent of an organization's resources to lobbying activities was substantial.

So, why doesn't everyone file under IRC 501(h)? Because most organizations haven't learned about it yet. The guidelines are far more generous, yet record-keeping demands for day-to-day lobbying activities are virtually the same.

7. How does lobbying differ from advocacy?

In the regulations for Title VII of the Rehab Act, advocacy is defined as "*pleading an individual's cause or speaking or writing in support of an individual. ... Advocacy may be on behalf of a single individual... a group or class of individuals... or oneself.*" Note that in this context, "*pleading*" is a legal term meaning "*a formal statement setting forth the defense of a case*" (Random House Dictionary). Advocacy, then, is action taken to convince others of the rightness of your cause and of their need to join you in supporting this cause.

Lobbying is a subset of advocacy in that it is a set of activities that plead a cause and set forth the defense of a case in order to influence the voting of legislators. In other words, lobbying is advocacy with a very narrow and specific focus—to convince legislators to vote as you wish them to on specific legislative proposals. Thus, the use of the word "advocacy" does not change the nature of what is or is not permitted as a lobbying activity.

8. Where can our center get more information about compliance with the Internal Revenue Code?

You can always try the IRS itself, but most of its information is not written for people other than certified public accountants. One excellent source of information we've found has been written by Greg Colvin, an attorney who specializes in this area. You can contact Greg at Silk, Adler and Colvin,

415.421.7555 to inquire about resource materials he has developed regarding lobbying and the tax code.

Other sources include Independent Sector (1828 L, N.W., 1200, Washington, D.C., 20036, 202.223.8100); Alliance for Justice (2000 P St., N.W., Suite 712, Washington, D.C. 20036, 202.822.6070); and Chronicle of Philanthropy (1255 23rd Street, N.W., Suite 700, Washington, D.C., 20037, 202.466.1200).

9. How does the Lobbying Disclosure Act of 1995 affect centers?

In most cases, it doesn't. Centers which attempt to influence Congress or top federal executive branch officials may be required to register, to report their areas of interest and to specify the amount of money spent on lobbying activities. A center is required to register under the Act only if: 1) an individual employed or retained by the center makes more than one contact and spends 20 percent or more of his or her time providing lobbying activities for the center during a six-month period, and 2) the center's total expenses in connection with lobbying activities exceed \$20,000 in a six-month period.

10. How may I obtain copies of the documents identified in this FAQ?

The documents referred to in this FAQ are available through the Government Printing Office or from your auditor or congressman. In addition, many codes, regulations and legislation can be downloaded electronically from the Internet.

- To access OMB Circular A-122 online, go to www.whitehouse.gov/WH/EOP/OMB/html/circulars/a122/a122.htm.
- For the Internal Revenue Code (P.L. 94-455), the address is www.law.cornell.edu/uscode/26/4955.html

- To find a copy of the Lobbying Disclosure Act of 1995 (P.L. 104-65) Act and other federal legislation, go to the Thomas homepage at <http://thomas.loc.gov>, probably the best springboard into everything from public documents to the inner workings of Congress.

CONCLUSION

As you know, advocacy is one of the core services of a center, essential to achieving the mission of promoting independent living opportunities for persons with disabilities. This said, among questions most often heard by IL NET trainers and technical assistants are what constitutes advocacy and what distinguishes it from lobbying?

This FAQ is intended to provide the basics. If you need more information, be sure to contact an attorney or your grantor agency.

“Frequently Asked Questions About Lobbying and CILs” is reprinted from the “Readings in Independent Living” series published by ILRU and the ILNet. The information was prepared by Bob Michaels with assistance from Laurel Richards, Cynthia Dresden, and Dawn Heinsohn. We extend our appreciation to Greg Colvin, John Nelson of the Independent Living Branch, RSA; Sergio Kapfer, Department of Education General Attorney, Division of Educational Equity and Research; and Susan Winchell, Department of Education Ethics Counsel Staff for agreeing to review these responses.