

Lessons from the Playground: What We Can Learn From How Kids Resolve Their Disputes

by Jeffrey I. Abrams



Disputes and conflict are an inevitable part of life. While some believe that learning to deal with these daily challenges is something that can wait until adulthood, it is actually on the playground, as pre-schoolers, where dispute resolution skills are first developed. At a very early age, most pre-schoolers learn the valuable lesson that selecting the appropriate dispute resolution process is often the single most important factor in the successful resolution of a dispute.



Generally, dispute resolution methods fall along a continuum, where the parties become more like ANIMALS the further they go along the continuum (Avoidance; Negotiation; Mediation; Arbitration; Litigation; and Self-help). As one travels along this continuum, the dispute becomes more adversarial, the costs (monetary, physical or emotional) become greater, options become more limited and the parties increasingly lose the ability to control the outcome.

Using the most prototypical of all playground disputes – a fight over a sand toy –valuable lessons can be learned about how to successfully resolve disputes by selecting the right dispute resolution process.

Avoidance: Avoidance is a strategic decision to deliberately walk away from the dispute. Often, a strategic plan of avoidance is dictated by the relative power imbalance of the parties.

On the playground, this can take the form of a smaller child (Jack) choosing to let the bigger child (Sam) have the toy because of the legitimate fear that the bigger child will harm him physically. This is a strategic decision – “I don’t want to get hurt.” On the other hand, the bigger child may decide that there are simply more exciting things with which to play. Again, this is a strategic decision – “The toy is simply not worth fighting over.”

As adults, a strategic decision often is made to avoid a dispute. For example, a screenwriter who believes that his idea for a movie has been stolen may make a strategic decision to avoid initiating any dispute, as it may ultimately make it more difficult for him to later work with this, or any other studio. This is not mere capitulation – it is a strategic decision that, regardless of the validity of the claim, the screenwriter will ultimately be more successful and earn more money by not making any claim. Conversely, a large, multi-national company may make a conscious decision not to pursue a valid claim against a single individual in a remote, foreign location. Again, this is strategic business decision that the cost of litigation outweighs any potential benefit from engaging in the dispute.

Negotiation: Negotiation consists of voluntary, direct, one-on-one contact between the parties in

dispute. Critical to any negotiation is the willingness of the parties to communicate about their dispute and the willingness to compromise towards a win-win solution for both parties. Since there are few, if any, limitations to a negotiation, this allows for a wide range of possible solutions. Not surprisingly, negotiation is the primary conflict resolution device used by both children and adults.

On the playground, this negotiation can take the form of the “bait and switch” when two children want to play with the same toy. The effective negotiator, Sam, realizes that by offering another toy which may be more attractive to Jack, each can end up playing with a toy that makes him happy.

An effective adult negotiator will likewise be adept at finding “win-win” solutions to resolving disputes. This requires the parties to work together by: (i) identifying and agreeing on what issues are in dispute; (ii) recognizing that the interests, goals and needs of the parties are not completely incompatible; (iii) realizing that the parties can influence each other to act in ways which are mutually beneficial; and (iv) rejecting other, more confrontational and adversarial ways of resolving their dispute.

Mediation: Mediation is a negotiation which is facilitated by a third party who helps the parties to resolve their dispute. The mediator does not make decisions. Rather, the mediator hears both sides of the dispute and helps the parties to arrive at their own solution.

On the playground, assuming that Sam and Jack are past the point of Avoidance and Negotiation, the next step is to seek the intervention of a third party – Mediator Mom. Sam and Jack both present their side of the story to Mediator Mom, knowing full well that the way in which they present their story, their willingness to appear to be acting in good faith and their complete candor are essential to a resolution of the dispute. While Mediator Mom won’t ultimately make any decision, based on what she has heard from each child, she may propose creative solutions to their dispute. By suggesting, rather than ordering, that Sam play with the toy for five (5) more minutes and then give Jack a turn, both children have the satisfaction of knowing that their side of the story has been told and that they have reached the ultimate resolution themselves.

In the adult world, the primary benefit of mediation is that this often is the last opportunity for the parties to maintain some control of their dispute – control of the costs (financial, physical, emotional), control of the process and control of the outcome. However, in order to be successful, a mediation in the adult world must be much a mediation before Mediator Mom. The parties must be open, honest and candid with the mediator; each party to the mediation must do its best to present a fair and honest view of its side of the dispute; and each party must be willing to compromise.

Arbitration: Arbitration is useful where the parties not only seek the intervention of a third party, but grant the third party decision making power. Arbitration either can be informal, where the parties select someone in their community or business who they mutually respect, or it can be akin to a formal legal proceeding. Regardless, by submitting their dispute to an arbitrator, as

opposed to going the more formal litigation route, the parties hope to achieve a speedier and more cost effective resolution.

On the playground, this decision making power is often entrusted to a mutual friend; someone who has had similar experiences and who is seen as fair and trustworthy. Sam and Jack know that, after having exhausted the possibility of resolving their dispute themselves, they may need to seek a decision. While they can certainly go back to Mediator Mom, they make seek to avoid the formality, and lasting impact, of seeking a decision which would transform Mediator Mom into Magistrate Mom. Critically, while recognizing the value in resolving their disputes themselves, they also recognize that there are times when they will need to submit themselves to a third party and seek a decision.

Similarly, in the adult world the choice of who will serve as the arbitrator will often be critical to the desired outcome. Just as Sam and Jack were careful to select a person who they respected and whose decision they would honor, so too should care be taken in selecting an arbitrator who will understand the dispute, listen to the evidence and render a fair decision.

Litigation: Obviously, litigation is generally limited to the adult world. However, even in the world of the playground, Sam and Jack may seek a formal decision by the ultimate decision maker – Magistrate Mom. The outcome of this approach is pre-ordained – one boy (Jack) will get the sandtoy and the other (Sam) will not. However, there are guaranteed to be costs on both sides. In addition to not being able to play with the sandtoy, Sam may harbor lasting resentment towards Jack, as well as the system which he views as having treated him unfairly. As for Jack, he may have “won the battle,” the toy, but “lost the war” in having lost a friend and playmate.

In the adult world, while litigation remains a legitimate and necessary dispute resolution method, the costs of litigation (financial, physical, emotional, etc.) remain a certainty.

Self-Help: The most extreme form of dispute resolution is self-help, which generally involves unilateral action by one of the parties. There is generally no communication between the parties, no intervention by any third party and most importantly, no rules.

On the playground, this consists of Sam simply ripping the toy out of Jack’s hands. Sam has made a strategic and conscious decision to resolve the dispute himself, rather than avoid it, engage in negotiation, or sought the intervention of a third party mediator or arbitrator. He has abused his power and used the most violent and adversarial form of dispute resolution. As any pre-school teacher will tell you, a playground where all the children resorted to self-help would be utter chaos.

Adults also frequently resort to self-help, which can even take the form of illegal conduct. The landlord who moves all of a tenant’s possessions into the street without pursuing a formal eviction, the driver who commits an act of road rage after being cut-off, an angry neighbor who cuts down a 100 year-old tree are all acts of self-help. Just as every pre-schooler must learn that these acts of self-help are unacceptable, adults also need to be reminded that these acts of

self-help are rarely, if ever, acceptable means to resolve a dispute.

From pre-school age, we learn that disputes are a part of life and that resolving these disputes requires being one of the ANIMALS. The only question is which one of the ANIMALS it should be.

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