

Statewide Special Education Mediation Procedures: A Guide for Parents, School Districts and Parent Advocacy Agencies

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I. Introduction and Purpose

This document sets forth the mediation process for the resolution of special education disputes filed with the Office for Exceptional Children (OEC), Ohio Department of Education (ODE) pursuant to 34 C.F.R. 34 § 300.506. The mediation process is an alternative to a formal due process hearing and the formal complaint process for settling special education disputes. It provides disputants the opportunity to resolve issues regarding the proposal or refusal to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. The mediation process is less adversarial and offers a way that promotes joint exploration of issues and encourages new thinking and supports problem solving.

II. Authorization/Regulations

The Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. § 300.506 requires that the state education agency establish and implement procedures that allow parents and school districts to resolve their differences regarding the provision of special education services through a mediation process.

34 C.F.R. § 300.506 Mediation in pertinent part states:

“Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

The procedures must meet the following requirements and must ensure that the mediation process:

- *Is voluntary on the part of the parties;*
- *Is not used to deny or delay a parent’s right to a hearing on the parent’s due process complaint, or deny any other rights afforded under Part B of the Act; and*
- *Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.*

A public agency (school district) may establish procedures to offer to parents and schools that choose to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

- *Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under this Act and*
- *Who would explain the benefits of and encourage the use of the mediation process to the parents.*

The state educational agency (SEA) must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

The SEA must select mediators on a random, rotational or other impartial basis.

The state must bear the cost of the mediation process, including the costs of meetings described in the above paragraphs.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution and that:

- *States that all discussion that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and*
- *Is signed by both the parent and a representative of the agency who has the authority to bind such agency.*

A written, signed mediation agreement under this paragraph is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under this part.

An individual who serves as a mediator under this part:

- *May not be an employee of the SEA or the local educational agency (LEA) that is involved in the education or care of the child; and*
- *Must not have a personal or professional interest that conflicts with the person's objectivity.*

A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under this Act solely because he or she is paid by the agency to serve as a mediator."

State law (*Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*) supports federal law in requiring mediation as an option for conflict resolution in Ohio.

Additional information regarding due process and mediation

- A representative of ODE/OEC or the Office of Early Learning and School Readiness may mediate a dispute if efforts to resolve an issue have failed at the school district level.
- Both parties must agree on mediation.
- ODE shall maintain a list of individuals who are qualified mediators. Both parties to the mediation must be involved in selecting the mediators and agree with the selection.
- The mediator shall be qualified and impartial and trained in effective mediation techniques; knowledgeable in laws and regulations relating to special education and related services; and must not have a personal or professional conflict of interest.
- The mediator may not be an employee of any school district or state supported or operated programs providing services to children with disabilities.

- The school district will schedule the mediation in a timely manner. The mediation shall be held at a time and location that are mutually agreeable to the parent, school personnel and the representative from ODE.
- ODE shall bear the cost of the mediation process.
- The designated agency involved in the dispute must send a representative who has the authority to commit resources.
- No part of the mediation process may be electronically recorded.
- Discussion occurring during the mediation session must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.
- The mediator may not be called as a witness in future proceedings related to the mediation conference.
- An agreement reached by the parties through the mediation process shall be stated in writing and is enforceable in court.
- If the mediation requires changes in the individualized education program (IEP), the IEP team shall be convened to incorporate changes into the IEP within 20 school days following the mediation agreement or as agreed to in the mediation agreement.
- If an impartial due process hearing officer has already been appointed, the district shall submit to the hearing officer a copy of the written agreement or a copy of the letter of withdrawal received by the school district.

III. General Requirements

In addition to developing and managing a statewide special education mediation system, ODE is also responsible for ensuring that information about mediation is disseminated to parents, advocacy organizations and school districts. ODE has information about mediation and how to access mediation services on the Web site (education.ohio.gov). In order to ensure that all parties who may need information about conflict resolutions are reached, OEC will also contact the following:

- 1. Parents:** OEC will contact parents directly to provide them information on mediation when the parent files either a formal written complaint or a request for a due process hearing or both, or simply when the parents inquire about conflict resolution or mediation.
- 2. School Districts:** Information about mediation and the process for requesting mediation will be provided to the special education offices at local school districts, Education Service Centers, the Buckeye Association of School Administrators, district superintendents, directors of special education/pupil services and State Support Teams (SSTs).
- 3. Other Agencies:** Information on mediation is available on the ODE Web site and by contacting OEC through our toll free phone number at (877) 644-6338.

Parents can also call the organizations below to obtain information on mediation. Contact information for these organizations is provided at the end of this guide.

- The Ohio Coalition for the Education of Children with Disabilities
- The Ohio Legal Rights Services
- Ohio Protection & Advocacy Association
- Child Advocacy Center of Ohio
- SSTs (formerly special education regional resource centers)

A. What is Mediation?

Mediation is a voluntary process that provides an opportunity for parents and school officials to meet with an independent third-party (the mediator), who will assist them to resolve their disputes regarding special education matters. Mediation is available without the need to request a due process hearing or file a complaint. Mediation is also available when a due process hearing or formal complaint has been requested. In addition to being a voluntary process, mediation is confidential and informal. It is based on the “good faith” of the parties involved in the mediation. Participation in mediation cannot be used to deny or delay a parent’s due process hearing.

As an alternative dispute resolution process, mediation can address many different types of issues in special education such as evaluation, identification and placement of a student with a disability. Examples of other issues that can be mediated include, but are not limited to:

- whether a student should be identified as having a disability, or the specific disability classification;
- whether a student is eligible to receive special education and related services;

- whether the programs and services designated for the student with a disability are appropriate;
- whether the designated type and amount of related services (e.g., speech/language, physical therapy) are appropriate; and
- whether the educational placement designated for the student is in the least restrictive setting.

B. Procedures for Requesting Mediation

Mediation is suitable for addressing any issue regarding a child's eligibility for services or the manner in which the services were provided including the scope of the services in question. During the mediation, the student's educational status remains the student's current placement unless the parents and the local school district agree to an alternative placement based on the student's IEP. Mediation will take place only if the parents and the local school district officials agree to mediate.

Whenever a due process hearing is requested by either the parent(s) or school district, OEC will offer to both parties the opportunity to take their dispute to mediation. If both parties agree to mediation, OEC will send an information packet that contains a list of three mediators to the parties. Upon receipt of the list, the parties will select and mutually agree upon a mediator within 10 calendar days from when the letter was mailed and inform OEC. If the parties do not agree on a mediator the parties may consider the entire list of mediators located on the ODE Web site (keyword search *Mediators in Ohio*). If the parties still are unable to reach agreement, OEC may appoint a mediator at the request of both parties or OEC will move forward with the due process request as if the mediation was unsuccessful.

Whenever a formal complaint is filed by a parent(s) against a school district, OEC will offer to both parties the opportunity to take their dispute to mediation. If both parties agree to mediation, OEC will send a list of three mediators to the parties. Upon receipt of the list, the parties will select and mutually agree upon a mediator within ten calendar days from the date of mailing and inform OEC. If the parties do not agree on a mediator the parties may look at the entire list of Ohio mediators on the ODE Web site. If the parties are still unable to reach agreement, OEC may appoint a mediator at the request of both parties or OEC will move forward with the complaint as if the mediation was unsuccessful.

When making an offer to both parties to take their dispute to mediation OEC shall describe the mediation process in full to both parties, including the benefits. In addition, OEC shall determine if the party would like a list of organizations that provide additional information or advocacy services.

Once it is established that both parties are interested in mediation, the parties will be provided the opportunity to select a mediator. Biographical information about mediators will be posted on the ODE Web site to provide the parties background knowledge and experience of the mediators. Once the parties have selected the mediator, OEC will:

1. Provide the mediator information regarding the issues in the dispute; and
2. Provide contact information for both parties.

Upon receipt of a mediation request, the mediator shall do the following:

1. Contact both parties to set up mediation in a neutral location;
2. Determine with each of the parties who may be attending the mediation (parent, parent advocate, parent attorney; school district administrative representative, school district attorney, school personnel who are familiar with the student or anyone else who may have unique information regarding the student such as a specialist);
3. Determine if anyone attending the mediation has special needs (interpreter, wheel chair access, etc.) or special accommodations;
4. Alert the school district to arrange an environment that might accommodate special needs;
5. Determine a reasonable date and time for the mediation. This may require several phone calls between the parties. Generally, it is the responsibility of the school district to make arrangements for a neutral site for the mediation. The site should have two rooms, one for the mediation session and one for a party to wait while the mediator is meeting with the other party (caucus). A copier must be available to ensure that copies of any signed agreement can be made for all parties; and
6. The mediator will schedule the mediation within five business days of receiving the appointment from OEC. The mediation will be completed within 20 business days of the mediator setting the mediation session.

If the parties cannot schedule the mediation within the prescribed timeline, or if the mediation itself exceeds the prescribed timeline, the mediator will immediately contact the mediation coordinator by phone, fax or email.

If during the mediation the parties reach agreement, the mediator will assist the parties in writing the agreement. Both parties will sign the mediation agreement, which will include a phrase indicating that the due process request or the complaint has been withdrawn, if the mediation was the subject of a due process request or complaint. If an agreement is not reached, the parties will proceed with the due process hearing or the complaint investigation.

In the case of a due process hearing request, the mediation coordinator will inform the coordinator of due process in OEC whether an agreement has been reached or not; and if an agreement was reached, whether the agreement completely resolves all issues so that the due process request may be terminated. In the case of a formal complaint, the mediation coordinator will inform the complaint investigator whether an agreement has been reached or not; and if an agreement was reached, whether the agreement completely resolves all issues so that the complaint may be closed. If all issues are resolved, the parties will be required to sign a complaint withdrawal form. It is the responsibility of the mediation coordinator to inform the complaint investigator about the issues that were not resolved so that an investigation of those issues can move forward.

C. Payment of Mediation Costs and Other Costs

Mediation and related services will be paid for by ODE and the school districts as follows:

1. The mediator will be compensated by ODE for conducting mediation at the rate of \$150 per hour;
2. ODE will pay the mediator after receiving an invoice from the mediator. The mediator must submit the invoice within 30 business days after the completion of the mediation. The invoice must name the case that was mediated; and
3. ODE will pay for services of non-English language interpreters and interpreters for the hearing impaired for services rendered at mediation meetings.

D. Evaluating/Monitoring Mediation Activities

The mediation system will be evaluated on an ongoing basis and revisions to the mediation system will be made as appropriate, based on the evaluation data collected from mediation participants. The purpose of the evaluation is to determine the perceived effectiveness of the mediation effort and to assist in the ongoing improvement of the mediation process.

1. In order to evaluate the mediation system, the mediation session, the role of the mediator and the user satisfaction with the mediation process, OEC will require the mediator to distribute and return to OEC the completed mediation evaluation.
2. The evaluation of the mediator will be based on the mediator's adherence to the contract for personal services and the assessments of the parties to the mediation. OEC has developed mediation evaluation surveys for this purpose.

E. Conclusion

The purpose of mediation in special education is to provide a speedy, less costly, less adversarial and voluntary way to resolve disputes between parents and school district personnel regarding the education of a child or children with disabilities. Mediation can assist in the clarification of issues and stimulating ideas about mutual problem solving efforts between parents and school district personnel. The goal of mediation is to reach a mutually acceptable written agreement; however, if an agreement is not reached it is hoped that both parties will leave the mediation with a clearer understanding of the issue(s).

Agencies and Organizations to Contact for Information on Mediation

Ohio Department of Education
Office for Exceptional Children
Chrissy Cline-Mediation and Due Process Coordinator
25 S. Front St.
Mail Stop 202
Columbus, Ohio 43215
Email: Chrissy.cline@ode.state.oh.us
Web site: Education.ohio.gov
(877) 644-6338

Ohio Coalition for the Education of Children with Disabilities
165 W. Center St., Suite 302
Marion, Ohio 43302
Phone: (800) 374-2806 or 740-382-5452
Email: ocecd@gte.net
Web site: ocecd.org

Ohio Legal Rights Service
50 W. Broad St. – 14th Floor
Columbus, Ohio 43215
Phone: (614) 466-7264
Web site: olrs.ohio.gov

Ohio Protection & Advocacy Association
5350 Brookpark Rd.
Cleveland, Ohio 44134
Phone: (216) 398-5501
Email: PhyllisFolan@sbcglobal.net
Web site: ohioprotectionadvocacy.org

Child Advocacy Center at Memorial, Inc.
1607 Mansfield St.
Cincinnati, Ohio 45202
Phone: (513) 621-3032
Email: cheizman@memorialinc.org

SST Region 1

Lynn Mielnik - Special Education and Parent/Family Contact
Tanya Braden - Parent/Family Contact
(800) 346-8495

SST Region 2

Christine Palumbo - Special Education Contact
Moirra Erwine – Parent/Family Contact
(440) 324-5777

SST Region 3

Jim Rohlik - Special Education Contact
Terri McIntee – Parent/Family Contact
(216) 524-3000

SST Region 4

Tom Stone - Special Education Contact
Gale Ott – Parent/Family Contact
(440) 350-2563

SST Region 5

Karen Kanotz - Special Education and Parent/Family Contact
(800) 776-8298

SST Region 6

Marlene Graf - Special Education Contact
Gloria Murphy - Parent/Family Contact
(800) 686-2945

SST Region 7

Ed Kapel - Special Education and Parent/Family Contact
(800) 424-7372

SST Region 8

Karen Majeski - Special Education and Parent/Family Contact
(330) 945-5600

SST Region 9

Joan Burrier - Special Education Contact
Deb Bates - Parent/Family Contact
(330) 492-8136

SST Region 10

Don Sheer - Special Education Contact
Patricia Gay - Parent/Family Contact
(937) 236-9965

SST Region 11

Rhonda Dickson - Special Education Contact

(614) 573-4707

Joe Farry - Parent/Family Contact

(614) 573-4680

SST Region 12

John Rocchi - Special Education and Parent/Family Contact

(740) 455-6700 or (877) 778-1274

SST Region 13

Deb Durbin - Special Education Contact

(513) 526-2864

Sue Bitsko - Parent/Family Contact

(513) 674-4261

SST Region 14

Lisa Barnhouse - Special Education Contact

Amy Luttrell - Parent/Family Contact

(937) 393-1904

SST Region 15

Eric Humston - Special Education Contact

Beth Rice and Stephanie Childers - Parent/Family Contacts

(740) 289-4171

SST Region 16

Debra Buck - Special Education and Parent/Family Contact

(740) 594-4235