

CONFLICT RESOLUTION **IN SPECIAL EDUCATION**

MEDIATION

North Dakota Department of Public Instruction
Office of Special Education
Dr. Wayne G. Sanstead, State Superintendent
State Capitol
600 E. Boulevard Ave., Dept. 201
Bismarck, North Dakota 58505-0440

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Equal education opportunity is a priority of the ND Department of Public Instruction.

OVERVIEW

Parents and school staff usually agree on issues regarding evaluation, eligibility, services and placement of students with disabilities. However, there are times when disagreement occurs. Disagreements and conflict are often inevitable, but they need not produce negative results.

If a parent and school are unable to resolve a conflict concerning a student with a disability, mediation is an available alternative to conflict resolution for both parties. Mediation is the process of using a third party mediator to help parents and school personnel reach a binding agreement about the educational evaluation, eligibility, placement or services for a child with special needs. As the mediator is a neutral third party, they have no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. The mediator has been trained in a communication process to handle special education disputes. Mediation is completely voluntary. It should not interfere with any procedural safeguards, including a request for a due process hearing.

MEDIATION IN SPECIAL EDUCATION & SECTION 504

Mediation in special education and Section 504 is a process to assist parents and schools in resolving disagreements regarding the education of a student with disabilities.

The federal regulations regarding special education, the Individuals with Disabilities Education Act (IDEA), requires any state educational agency that receives federal financial assistance to ensure that procedures are established and implemented to allow parties to dispute resolution, through a mediation process which, at a minimum, shall be available whenever a due process hearing is requested. North Dakota Department of Public Instruction offers mediation when a due process hearing is requested, or when conflict between a parent and school exists. The IDEA also requires that each state ensure that mediation

- is voluntary on the part of both parties
- is not used to deny or delay a parent's right to a due process hearing
- is conducted by a qualified and impartial mediator
- qualified personnel are listed with the state education agency
- costs are the responsibility of the state education agency
- sessions shall be held in a timely manner and in a convenient location
- binding agreements be created by the parties following successful mediation
- sessions shall be confidential and not used in subsequent due process hearings

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a meeting that is more structured than a parent-school conference, but less formal than a due process hearing. Mediation is a **voluntary** process and **optional** for both parties, with no consequence for choosing not to participate. The mediation session is completely confidential and encourages open communication. Mediation is considered binding under state contract law.

THE COST OF SPECIAL EDUCATION AND SECTION 504 MEDIATION

Mediation is available at no cost. The North Dakota Department of Public Instruction bears the costs related to special education mediation. Section 504 mediation is a school district expense. The ultimate responsibility for the administration of the mediation process is with the North Dakota Department of Public Instruction, who ensures that mediators throughout the state are trained and receive appropriate follow-up training.

ADVANTAGES OF MEDIATION

The purpose of mediation is to provide an **optional** conflict resolution process for disagreements between parents and school personnel. In virtually all cases, mediation is less costly and less adversarial than filing a complaint or requesting a due process hearing.

Mediation can:

- Identify disagreements concerning the identification, evaluation, placement or services of a student;
- Clarify the issues causing the disagreement;
- Provide those involved with uninterrupted opportunities to present their points of view;
- Stimulate mutual problem-solving efforts;
- Promote positive working relationships between parents and school personnel; and,
- Help parents and school personnel focus on what they have in common--the student--rather than on the issues that divide them.

REQUESTING MEDIATION

A request for mediation may occur when parents and schools reach an impasse after having made good faith efforts to resolve their differences. A request for mediation will most likely occur when parties are unable to modify their positions without outside assistance. Either the parents or school district can request mediation. Mediation may occur on any issue considered appropriate for a due process hearing or complaint investigation. Mediation may occur prior to or concurrent with a request for a due process hearing or the filing of a complaint. However, it may not, **in any way**, interfere with the right to a due process hearing. Mediation is not a necessary step prior to a due process hearing. It is an optional alternative.

AGREEING TO MEDIATE

Mediation is voluntary for both parties. Unless both parties agree to mediation as a way to resolve their disagreement, a mediation session cannot be scheduled. Once the parents and school district agree to mediation, each party completes their respective *Agreement to Mediate* form (see Appendix) and sends the document to the North Dakota Department of Public Instruction, Office of Special Education, 600 East Boulevard Avenue, Bismarck, ND 58505-0440. The Office of Special Education then initiates contact with the other identified party to seek participation. If the other party agrees to participate in mediation, they also complete the *Agreement to Mediate* form to document their concerns or issues. If the other party declines to participate in mediation, all efforts to resolve conflict via mediation end.

APPOINTMENT OF A MEDIATOR

- The North Dakota Department of Public Instruction will submit to both parties a list of three certified mediators with a brief biography of each.
- Each party **eliminates** one name from the list of three; if both parties eliminate the same name, the Office of Special Education will appoint one of the two remaining names. If each party eliminates a mediator, the remaining mediator will be assigned. This process will be completed in 5 days.

THE MEDIATION PROCESS

Once identified, the mediator will be contacted by the Department of Public Instruction and given the parties names and phone numbers in order to arrange the date, time and location for the session. The mediator will contact the two parties. To ensure objectivity, the mediator is given only the *Agreement to Mediate* forms submitted by the parties. The mediator is not made aware of any phone conversations between the parties and DPI personnel. During the initial contact with the parties, the mediator will limit questions to the scheduling of the mediation session and will not engage in conversation with either party about the issues involved in the conflict.

The mediator will be responsible to seek and secure a comfortable location for the mediation session; a location away from the school is preferred, but confidentiality and comfort are critical in securing a neutral location. The mediator will ask if either party has a need for accommodations and prepare accordingly.

MEDIATORS

Individuals selected to serve as mediators have successfully completed a training program in mediation. In addition, mediators participate in regularly scheduled in-service sessions to assure updating of appropriate information and skills. The IDEA does not support co-mediation, or the use of two mediators working together.

Mediators are selected to be available to the Department of Public Instruction on the basis of these qualifications:

- Sensitive to cultural, linguistic and class differences;
- Neutrality, both real and perceived;
- Knowledge of the process of mediation; and,
- Appropriate personal communication skills.

THE ROLE OF THE MEDIATOR

The mediator is a **neutral** third party acting as a facilitator to assist parents and school personnel in reaching an agreement.

Although the mediator is **in control** of the session, he/she does not make any decision on how to resolve the issue(s). The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student.

The mediator **facilitates** the process. He or she summarizes positions and helps the parties consider possible alternatives.

THE ROLE OF PARENTS AND THE SCHOOL DISTRICT

The parties are expected to approach the mediation in good faith and with the intention of reaching a binding agreement. They will be active participants in the session and, if mediation is successful, will develop a written binding agreement with the assistance of the mediator.

THE ROLE OF LEGAL COUNSEL

The parties understand that mediation is not a substitute for independent legal advice. The parties may secure independent legal advice throughout the mediation process. The parties are responsible for their own legal fees. It is not appropriate for attorneys to participate in mediation sessions.

PREPARING FOR A MEDIATION SESSION

- Make no other plans for the day or evening.
- Put aside personality conflicts and focus on the student's best interest.
- Review all relevant documents, papers, and reports prior to the session.
- Organize your information and any materials you bring to the mediation session.
- Think of possible alternatives/ways of solving the problem.
- Think about what you want to get out of the session.
- Think about what you want the other party to do.
- Think about what you are willing to do.
- Be willing to listen and compromise.

PARTICIPANTS IN THE MEDIATION SESSION

The number of participants at each mediation session will be kept to an *absolute minimum* in order to enhance the potential for effective problem solving.

At the session, the parties to the dispute--the parent(s) and the school district's representative(s)--must have the authority to make decisions and to commit any resources agreed upon as the result of the mediation. The mediator makes the final decision on who will attend the mediation session.

THE LENGTH OF MEDIATION

Mediation sessions could take up to a full day. Generally, however, sessions can be completed in three to four hours, depending upon the complexity of the issue(s). It is recommended that participants plan to set aside a full day, even though the session is likely to conclude in a shorter period of time. It is very possible that more than one mediation session will be necessary to resolve the issues and future sessions will attempt to be scheduled as timely as both parties can agree to given their schedules.

THE MEDIATION SESSION

The mediation session consists of several phases:

INTRODUCTION: The mediator begins the session promptly and explains the mediation process, makes introductions and confirms all ground rules of the session to all participants.

JOINT SESSION: Both parties to the dispute are given an opportunity **without interruption** to present the issue(s) from their point of view. Only the mediator may ask questions or summarize what has been said.

CAUCUS: The mediator may use the caucus, which is an opportunity for each party to take a break and meet privately with the mediator to further clarify issues and positions. The mediator will not share information from the caucus without consent of the party participating in the caucus session.

AGREEMENT: When (and if) the parties reach an agreement, the mediator assists in explaining solutions to the problem. The parties determine the terms of the agreement and the mediator puts the agreement in writing. Both parties and the mediator sign the mediation agreement. At the conclusion of the session, each party receives a copy. If mediation results in an agreement that would require changes to a student's IEP, an IEP team meeting should be convened as soon as possible to **consider** the incorporation of elements of the agreement into the student's IEP.

Not all mediation sessions result in agreements. If agreement is not reached, the mediator will certify to the parties, in writing, that the mediation has been unsuccessful. Alternative options exist with the Department of Public Instruction if initial mediation is unsuccessful.

The discussion during the mediation session is completely **confidential** and there will be **no disclosure of any information given by either party**. At the conclusion of the session, and in the presence of the parties, the mediator may destroy any notes he/she has taken during the session. The only part of the mediation session that may be shared with other persons is the written agreement. It is critical that the mediator discuss with the parties how the mediation agreement will be shared with the IEP team, other parties, etc., who will be responsible to share and by what method.

The mediator will be excluded from participation in subsequent proceedings--staffing, complaint investigations, and due process hearings. Nothing occurring at a mediation session is admissible as evidence in a due process hearing. The written agreement may not be admissible in subsequent proceedings.

No electronic recording of mediation sessions will be allowed and no records of the proceedings will be kept other than written agreements in successful mediations.

DISCLOSURE AND STANDARDS OF MEDIATION

Mediation is a conflict resolution process in which an impartial third party facilitates participants negotiating a voluntary agreement. In mediation, decision-making authority rests at all times

with the parties. These standards are intended to assist and guide special education and Section 504 mediation in school districts throughout North Dakota.

Mediators have duties to the parties, to their professions, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties.

Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, have no bias toward individuals or institutions involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.

IMPARTIALITY

The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by work or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations that the mediator may have with any participant and obtain all parties' consent to proceed as mediator.

CONFIDENTIALITY

Maintaining confidentiality is critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator should resist testifying and disclosing other information about the substance of mediation at any proceeding without the consent of all mediating parties.

SUSPENSION OR TERMINATION OF MEDIATION

The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason. If the parties reach a final impasse, the mediator should not prolong unproductive discussions that result in emotional and monetary costs to the participants.

INDEPENDENT ADVICE AND INFORMATION

The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

OPPORTUNITY FOR FULL EXPRESSION OF INTERESTS

The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.

CONCLUSION

The purpose of mediation in special education and Section 504 is to provide an optional process as a way to resolve conflicts, clarify issues and stimulate mutual problem-solving efforts between parents and school personnel. Even if an agreement is not reached, there is the potential of both parties leaving the session with an enhanced perspective of the issues and with the focus on the student. Most mediations result in better communication between the school and the parents. This leads to an improved situation for the student.

HOW TO REQUEST MEDIATION THROUGH THE OFFICE OF SPECIAL EDUCATION

If you believe mediation may be appropriate to help resolve your conflict with a school, teacher and or parent regarding special education services to a child with disabilities, you can follow these steps:

- Contact the Office of Special Education at (701) 328-2277 and request one of the following forms –
 Parent Request for and Agreement to Mediate
 School Request for and Agreement to Mediate
- Complete the form and return to the Office of Special Education by mail or fax (701) 328-4149
- The Office of Special Education will contact the other party regarding participation in mediation and if agreed, will send/fax the form identified above for completion
- If the other party chooses not to participate in mediation, the process ends. If the other party agrees to mediation, the Office of Special Education will send via mail, fax or email to both party's three biographies of trained mediators in your geographical area – each party is able to dismiss/eliminate one mediator. The mediator is then chosen and contacted by the Office of Special Education.
- The mediator will have only the two completed forms and no additional information. The mediator will contact both parties to arrange a date, time and place to meet as soon as conveniently possible to begin the mediation process (multiple sessions if necessary).
- Upon completion, the mediation agreement (if reached) is returned to the Office of Special Education, along with the three requested evaluation forms and the file considered closed.

Additional conflict resolution remedies may be pursued if appropriate.

APPENDIX A
Parent Request for and Agreement to Mediate

I/We request mediation in the in the matter of _____ (child/student's initials) to try to reach an agreement on some or all of the issues regarding educational services for the child/student. I/We have read and understand the written materials describing mediation services and have been fully informed that the mediator is not providing the parent(s), the school district, or the child/student with legal representation. I/We also understand that the mediator is not providing counseling or therapy services.

I/We choose to pursue mediation to try to reach an agreement on some or all of the issues regarding the child/students' educational program. I/We understand that the mediation process will involve the mediator, acting as a neutral third party, to help develop an agreement that is mutually satisfactory. If an agreement is reached, I/we understand that the written and signed agreement may be shared with other individuals working with the child/student. I/We understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings pertaining to the child/student's case.

The following is a summary of the issue(s) that I/we will discuss in mediation: (use the back side of this sheet if more room is needed)

Please identify the other party(ies) that you want to meet with for mediation.

Name	Position

Please identify the other party(ies) who will attend the mediation with you.

Name	Position

Parent(s)/Guardian(s) Name(s)	Child/Student Name	Date of Birth
Address		Telephone Number
School District Name		
Parent Signature		Date

Mail to:

Department of Public Instruction, Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440

APPENDIX B
School District Request for and Agreement to Mediate

I/We request mediation in the in the matter of _____ (child/student's initials) to try to reach an agreement on some or all of the issues regarding educational services for the child/student. I/We have read and understand the written materials describing mediation services and have been fully informed that the mediator is not providing the parent(s), the school district, or the child/student with legal representation. I/We also understand that the mediator is not providing counseling or therapy services.

I/We choose to pursue mediation to try to reach an agreement on some or all of the issues regarding the child/students' educational program. I/We understand that the mediation process will involve the mediator, acting as a neutral third party, to help develop an agreement that is mutually satisfactory. If an agreement is reached, I/we understand that the written and signed agreement may be shared with other individuals working with the child/student. I/We understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings pertaining to the child/student's case.

The following is a summary of the issue(s) that I/we will discuss in mediation: (use the back side of this sheet if more room is needed)

Please identify the other party(ies) that you want to meet with for mediation.

Name	Position

Please identify the other party(ies) who will attend the mediation with you.

Name	Position

School District Representative Name	Child/Student Initials	Date of Birth
School Address	Telephone Number	
School District Name		
School District Representative Signature	School District Representative Position	Date

Mail to:
Department of Public Instruction, Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440

APPENDIX C
Mediation Agreement Form

Child/Student Initials	Date of Birth	Date & Place of Mediation
Mediation Issue(s) of Parents		
Mediation Issue(s) of School		
Parties: Each of you understands the preference for a limited number of participants at the meeting. At this time, the only participants who will be allowed into the session, without prior consent, will be:		
Parent(s)/Guardian(s)		School District Representative(s)
<u>Other Participants (please indicate relationship to child/student)</u>		

Terms of Agreement: (use additional pages if necessary) The parties understand that mediation is an agreement-reaching process in which the mediator assists parties in reaching agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties may secure such advice throughout the mediation process. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

Neither the mediator nor the mediator's records or notes will be available for further procedures such as a due process hearing. Any agreement reached will be reduced to writing and duplicate originals and duplicate originals given to the parents and the district.

Each of you should be aware that the length of the mediation is unknown. Please reserve the remainder of the day for the mediation.

The parties should understand that as mediator, my duty is to help the parents and the school district reach an agreement on the future placement and educational program for this child/student. While it is important and useful to review the past activities of the parties with respect to the placement and educational program of this child/student, the parties are urged to be particularly prepared to address the child/student's future placement and program. At the conclusion of mediation, all parties will discuss and agree how best and when to share the results of them mediation with other relevant parties.

Summary of Agreement

This mediation agreement is in effect for:

_____ time specified in agreement

_____ school year in question, or

_____ until circumstances change as determined by the IEP team

Parent/Guardian Signature

Date

School District Representative Signature

Date

Mediator Signature

Date

Please mail to:
Department of Public Instruction, Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440

APPENDIX D
PARENT EVALUATION FORM

Parent Name		Address	
City	State	Zip	Telephone #
Summary of Issue(s) Mediated			
How did you find out about mediation?			
What made you decide to try mediation?			
In your opinion, was the mediation successful? <input type="checkbox"/> Yes <input type="checkbox"/> No			
What was the most positive aspect of the session?			
The most negative?			
How would you rate the mediator? <input type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Outstanding			
Did you reach an agreement at the session? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If so, how helpful was the mediator in assisting you in reaching the agreement?			
Did you consult an attorney before, during, or after the mediation process? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Did you feel that the mediator sufficiently explained the mediation process? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Had you requested a due process hearing prior to the mediation session? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If so, is the hearing still scheduled? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Do you feel the mediation process improved communication with the school? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Would you recommend the mediation process to other individuals involved in special education disputes? <div style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div>			

Thank you for completing this form. Please mail to:

Department of Public Instruction
Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440

APPENDIX E
SCHOOL DISTRICT EVALUATION FORM

School Name		Child/Student Initials		
Address	City	State	Zip	Telephone #
Summary of Issue(s) Mediated				
How did you find out about mediation?				
What made you decide to try mediation?				
In your opinion, was the mediation successful? <input type="checkbox"/> Yes <input type="checkbox"/> No				
What was the most positive aspect of the session?				
The most negative?				
How would you rate the mediator? <input type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Outstanding				
Did you reach an agreement at the session? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If so, how helpful was the mediator in assisting you in reaching the agreement?				
Did you consult an attorney before, during, or after the mediation process? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Did you feel that the mediator sufficiently explained the mediation process? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Had you requested a due process hearing prior to the mediation session? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If so, is the hearing still scheduled? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Do you feel the mediation process improved communication with the school? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Would you recommend the mediation process to other individuals involved in special education disputes? <div style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div>				

Thank you for completing this form. Please mail to:

Department of Public Instruction
Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440

APPENDIX F
MEDIATOR EVALUATION FORM

Name	Telephone
Summary of Issue(s) Mediated	
How would you rate the success of the mediation session(s)? <input type="checkbox"/> Unsuccessful <input type="checkbox"/> Successful <input type="checkbox"/> Very Successful	
What was the most positive aspect of the session?	
The most negative?	
How would you have improved the session?	
How much time did you spend preparing for the session?	
Was the information you received sufficient and objective-based?	
What was the most difficult aspect of conducting the session?	
Would you be willing to facilitate other mediation sessions? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If an agreement was not reached, what do you perceive was the major obstacle to resolving the dispute?	
In your opinion, would mediation have been more helpful to the parties at some other stage of the dispute? Please explain.	
<u>Other comments for DPI</u>	

Attach the Mediation Agreement and billing form and return to:

Department of Public Instruction
Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440