

The Wisconsin Special Education Mediation System

Effective Participation in the Special Education Mediation Process



**Wisconsin
Special Education
Mediation System**

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Nissan Bar-Lev

Nina Meierding

Jan Serak

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Preface

This manual is designed to help you learn about the mediation process. By using the manual, you have a better chance to be a more effective participant in the mediation session. The manual is designed to help you:

- Anticipate issues you may need to consider before, during and after mediation.
- Clarify your thinking.
- Think of new ways to resolve your dispute.
- Explain your point of view.
- Understand how the Wisconsin Special Education Mediation System (WSEMS) works.

The manual does not provide answers to legal questions that you may have about mediation or the topics you may discuss in mediation. Consult an attorney for answers to those questions.

Contributions by the WSEMS Team: Nissan Bar-Lev, Jan Serak,
Nina Meierding, Jane Burns and Nelsinia Wroblewski
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An Introduction to the Special Education Mediation Process

What is mediation?

Mediation is a voluntary process that allows parents and school districts to informally work out differences that they have about a child's special education needs with the help of a neutral third person, a mediator.

You (the parent and the school district) are an active participant in every step of the mediation process.

Why should parents and school districts choose mediation?

- 1. State Pays Cost Of Mediation** The special education mediation option is FREE to both parents and schools and is paid for by a grant from the state. On the other hand, the estimated average cost of a due process hearing (an alternative system to resolve similar disputes in which both parties, who may be represented by attorneys, argue their case before a hearing officer) is about \$40,000 to the local school district.
- 2. Speedy Process** Unlike the due process hearing timeline that may extend over the course of many months and beyond, the mediation process may be completed within 20 to 30 days. The mediation process can be most effective in the early stages of a dispute, before emotions harden on both sides.
- 3. Collaborative Process** A parent and a school administrator remarked in disbelief to each other after their mediation session was over "People were leaving the mediation session actually smiling at each other..." Since the mediation agreement is not imposed by a third party and is a result of the two parties crafting a joint resolution with the assistance of the mediator, it is a win-win situation. Most importantly, parents and schools who experience collaboration in the mediation session, tend to use the new collaborative framework to address and resolve future disputes.

4. **Forward Looking** Unlike the due process hearing, the mediation option does not look to the past and search for “whom to blame.” Instead, the mediation option looks into the future in terms of: (1) identifying the child’s needs; (2) meeting the child’s needs; and (3) meeting these needs in the future. Consequently, the resulting non-adversarial atmosphere at the mediation session is one of “let’s roll up our sleeves and get to work” in order to establish a plan for the future.

5. **Private/Confidential** Mediation is private and confidential and provides a “safe haven” atmosphere for parties to openly discuss any issue, knowing it will remain private. No records are kept or shared in any subsequent legal proceeding. “...the mediator, the parties, and their attorneys agree that they are all strictly prohibited from revealing to anyone, including a judge, administrative hearing officer, or arbitrator, the content of any discussions which take place during the mediation process.” (The Senate version of IDEA 97). According to state law (Wisconsin Statutes 904.085), the agreement to mediate is a contract between the parties agreeing to confidentiality of the process so that offers and conversations cannot be shared in a future legal proceeding.

Because mediation is private, the names of parents and schools requesting mediation are kept in the confidential case file in the Wisconsin Special Education Mediation Office (WSEMS) and only shared with the mediator by the system intake coordinator.

6. **Party-Driven** Parties are actively involved in the process. The mediation process unfolds to the “tune” of the parties. The parties determine whom the participants are, who will mediate, where the mediation session will take place, and what should be included in the final agreement. Thus, the mutually agreed upon resolutions will be more likely implemented and followed by the two parties over time. In addition, any party may stop the process at any time. The mediation option is designed to empower the parties.

7. **Creative Solutions** This process gives parties the chance to suggest many different ways to resolve their issues. With the parties contributing to the resolution/agreement, they will feel as if the final agreement fits their needs, creating a win-win situation. No one party should feel like they have given up everything in the negotiation. The adversarial due process provision narrows

the decisions that can be made in such a process: one side is declared a “winner”, and the other side is declared a “loser”. The loser might need to provide certain services or remedies as determined by the hearing officer.

When is mediation right for you?

Mediation can be most effective when used early in a dispute. Mediation is a good process to use when there is:

- a need to preserve a good working relationship over a long period of time.
- a need for creative and flexible solutions, or “thinking outside of the box.”
- a need for privacy.

Under federal and state special education law, mediation may be used for disputes involving children with disabilities related to the following:

- Identification (such as, eligibility for special education services)
- Evaluation (such as, the proposal or refusal to initiate or change an evaluation)
- Individualized education program (IEP)
- Placement (such as, type or location of services)
- Free Appropriate Public Education – FAPE- (such as, appropriateness of special education services).

Who pays for mediation?

Mediation is a free process for both parents and schools. WSEMS pays the mediators with grant funds from the Wisconsin Department of Public Instruction. However, participants in the system must pay for their own expenses, such as attorney or parent/family advocate fees.

How to request mediation?

To request mediation, either a parent, district, or both, will need to fill out a Request for Mediation form. If you have questions about mediation or need a form:

- call the WSEMS intake coordinator at: 888-298-3857
- check the forms section of the WSEMS website: www.wsems.us

The WSEMS intake coordinator can help you fill out the request form. When your form is received in the WSEMS office, the intake coordinator will call you to let you know that it was received and to ask some screening questions.

When you request mediation, you will be assigned a case number by the WSEMS intake coordinator.

How fast is a mediation session scheduled?

Mediation is scheduled within 21 days after the mediator is chosen, unless both parties agree to a longer time frame. The time and date of the mediation session should be convenient for both parties. Average mediation is 4 hours.

What is the role of the mediator?

The mediator is a neutral person who assists the participants in trying to reach an agreement.

The mediator helps the participants:

- Understand how the mediation process works.
- Facilitate who will participate in the mediation session.
- Schedule the mediation session.
- Facilitate discussion with each other.
- Identify and try to resolve underlying interests (such as trust and communication breakdowns).
- Create options and explore options (by brainstorming, building on what is already working, etc.)
- Help parties create a draft of their agreement, if agreement is reached.

The mediator does not:

- Make decisions about the case like a judge or a due process hearing officer.
- Provide legal advice to any participant.
- Actually write the agreement (although mediators may act as a “secretary” or “scrivener” to record the ideas of the participants and their attorneys or advocates in their own words).
- Sign the agreement.
- Enforce the agreement.

Who Are the Mediators?

There are usually 25 -30 active mediators on the WSEMS special education mediator roster. They come from many different professional backgrounds. Some are attorneys, others are psychologists or social workers. Some are former educators. They are all well trained and each mediator has completed a

5-day training on special education mediation that is required by Wisconsin law. Each must attend one day of training sponsored by WSEMS every year to remain on the roster. The parties should think about what different qualities and experience would be helpful in their particular situation.

When both parties agree to participate in mediation, WSEMS works with the parties to choose a mediator. The intake coordinator can give suggestions, matching the needs of your situation to the training, education, experience, mediation style, personality and geographic location of a particular mediator. Either party can also request a specific mediator to be appointed. However, both parties must agree on the same mediator. You will receive an email or letter with biographical information about the mediator, or you can go to our website, www.wsems.us to review their bios.

Check periodically with the WSEMS intake coordinator or on the WSEMS website for any mediators who are on the “Inactive” status.

A mediator who is not on the WSEMS roster could be used, but it would be at the parties' expense.

You have three days to let WSEMS know if any nominated mediator is acceptable or not. Both parties need to agree and feel comfortable with the mediator selected for their case. Mediation is a voluntary process. *You* are in control of every step of the mediation process.

Mediators have different styles they use to conduct a mediation session. Some mediators may contact participants before the mediation session by phone, in writing or by email. Some mediators want information before the meeting (such as IEP records) and some do not. Mediators vary greatly in how they facilitate their mediation sessions. A mediator may ask for private meetings (caucuses) and/or may work with the parties in the same room during the mediation session.

What are you looking for in a mediator?

Section for Parents

What Happens Before the Mediation Session?

First, describe what specific concerns you might have about your child's education programming or placement.

With whom have you discussed your concerns in the school system?

- | | |
|---|--|
| <input type="checkbox"/> Classroom teacher | <input type="checkbox"/> Principal |
| <input type="checkbox"/> School psychologist | <input type="checkbox"/> Special Ed. Teacher |
| <input type="checkbox"/> Social worker | <input type="checkbox"/> Superintendent |
| <input type="checkbox"/> Director of Pupil Services/Special Education | |
| <input type="checkbox"/> Guidance Counselor | |
| <input type="checkbox"/> Other: _____ | |

What was the result of your contacts/discussion with school representatives?

What other action has been taken to try and resolve the issue(s) before trying mediation? _____

You and your school district representatives may decide together that a neutral person (a mediator) is needed to help resolve your issues. Or, just one of you may decide help is needed in the form of mediation.

Next, find out if your issues can be considered for mediation under state law.

Special education law allows mediation to be requested for unresolved issues relating to children with disabilities in areas of:

- Identification (such as, eligibility for special education services)
- Evaluation (such as, the proposal or refusal to initiate or change an evaluation)
- Individualized education program (IEP)
- Placement (such as, type or location of services)
- Free appropriate public education (such as, appropriateness of special education services).

Do any of the above describe your situation? Yes No If yes, which?

If you don't think any of these apply, you may call the WSEMS Intake Coordinator to check. WSEMS cannot mediate Section 504 or Regular Education cases.

Next, fill out a "Request for Special Education Mediation" form (See appendix H).

To request mediation jointly (parent and district together), you and the school district will need to fill out and sign a Request for Mediation form and submit. To request separately, fill out the Request for Mediation, sign, and submit. If you have questions about mediation or need a form:

- Call the WSEMS intake coordinator at: 888-298-3857
- Check the WSEMS website: www.wsems.us
- A sample **Request Form** is in the appendix H.

Complete the Request Form (if filing a joint request) Write the issues (that you listed above) that describe your situation in the box that says, "MEDIATION REQUEST: We request that WSEMS help us to select a WSEMS mediator who will convene a special education mediation session regarding the following unresolved issues" (list).

By law, mediation cannot deny or delay a due process hearing. Are there other methods of dispute resolution that you have started or are in the process of trying related to this case, such as, due process hearing request, IDEA complaint, litigation? Yes No If yes, which? _____
Start date? _____

Add any more information about the issues you listed above if you wish, but a lot of detail is not necessary.

Complete the Request (if filing an individual request)

For an individual request, only one party (either parent(s) or school representative) signs the form. The process does take a bit longer this way.

WSEMS notifies the other person identified on the request form. The WSEMS intake coordinator explains the mediation process and finds out if the non-requestor (which could be you if the school was the one who requested mediation) would like to try mediation. The non-requester is not required by law to participate in mediation. The mediation process is voluntary. The non-requester has 5 business days to decide whether or not to participate.

Who may participate in mediation?

Wisconsin law provides that the parents (see Wisconsin Department of Public Instruction website for definition of parent) or an adult student or a guardian and two school district representatives may participate in mediation. With the consent of both the parents and the two school representatives, other people may attend the mediation.

Are you legally able to request and participate in mediation on behalf of your child?

Yes, my child is under 18 and I (we) have educational decision-making rights for my child.

OR

Yes, I am the legal guardian for my adult child who is 18 years of age or older. (You will be asked to provide guardianship papers.)

If you are the legal guardian, please provide a copy of the guardianship papers to WSEMS:

- Email: jane@wsems.us
- Fax: 262-538-1348
- Address: WSEMS, Burns Mediation Services, P.O. Box 107, Hartland, WI 53029-0107.

Contact the WSEMS intake coordinator if you are not the legal guardian of an adult child (over 18).

Which parent/s will participate in the mediation? _____

Do you want anyone else to participate in the mediation session?

Other people may participate – with permission of both parents and school representatives

You will be responsible for fees of individuals you invite.

Would you like anyone attend the mediation session with you (such as, family friend, relative, attorney, advocate, psychologist/psychiatrist, social worker, therapist, minister, priest, rabbi, doctor or other medical provider, etc.)?

Yes No If yes, who?

Why do you want the person/s with you?

Is there a school representative that you feel comfortable with?

Yes No If yes, who? _____

Would you like them to participate in the mediation session?

Yes No

Please notify the mediator or the intake coordinator. The intake coordinator tries to get an initial idea of whom the parties would like to bring. The mediator can also help the participants decide who else may be present the session. The mediator will let the school representatives know who else you would like to have come to the session and why. The mediator will also let you know others the school would like present in the session and why.

You may both agree to participation of others. Or, either of you can say no to other participants.

If the school says no to someone you have suggested as a participant, you can ask for a break during the mediation session to meet with the person(s) by phone or in person.

The majority of WSEMS mediation sessions have been held without attorneys or advocates. The rate of agreement is about the same with attorneys or advocates present as without. It is your decision whether you would like an attorney or advocate present at your mediation session.

Following the contact with your mediator or intake coordinator, note who will be participating in your mediation session.

Scheduling the Mediation Session

Mediation is scheduled within 21 days after the mediator is selected, unless both parties agree to a longer timeframe.

Is there a need for the mediation session to be scheduled quicker than within 21 days? (such as in the case of an expedited due process hearing.)

Yes No If yes, why?

Let the intake coordinator know and she can help work on an expedited timeline.

The mediator will work with you and the school representatives to find a place for the mediation session where you both will feel comfortable. This might be in a public library, community center, school, school district office, attorney's office, etc.

Where are 3 places you would like to meet?

The time and date of the mediation session should be convenient for both parties. The mediator will also check with you and the school district to find the time best for both of you.

What dates and times of day (allow 4-6 hours) in the next 30 days that would work for your mediation session?

Dress should be comfortable and casual.

Do you have any special needs for the mediation session, for example, language interpreter, accessible site, etc? Yes No If yes, describe:

If a language interpreter is needed, WSEMS will provide one or more as needed.

What information may be helpful for mediation?

Mediators have different styles they use to conduct a mediation session. Some mediators want information before and some do not. This is something you can discuss with your mediator.

You can bring materials to the mediation session to help the other participants understand your viewpoint.

Are there any materials such as IEP documents or recent assessments, or other written, audio or video information that you would like the mediator or the school representative(s) to look at before or during the mediation session?

Yes No If yes, describe? _____

Have you had any type of evaluation done by someone **outside** of the public school that you might like the mediator or the school representative(s) to look at before or during the mediation session? Yes No If yes, describe:

Has your child received any type of specialized services **outside** of the public school? For example, speech therapy, occupational therapy, physical therapy, tutoring, etc.

Yes No If yes, describe

You may want to share that information with the mediator or the school representative(s) before or during the mediation session.

Family Considerations

Home and school are both very important in a child's life. Often one has an effect on the other. Think about the answers to the following questions. You may decide to answer these questions only for your own understanding or you may decide to share these answers with your advocate, attorney or the mediator. Some issues are private and there is no need to discuss them with an advocate or attorney.

Have you discussed your concerns with your spouse or partner?

Yes No

Does he or she agree with your view of the situation?

Yes No

Does he or she agree with your desired outcome?

Yes No

If not, you can ask the mediator to call a caucus, or private meeting, with just you and the mediator or include your spouse to discuss options.

Is anyone else involved in your child's education on a regular basis (grandparent, other relative, childcare worker, etc.) who might want to be at the mediation?

Yes No

If so, who and how are they involved:

Are there any other circumstances at home that may have an effect on your child's education (for example, another child with special needs, a grandparent or other relative living with family, or parent's second or third shift work schedule)? Yes No

If so,
what?

Is your child involved in any legal proceedings (such as the juvenile justice system)? Yes No

If so, what?

What Happens in a Typical Mediation Session?

Here is what may happen:

- Everyone sits around a table with the mediator in a relaxed, informal manner.
- The mediator explains the agreement to mediate and then asks the parties to sign it (See appendix G).

- The mediator explains the mediation process and the mediator's role.
- The mediator asks each participant to explain why he or she is at the mediation and what he or she may see as the issues to be discussed.
- The mediator may ask questions to clarify issues.
- The mediator helps participants brainstorm and create a list of options.
- The mediator helps participants talk about all of the options.
- There will be no audio, video or written record of the session unless a party has a documented disability that needs to have one of these as an accommodation.
- Anyone may ask the mediator for a break at any time, or the mediator may decide to call for a break.
- A mediation session may last from one to six hours. The parties are asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.
- The parents and school district representatives work together to write down how they have decided to resolve their dispute. They both sign this written statement, which is called the mediation agreement. A participant may, at his or her own cost, have a lawyer review the agreement.

The five principles of problem solving negotiation

Generally speaking, mediators will tend to use the five (5) principles of problem solving negotiation in mediating your case. Here are a few examples (see the book Getting to Yes, Fisher & Ury, for more information):

1. Separate people from the problem.

If, as a parent, you believe the special education director has been rude, insensitive, or unavailable, do not discuss these personal feelings or attack the special education director personally when you are asking for additional physical therapy sessions each week for your child.

If a school representative believes a parent has been unreasonable, pushy and rude to the staff, they should likewise not give these opinions while discussing the subject of physical therapy.

People are not responsive to requests, nor will they actively listen to each other, if they are the subject of name-calling or personal attacks.

If you feel the need to express strong personal feelings about people or situations, you may wish to discuss these separately with the mediator and decide if it would be helpful or unproductive to share those feelings with the district. You can also decide to deal with relationship issues at a separate time and place.

Visualize yourself as being on the same side of the table working with the district to problem solve resolutions rather than on opposite sides of the table arguing for a specific outcome.

Is there a person that you need to separate from the problem? If so, who?
Describe _____

2. Focus on interests, not positions.

A position is what you want. It is concrete, definable, and measureable. ("I want three hours of OT per week for my child.") An interest is the feeling, drive, motivation, and belief that has created the position. ("I am concerned

that he is not making the progress that he could be making and I think the additional help is especially important at this age.”)

For example, if as a parent, you insist on a child taking a later bus (position), explain that no one is home at the time the earlier bus is dropping the child off (interest).

A school representative, for example, may insist on a child taking an earlier bus (position); they should explain this is because they have no adult to supervise the child while waiting for a later bus (interest).

If only positions are shared then it is easy to become competitive. If parents and district share their underlying interests, there may be a way to creatively solve the issue.

What do you think your interests are? Please describe_____

3. Invent options for mutual gain.

Neither party should present their “one and only” proposal. For example, as a parent, do not say, “The only acceptable resolution is to provide a full time aide from the moment my child arrives at school to when she leaves the school grounds.” And, a school representative should not rely simply on “school policy” to address a parent’s request, but try to think of multiple ways that policy can be implemented.

By expressing and understanding the underlying interests (see step 2 above) multiple options can be explored and the parties have the ability to be more creative.

For example, if a parent wants a full-time aide because the child has difficulty attending to tasks, possible solutions might be 1) change seating location so that the child is closer to the teacher, 2) provide technological assistance such as an iPad etc. so that the child has multiple modalities for learning, 3) have a part-time aide during the student’s more difficult subjects but have another student be a seat “partner” during less difficult subjects, 4) provide a study cubicle so that the child has minimal distractions while completing assignments.

What are three options (ways) you can think of to resolve your situation?

1. _____
2. _____
3. _____

4. Insist on using objective data.

Neither a parent nor a school representative should insist on their own "method" based on personal experience as the "best" way to meet a child's needs. If in disagreement about the "best way," then the parent and district should agree jointly that each come to the next session with an outline/study showing the latest methods/research on, for example, speech/language methodologies. Check web sites on the Internet for national organizations that may lead you to appropriate publications.

What kind of objective data might be helpful to your case? Where will you find the data? _____

5. Know your BATNA (Best Alternative To a Negotiated Agreement).

As a parent, try to determine before attending a session whether you are going to proceed to due process or file an IDEA complaint if the negotiation fails. Know the financial and possible emotional costs, time investment and probable outcomes of that decision.

Similarly, school representatives should know before attending the session if they have authority to take the case to due process. They need to know if they have the support of the administration and school board. They also need to know the financial and possible emotional costs, time investment and possible outcomes.

What do you think your alternatives may be if you do not reach agreement through mediation?

What is the BATNA (Best Alternative) in your case?

What is the WATNA (Worst Alternative) in your case?

What do you hope to see happen at the mediation session? (For example, improved communication, specific desired outcomes, negotiated results?)

The agreement

You and the school district may reach an agreement. The agreement will be in writing. You and school district representatives write down how you have decided to resolve your dispute. You can have an attorney, at your own cost, look at the written agreement before you and the school representative sign it. If you sign it, you are agreeing to its terms.

The agreement should be very specific. For example, "Tom will receive Occupational Therapy (OT) services 3 times a week 45 minutes per session in the OT room at the school." "The pending due process hearing # 004-02 will be dismissed."

The Wisconsin Special Education Mediation System, as a neutral agency, does not enforce the agreement.

You are responsible for following the agreement. You can include options in an agreement of returning to mediation, if any party feels the agreement is not being followed or there is a disagreement about the provisions. You can choose to use the same mediator or agree on another mediator.

Is there anyone in the school system that you feel particularly comfortable with and trust that could help keep an agreement on track? Yes No If so, who? _____

What Happens After the Mediation Process?

All participants are asked to complete a satisfaction survey about the mediation process once it is complete. The information is given anonymously and the participants' names remain confidential. The survey helps WSEMS to measure how the mediation process is working and where we might need improvement. The feedback also provides information for mediator training.

Section for School Representative

What Happens Before the Mediation Session?

First, describe what specific concerns you might have about your child’s education programming or placement.

With whom have you discussed your concerns about the child?

What were the results of your contacts/discussion?

What other action has been taken to try and resolve the issue(s) before trying mediation? _____

You and the parents may decide together that a neutral person (a mediator) is needed to help resolve your issues. Or, just one of you may decide help is needed in the form of mediation.

Next, find out if your issues can be considered for mediation under state law.

Special education law allows mediation to be requested for unresolved issues relating to children with disabilities in areas of:

- Identification (such as, eligibility for special education services)

- Evaluation (such as, the proposal or refusal to initiate or change an evaluation)
- Individualized education program (IEP)
- Placement (such as, type or location of services)
- Free appropriate public education (such as, appropriateness of special education services).

Do any of the above describe your situation? Yes No If yes, which?

If you don't think any of these apply, you may call the WSEMS Intake Coordinator to check. WSEMS cannot mediate Section 504 or Regular Education cases.

Next, fill out a "Request for Special Education Mediation" form (See appendix H).

To request mediation jointly (parent and district together), you and the parent will need to fill out and sign a Request for Mediation form and submit. To request separately, fill out the Request for Mediation form, sign, and submit. If you have questions about mediation or need a form:

- Call the WSEMS intake coordinator at: 888-298-3857
- Check the WSEMS website: www.wsems.us
- A sample **Request Form** is in the appendix H.

Complete the Request Form (if filing a joint request) Write the issues (that you listed above) that describe your situation in the box that says, "MEDIATION REQUEST: We request that WSEMS help us to select a WSEMS mediator who will convene a special education mediation session regarding the following unresolved issues" (list).

By law, mediation cannot deny or delay a due process hearing. Are there other methods of dispute resolution that you have started or are in the process of trying related to this case, such as, due process hearing request, IDEA complaint, litigation? Yes No If yes, which? _____
 Start date? _____

Add any more information about the issues you listed above if you wish, but a lot of detail is not necessary.

Complete the Request (if filing an individual request)

For an individual request, only one party (either parent(s) or school representative) signs the form. The process does take a bit longer this way.

WSEMS notifies the other person identified on the request form. The WSEMS intake coordinator explains the mediation process and finds out if the non-requestor (which could be you if the parent was the one who requested mediation) would like to try mediation. The non-requester is not required by law to participate in mediation. The mediation process is voluntary. The non-requester has 5 business days to decide whether or not to participate.

To request mediation jointly, you and the parents will need to fill out a request for mediation form. If you have questions about mediation or need a form:

- Call the WSEMS intake coordinator at: 888-298-3857
- Check the WSEMS website: www.wsems.us
- A sample **Request for Special Education Mediation Form** is in appendix H.

Who may participate in mediation?

Wisconsin law provides that the parents (see Wisconsin Department of Public Instruction website for definition of parent) or an adult student or a guardian and two school district representatives may participate in mediation. With the consent of both the parents and the two school representatives, other people may attend the mediation.

Who will be the two school district representatives? _____

Who will speak on behalf of the school district? _____

Who will have authority to commit to an agreement on behalf of the school district? _____

Please be aware that the mediator may ask the following questions:

- Are all participants familiar with the facts of the case? Have participants read the IEP or other documents, if appropriate? Reading the IEP may help you to use the mediation session more effectively.
- Have all participants met or observed the child? Yes No
- Have all participants met child's parents or guardian? Yes No

Generally, school participants meet to share perspectives before going to a mediation session.

Have all participants met to generate options? Yes No

Do the school representatives share the same view about the appropriate action for the child? _____

Are there any concerns related to the child's home life that should be discussed at the mediation session? _____

Do you want anyone else to participate in the mediation session?

Other people may participate – with permission of both parents and school representatives (Please note that you will be responsible for all related fees).

Would you like anyone attend the mediation session with you (attorney, psychologist/psychiatrist, social worker, therapist, minister, priest, rabbi, doctor or other medical provider, etc.)?

Yes No If yes, who?

Please notify the mediator or the intake coordinator. The intake coordinator tries to get an initial idea of whom the parties would like to bring. The mediator can also help the participants decide who else may be present the session.

The mediator will let the parents know who else you would like to have come to the session and why. The mediator will also let you know others the parents would like present in the session and why.

You may both agree to participation of others. Or, either of you can say no to other participants.

If the parents says no to someone you have suggested as a participant, you can ask for a break during the mediation session to meet with the person(s) by phone or in person.

The majority of WSEMS mediation sessions have been held without attorneys or advocates. The rate of agreement is about the same with attorneys or advocates present as without. It is your decision whether you would like an attorney or advocate present at your mediation session.

Following the contact with your mediator or intake coordinator, note who will be participating in your mediation session?

Scheduling the mediation session

Mediation is scheduled within 21 days after the mediator is selected, unless both parties agree to extend the time frame.

Is there a need for the mediation session to be scheduled quicker than within 21 days? (such as in the case of an expedited due process hearing.)

Yes No If yes, why?

Let the intake coordinator know and she can help work on an expedited timeline.

The mediator will work with you and the parents to find a place for the mediation session where you both will feel comfortable. This might be in a public library, community center, school, school district office, attorney's office, etc.

Where are 3 places you would like to meet?

The time and date of the mediation session should be convenient for both parties. The mediator will also check with you and the school district to find the time best for both of you.

What dates and times of day (allow 4-6 hours) in the next 30 days that would work for your mediation session?

Dress should be comfortable and casual.

Do you have any special needs for the mediation session, for example, accessible site, etc? Yes No If yes, describe:

If a language interpreter is needed, WSEMS will provide one or more as needed. Please notify WSEMS as soon as you are aware that a language interpreter may be needed.

Do you have a recommendation as to who would be an appropriate language interpreter? If yes, who? _____

What information may be helpful for mediation?

Mediators have different styles they use to conduct a mediation session. Some mediators want information before and some do not. This is something you can discuss with your mediator.

You can bring materials to the mediation session to help the other participants understand your viewpoint.

Are there any materials such as IEP documents or recent assessments, or other written, audio or video information that you would like the mediator or the school representative(s) to look at before or during the mediation session?

Yes No If yes, describe: _____

Have you had any type of evaluation done by someone outside of the public school that you might like the mediator or the parents to look at before or during the mediation session? Yes No If yes, describe:

Are there any legal proceedings waiting to be resolved with the child (like with the Juvenile Justice System)? Yes No

If so, what? _____

District considerations

Home and school are both very important in a child's life. Often one has an effect on the other. Think about the answers to the following questions. You may decide to answer these questions only for your own understanding or you may decide to share these answers with your attorney or the mediator. Some issues are private and there is no need to discuss them with an advocate or attorney.

What Happens During a Typical Mediation Session?

A few comments about the proceedings:

- Everyone sits around a table with the mediator in a relaxed, informal manner.
- The mediator explains the agreement to mediate and then asks the parties to sign it (See appendix G).
- The mediator explains the mediation process and the mediator's role.
- The mediator asks each participant to explain why he or she is at the mediation and what he or she may see as the issues to be discussed.
- The mediator may ask questions to clarify issues.
- The mediator helps participants brainstorm and create a list of options.
- The mediator helps participants talk about all of the options.
- There will be no audio, video or written record of the session unless a party has a documented disability that needs to have one of these as an accommodation.
- Anyone may ask the mediator for a break at any time, or the mediator may decide to call for a break.
- A mediation session may last from one to six hours. The parties are asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.

- The parents and school district representatives work together to write down how they have decided to resolve their dispute. They both sign this written statement, which is called the mediation agreement. A participant may, at his or her own cost, have a lawyer review the agreement.

Generally speaking, mediators will tend to use the five (5) principles of problem solving negotiation in mediating your case. Here are a few examples (see the book Getting to Yes, Fisher & Ury, for more information):

The five principles of problem solving negotiation

Generally speaking, mediators will tend to use the five (5) principles of problem solving negotiation in mediating your case. Here are a few examples (see the book Getting to Yes, Fisher & Ury, for more information):

1. Separate people from the problem.

For example, if you, as a school representative, believe a parent has been unreasonable, pushy and rude to the staff, you should not discuss these personal feelings or attack the parents while exploring the subject of physical therapy.

If the parents believe the special education director has been rude, insensitive, or unavailable, they should not discuss these feelings or attack the special education director personally when they are asking for additional physical therapy sessions each week for their child.

People are not responsive to requests, nor will they actively listen to each other, if they are the subject of name-calling or personal attack. The goal of mediation is to problem solve together as to possible options to solve the problem. If parties direct open hostility and anger at the other party it is much less likely they will be able to solve the problem.

If you feel the need to express strong personal feelings about people or situations, you may wish to discuss these separately with the mediator and decide if it would be helpful or unproductive to share those feelings with the

parents. You can also decide to deal with relationship issues at a separate time and place.

Visualize yourself as being on the same side of the table working with the district to problem solve resolutions rather than on opposite sides of the table arguing for a specific outcome.

Is there a person that you need to separate from the problem? If so, who?
Describe _____

2. Focus on interests, not positions.

A position is what you want. It is concrete, definable, and measurable. ("I think two hours of OT per week for the student is sufficient.") An interest is the feeling, drive, motivation, and/or belief that has created the position. ("I believe that two hours of OT services is sufficient because it more than meets our obligation under the law and I am concerned that our OT personnel are very overworked. Giving additional services is not warranted and could set a bad precedent.")

Another example would be if you, as a school representative insists on a child taking an earlier bus (position), you should explain this is because you have no adult to supervise the child while waiting for a later bus (interest).

If the parent insists on a child taking a later bus (position), they could explain that no one is home at the time the earlier bus is dropping the child off (interest).

If only positions are shared then it is easy to become competitive. If parents and district share their underlying interests, there may be a way to creatively solve the issue.

What do you think your interests are? Please describe _____

3. Invent options for mutual gain.

Neither party should present their "one and only" proposal. For example, as a parent, do not say, "The only acceptable resolution is to provide a full time aide from the moment my child arrives at school to when she leaves the school grounds." And, a school representative should not rely simply on "school policy" to address a parent's request, but try to think of multiple ways that policy can be implemented.

By expressing and understanding the underlying interests (see step 2 above) multiple options can be explored and the parties have the ability to be more creative.

For example, if a parent wants a full-time aide because the child has difficulty attending to tasks, possible solutions might be 1) change seating location so that the child is closer to the teacher, 2) provide technological assistance such as an iPad etc. so that the child has multiple modalities for learning, 3) have a part-time aide during the student's more difficult subjects but have another student be a seat "partner" during less difficult subjects, 4) provide a study cubicle so that the child has minimal distractions while completing assignments.

What are three options (ways) you can think of to resolve your situation?

1. _____
2. _____
3. _____

4. Insist on using objective data.

As a parent or a school representative, for example, rather than insisting your "method" based on personal experience is the "best way" to meet a child's needs, agree jointly that each come to the next session with an outline/study showing the latest methods/research on, for example, speech/language methodologies. Check web sites on the Internet for national organizations that may lead you to appropriate publications.

What kind of objective data might be helpful to your case? Where will you find the data _____

5. Know your BATNA (Best Alternative To a Negotiated Agreement).

School representatives should know before attending the session if they have authority to take the case to due process. They need to know if they have the support of the administration and school board. They also need to know the financial and possible emotional costs, time investment and possible outcomes.

Similarly, parents should try to determine before attending a session whether they are going to hire an attorney and proceed to due process or file an IDEA complaint if the negotiation fails. They should also know the financial and possible emotional costs, time investment and probable outcomes of that decision.

What do you think your alternatives may be if you do not reach agreement through mediation?

What is the BATNA (Best Alternative) in your case?

What is the WATNA (Worst Alternative) in your case?

What do you hope to see happen at the mediation session? (For example, improved communication, specific desired outcomes, negotiated results?)

The agreement

You and the parents may reach an agreement. The agreement will be in writing. You and parents write down how you have decided to resolve your dispute. You can have an attorney, at your own cost, look at the written agreement before you and the parents sign it. If you sign it, you are agreeing to its terms.

The agreement should be very specific like "Tom will receive Occupational Therapy (OT) services 3 times a week 45 minutes per session in the OT room at the school." Or "The pending due process hearing # 004-02 will be dismissed."

The Wisconsin Special Education Mediation System, as a neutral agency, does not enforce the agreement.

You are responsible for following the agreement. You can include options in an agreement of returning to mediation, if any party feels the agreement is not being followed or there is a disagreement about the provisions. You can choose to use the same mediator or agree on another mediator.

What Happens After the Mediation Process?

All participants are asked to complete a satisfaction survey about the mediation process is complete. The information is given anonymously and the participants' names remain confidential. The survey helps WSEMS to measure how the mediation process is working, and where we might need improvement. The feedback also provides information for mediator training.

Section for Attorney/Advocate

Attorneys and advocates may participate in the Wisconsin Special Education Mediation System (WSEMS) **with the approval of the parties**. Mediation is a problem-solving process. Due process is a decision making process. As a result, advocacy in mediation by attorneys and advocates is different from advocacy in due process. In due process, you [and the parent(s) or school representative(s)] are trying to convince the hearing officer of the rightness of your position. In mediation, you are supporting your client or family in interest-based negotiation.

Role of the attorney/advocate in mediation:

- Educate the participants about the mediation process prior to attending the session.
- Assist parents or school representatives to evaluate if the other party's options or offers are reasonable.
- Clarify the views of the participants.
- Manage the emotional content and diffuse tension with your client.
- Serve as a reality check for your client.
- Assist participants in focusing on the issues that can be resolved rather than dwelling on situations that happened in the past and cannot be changed.
- Help the participants to create new options for resolving differences.
- Assist the participants in reaching an agreement.
- Assist the participants in writing the agreement.

At any time during the mediation session, you may ask the mediator for a break so that you can meet privately with your client.

You may also ask that the mediator join your separate meeting, if you believe it would be helpful. Or, with permission from the participants, you may also meet separately with the mediator. These separate sessions are sometimes called "caucuses."

Before attending the mediation session, review with the parent(s) or school representatives their responses to the questions in the "Parent or School Representative" section of this training manual.

1. For each issue, work with the participants to develop five (5) possible ways to resolve the problem.

Issue #1 : _____

Options for resolution:

1. _____
2. _____
3. _____
4. _____
5. _____

Issue #2 : _____

Options for resolution:

1. _____
2. _____
3. _____
4. _____
5. _____

Issue # 3 : _____

Options for resolution:

1. _____
2. _____
3. _____
4. _____
5. _____

If there are additional issues, add another page.

Review the following five (5) principles of problem solving negotiation.

Generally speaking, mediators will tend to use these five (5) principles of problem solving negotiation in mediating the case. Here are a few examples (see the book Getting to Yes, Fisher & Ury, for more information):

Separate people from the problem.

For example, if the school representative believes a parent has been unreasonable, pushy and rude to the staff, they should not discuss these personal feelings or attack the parents while exploring the subject of physical therapy.

If the parents believe the special education director has been rude, insensitive, or unavailable, they should not discuss these feelings or attack the special education director personally when they are asking for additional physical therapy sessions each week for their child.

People are not responsive to requests, nor will they actively listen to each other, if they are the subject of name-calling or personal attack. The goal of mediation is to problem solve together as to possible options to solve the problem. If parties direct open hostility and anger at the other party it is much less likely they will be able to solve the problem.

If your client feels the need to express strong personal feelings about people or situations, you may wish to discuss these separately with the mediator and decide if it would be helpful or unproductive to share those feelings with the other party and under what parameters they could be shared. You can also decide to deal with relationship issues at a separate time and place.

Visualize yourself as being on the same side of the table working with the party to problem solve resolutions rather than on opposite sides of the table arguing for a specific outcome.

Is there a person that you need to separate from the problem? If so, who?
Describe _____

2. Focus on interests, not positions.

A position is what your client wants. It is concrete, definable, and measureable. ("I think two hours of OT per week for the student is sufficient.") An interest is the feeling, drive, motivation, and/or belief that has created the position. ("I believe that two hours of OT services is sufficient because it more than meets our obligation under the law and I am concerned that our OT personnel are very overworked. Giving additional services is not warranted and could set a bad precedent.")

Another example would be if the school representative insists on a child taking an earlier bus (position), they should explain this is because there is no adult to supervise the child while waiting for a later bus (interest).

If the parent insists on a child taking a later bus (position), they could explain that no one is home at the time the earlier bus is dropping the child off (interest).

If only positions are shared then it is easy to become competitive. If parents and district share their underlying interests, there may be a way to creatively solve the issue.

What do you think your client's interests are? Please describe:

3. Invent options for mutual gain.

Neither party should present their "one and only" proposal. For example, as a parent, do not say, "The only acceptable resolution is to provide a full time aide from the moment my child arrives at school to when she leaves the school grounds." And, a school representative should not rely simply on "school policy" to address a parent's request, but try to think of multiple ways that policy can be implemented.

By expressing and understanding the underlying interests (see step 2 above) multiple options can be explored and the parties have the ability to be more creative.

For example, if a parent wants a full-time aide because the child has difficulty attending to tasks, possible solutions might be 1) change seating location so that the child is closer to the teacher, 2) provide technological assistance such as an iPad etc. so that the child has multiple modalities for learning, 3) have a part-time aide during the student's more difficult subjects but have another student be a seat "partner" during less difficult subjects, 4) provide a study cubicle so that the child has minimal distractions while completing assignments.

What are three options (ways) you can think of to resolve your situation?

1. _____
2. _____
3. _____

4. Insist on using objective data.

Rather than insisting that your proposed "method" based on your client's or your personal experience is the "best" way to meet a child's needs, agree jointly to each come to the next session with an outline/study showing the latest methods/research on, for example, speech/language methodologies. Check web sites on the Internet for national organizations that may lead you to appropriate publications.

What kind of objective data might be helpful to your case? Where will you find the data _____

5. Know your BATNA (Best Alternative To a Negotiated Agreement).

School representatives should know before attending the session if they have authority to take the case to due process. They need to know if they have the support of the administration and school board. They also need to know the financial and possible emotional costs, time investment and possible outcomes.

Similarly, parents should try to determine before attending a session whether they intend to proceed to due process or file an IDEA complaint if the negotiation fails. They should also know the financial and possible emotional costs, time investment and probable outcomes of that decision.

What do you think are your client's alternatives if they do not reach agreement through mediation?

What is the BATNA (Best Alternative) in your case?

What is the WATNA (Worst Alternative) in your case?

What do you hope to see happen at the mediation session? (For example, improved communication, specific desired outcomes, negotiated results?) _____

Discuss the participant's emotional response to this conflict. How can you help the participants to manage their emotions effectively during the mediation session?

Do the participants have any resources that may be available in creating an option for resolving these concerns?

- Financial
- Training
- Willingness to be trained
- Any outside resources available – disability organizations, support groups
- Time
- Other special skills

If so, describe: _____

What resources, if any, do you think the school may be able to provide within the district?

As an attorney or advocate, do you believe that there is one "good" or "desirable" outcome for this dispute?

If so, describe:

Are you open to other outcomes? Yes No

If so, what: _____

2. Before the mediation session, review the following with the participants:

- Your role
 - Speak for them
 - Add helpful comments

- Take notes
- Request caucus
- "Translate" legal or technical terms into more understandable terms

- Opening statement

- Clear
- Brief as possible
- List of issues in order of importance
- Describe child: personality, interests, role in family

- Appropriate attire

- Comfortable
- Nicely dressed

- Arrangements for the mediation session

- Where
- When
- Directions to the site
- Name of mediator
- If unable to attend, who to call

- Agreement provisions

- Describe confidentiality expectations
- Provide specific dates for actions to occur
- Name specific personnel involved
- Describe services in detail
- Describe future communications with the school

Appendix

A. IDEA 2004 Section 615 on Mediation

B. IDEA Regulations on Mediation

C. Wisconsin State Laws

D. Intake Information Form

E. Two Sample Letters

F. Post-Mediation Participant Form

G. Agreement to Mediate Form

H. Request for Special Education Mediation Form

Appendix A

IDEA 2004 Section 615 on Mediation

Statute: TITLE I / B / 615

Sec. 615 PROCEDURAL SAFEGUARDS.

(e) Mediation.--

(1) In general.--Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements.--Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process--

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party.--A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not 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--

(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators.--The State shall 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.

(D) Costs.--The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location.--Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement.--In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) <<NOTE: Confidential information.>> Mediation discussions.--Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

Appendix B

IDEA Regulations on Mediation

PROCEDURAL SAFEGUARDS: MEDIATION

(See also Procedural Safeguards: Resolution Meetings and Due Process Hearings, Procedural Safeguards: Surrogate Parents, Notice and Parental Consent and State Complaint Procedures)

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding mediation.

IDEA Regulations

1. Require each public agency to allow parties to resolve disputes regarding any matter through a mediation process.

Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under 34 CFR Part 300, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

[34 CFR 300.506(a)] [20 U.S.C. 1415(e)(1)]

The procedures 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 to 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.

[34 CFR 300.506(b)(1)] [20 U.S.C. 1415(e)(2)(A)]

¹ Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

2. Give a public agency the option of providing parents and schools choosing not to use the mediation process the opportunity to meet with a disinterested party.

A public agency may establish procedures to offer to parents and schools that choose not 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 sections 671 or 672 of the IDEA and who would explain the benefits of, and encourage the use of, the mediation process to the parents.

[34 CFR 300.506(b)(2)] [20 U.S.C. 1415(e)(2)(B)]

3. Set forth the state's responsibilities for mediation.

The State 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 State educational agency (SEA) must select mediators on a random, rotational, or other impartial basis.

[34 CFR 300.506(b)(3)(i)-(ii)] [20 U.S.C. 1415(e)(2)(C) and (D)]

The State must bear the cost of the mediation process, including the costs of meetings of parents with disinterested parties described in 34 CFR 300.506(b)(2).

[34 CFR 300.506(b)(4)] [20 U.S.C. 1415(e)(2)(D)]

4. Include requirements for scheduling and location.

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.

[34 CFR 300.506(b)(5)] [20 U.S.C. 1415(e)(2)(E)]

5. Require a written agreement that is enforceable in court if the dispute is resolved through the mediation process.

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

- States that all discussions 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.

[34 CFR 300.506(b)(6)] [20 U.S.C. 1415(e)(2)(F)]

A written, signed mediation agreement under 34 CFR 300.506(b) is enforceable in any State court of competent jurisdiction or in a district court of the United States.²
[34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(F)]

6. Require that mediation discussions be kept confidential.

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 or any Federal court or State court of a State receiving assistance under Part 300.
[34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(G)]

7. Establish requirements for impartiality of mediators.

An individual who serves as a mediator under Part 300 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.
[34 CFR 300.506(c)(1)] [20 U.S.C. 1415(e)]

A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under 34 CFR 300.228 solely because he or she is paid by the agency to serve as a mediator.
[34 CFR 300.506(c)(2)] [20 U.S.C. 1415(e)]

²Notwithstanding 34 CFR 300.506(b)(7) and 300.510(d)(2) which provide for the judicial enforcement of a written agreement reached as a result of a mediation..., there is nothing in Part 300 that would prevent the SEA from using other mechanisms to seek enforcement of a written agreement reached as a result of a mediation or resolution meeting, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States. [34 CFR 300.537] [20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B)]

Sec. 300.506 Mediation.

(a) General. 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.

(b) Requirements. The procedures must meet the following requirements:

- (1) The procedures must ensure that the mediation process--
 - (i) Is voluntary on the part of the parties;
 - (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--
 - (i) 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 section 671 or 672 of the Act; and
 - (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
- (3)
 - (i) The State 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.
 - (ii) The SEA must select mediators on a random, rotational, or other impartial basis.
- (4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) 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.

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

(i) States that all discussions 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

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) 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.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part--

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e))

Appendix C

Wisconsin State Laws

115.797 Mediation. (1) DEFINITIONS. In this section:

(a) "Dispute" means any disagreement between parties concerning the proposal or refusal to initiate or change the evaluation, individualized education program or educational placement of a child with a disability or the provision of a free appropriate public education to such a child. "Dispute" includes any such disagreement between parties that arises before the filing of a request for a hearing under s. 115.80 or in which other processes, including a hearing under s. 115.80 or litigation, have been requested or commenced.

(b) "Mediation" has the meaning given in s. 802.12 (1) (e).

(c) “Party” means a competent adult pupil or the parent of a child or adult pupil adjudicated incompetent who is the subject of a dispute, and the local educational agency.

(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES. (a) The division shall establish a program for the mediation of disputes between parties. A party may request the division to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify both parties. Both parties may jointly request mediation.

(b) If only one of the parties requests mediation, within 5 business days after receiving the request the division shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

1. An explanation of mediation and its advantages.

2. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise.

3. A request that the party notify the division within 5 business days after receiving the notice regarding the party’s consent or refusal to participate in mediation.

(c) If the division does not receive timely response under par. (b) 3. or if the other party notifies the division under par. (b) 3. of its refusal to participate in mediation, the division shall so notify the party that requested mediation.

(3) APPOINTMENT OF MEDIATOR. (a) A party that requests mediation may nominate a mediator from the roster under sub. (4). If a party nominates a mediator, the division shall include in the notice under sub. (2) (b) the name of the nominated mediator.

(b) 1. If both parties nominate the same person as mediator, the division shall appoint that person as mediator if he or she is on the roster under sub. (4) and available to mediate.

2. If both parties request mediation but neither party nominates a mediator, the division shall propose a mediator from the roster under sub. (4).

3. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the division shall propose a mediator from the roster under sub. (4).

(c) Whenever the division proposes a mediator under par. (b) 2. or 3., it shall send information about the mediator’s training and experience to both parties. Within 3 business days after receiving the information, either party may request the division to propose a different mediator from the roster under sub. (4).

(4) ROSTER OF MEDIATORS. (a) In consultation with the council on special education, the division shall maintain a roster of mediators qualified to resolve disputes. The division may include a person on the roster if all of the following apply:

1. The division determines that the person has the appropriate skills and knowledge to act as a mediator under this section.

2. The person participates in a training program of at least 5 days’ duration that has been approved by the division.

3. The person agrees to mediate, at the rate of compensation established by the division, the number of disputes required by the division each year.

4. The person consents to be observed by a division representative at any mediation session if the parties consent.

(b) The division may not maintain a person on the roster unless he or she participates in at least one day of additional training approved by the division each year.

(c) Subject to subch. II of ch. 111, the division may remove from the roster any person whom it believes cannot serve effectively as a mediator.

(5) MEDIATION. (a) Unless both parties agree otherwise, mediation shall commence within 21 days after the mediator is

appointed and shall not delay hearings or appeals related to the dispute. All mediation sessions shall be held in a location that is convenient to the parties.

(b) The parents of the child or adult pupil and 2 representatives of the local educational agency may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a division representative may observe the mediation sessions.

(c) At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the division for the purpose of administering the mediation program. The division may not require a mediator to disclose the substance of any matter discussed or communication made during mediation.

(d) Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

(e) Unless both parties and the mediator agree otherwise, no person may record a mediation session.

(f) Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(g) The mediator and either party may withdraw from mediation at any time.

(h) No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

(6) AGREEMENTS. If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding upon the parties and is enforceable in the circuit court for the county in which the local educational agency is located.

(7) MEDIATOR COMPENSATION. (a) The division shall establish a schedule for the compensation of mediators and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.255 (1) (me).

(b) If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule under par. (a) allows, the additional compensation is the responsibility of the parties.

(c) If the parties have agreed to mediation by a mediator who is not on the roster under sub. (4), the mediator’s compensation is the responsibility of the parties.

(8) PROGRAM EVALUATION. The division may require that mediators, and may request that parties, participate in the evaluation of the mediation program. The division shall ensure that mediators and parties may participate in evaluating the program without being required to identify themselves or the other mediation participants. The division may not disclose a party’s or mediator’s evaluation to any other mediation participant without the party’s or mediator’s consent.

(9) CONTRACT FOR SERVICES. The department may contract with a private, nonprofit agency to administer the mediation program under this section or for mediator training or other services, including outreach and promotion, related to the administration of the program.

History: 1997 a. 164; 2005 a. 258, 387.

802.12 Alternative dispute resolution.

(1) DEFINITIONS. In this section:

(a) "Binding arbitration" means a dispute resolution process that meets all of the following conditions:

1. A neutral 3rd person is given the authority to render a decision that is legally binding.
2. It is used only with the consent of all of the parties.
3. The parties present evidence and examine witnesses.
4. A contract or the neutral 3rd person determines the applicability of the rules of evidence.
5. The award is subject to judicial review under ss. [788.10](#) and [788.11](#).

(b) "Direct negotiation" means a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person.

(c) "Early neutral evaluation" means a dispute resolution process in which a neutral 3rd person evaluates brief written and oral presentations early in the litigation and provides an initial appraisal of the merits of the case with suggestions for conducting discovery and obtaining legal rulings to resolve the case as efficiently as possible. If all of the parties agree, the neutral 3rd person may assist in settlement negotiations.

(d) "Focus group" means a dispute resolution process in which a panel of citizens selected in a manner agreed upon by all of the parties receives abbreviated presentations from the parties, deliberates, renders an advisory opinion about how the dispute should be resolved and discusses the opinion with the parties.

(e) "Mediation" means a dispute resolution process in which a neutral 3rd person, who has no power to impose a decision if all of the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in a case, exchanging information between the parties and exploring options for settlement.

(f) "Mini-trial" means a dispute resolution process that consists of presentations by the parties to a panel of persons selected and authorized by all of the parties to negotiate a settlement of the dispute that, after the presentations, considers the legal and factual issues and attempts to negotiate a settlement. Mini-trials may include a neutral advisor with relevant expertise to facilitate the process, who may express opinions on the issues.

(g) "Moderated settlement conference" means a dispute resolution process in which settlement conferences are conducted by one or more neutral 3rd persons who receive brief presentations by the parties in order to facilitate settlement negotiations and who may render an advisory opinion in aid of negotiation.

(h) "Nonbinding arbitration" means a dispute resolution process in which a neutral 3rd person is given the authority to render a nonbinding decision as a basis for subsequent negotiation between the parties after the parties present evidence and examine witnesses under the rules of evidence agreed to by the parties or determined by the neutral 3rd person.

(i) "Settlement alternative" means any of the following: binding arbitration, direct negotiation, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(j) "Summary jury trial" means a dispute resolution process that meets all of the following conditions:

1. Attorneys make abbreviated presentations to a small jury selected from the regular jury list.
2. A judge presides over the summary jury trial and determines the applicability of the rules of evidence.

3. The parties may discuss the jury's advisory verdict with the jury.
4. The jury's assessment of the case may be used in subsequent negotiations.

(2)

(a) A judge may, with or without a motion having been filed, upon determining that an action or proceeding is an appropriate one in which to invoke a settlement alternative, order the parties to select a settlement alternative as a means to attempt settlement. An order under this paragraph may include a requirement that the parties participate personally in the settlement alternative. Any party aggrieved by an order under this paragraph shall be afforded a hearing to show cause why the order should be vacated or modified. Unless all of the parties consent, an order under this paragraph shall not delay the setting of the trial date, discovery proceedings, trial or other matters addressed in the scheduling order or conference.

(b) The parties shall inform the judge of the settlement alternative they select and the person they select to provide the settlement alternative. If the parties cannot agree on a settlement alternative, the judge shall specify the least costly settlement alternative that the judge believes is likely to bring the parties together in settlement, except that unless all of the parties consent, the judge may not order the parties to attempt settlement through binding arbitration, nonbinding arbitration or summary jury trial or through more than one of the following: binding arbitration, early neutral evaluation, focus group, mediation, mini-trial, moderated settlement conference, nonbinding arbitration, summary jury trial.

(c) If the parties cannot agree on a person to provide the settlement alternative, the judge may appoint any person who the judge believes has the ability and skills necessary to bring the parties together in settlement.

(d) If the parties cannot agree regarding the payment of a provider of a settlement alternative, the judge shall direct that the parties pay the reasonable fees and expenses of the provider of the settlement alternative. The judge may order the parties to pay into an escrow account an amount estimated to be sufficient to pay the reasonable fees and expenses of the provider of the settlement alternative.

(3) ACTIONS AFFECTING THE FAMILY. In actions affecting the family under ch. [767](#), all of the following apply:

(a) All settlement alternatives are available except focus group, mini-trial and summary jury trial.

(b) If a guardian ad litem has been appointed, he or she shall be a party to any settlement alternative regarding custody, physical placement, visitation rights, support or other interests of the ward.

(c) If the parties agree to binding arbitration, the court shall, subject to ss. [788.10](#) and [788.11](#), confirm the arbitrator's award and incorporate the award into the judgment or postjudgment modification order with respect to all of the following:

1. Property division under s. [767.61](#).
2. Maintenance under s. [767.56](#).
3. Attorney fees under s. [767.241](#).
4. Postjudgment orders modifying maintenance under s. [767.59](#).

(d) The parties, including any guardian ad litem for their child, may agree to resolve any of the following issues through binding arbitration:

1. Custody and physical placement under s. [767.41](#), [767.805 \(4\)](#), [767.863 \(3\)](#) or [767.89 \(3\)](#).
2. Visitation rights under s. [767.43](#).
3. Child support under s. [767.511](#), [767.805 \(4\)](#), [767.863 \(3\)](#) or [767.89 \(3\)](#).
4. Modification of subd. [1.](#), [2.](#) or [3.](#) under s. [767.451](#) or [767.59](#).

(e) The court may not confirm the arbitrator's award under par. [\(d\)](#) and incorporate the award into the judgment or postjudgment modification order unless all of the following apply:

1. The arbitrator's award sets forth detailed findings of fact.
2. The arbitrator certifies that all applicable statutory requirements have been satisfied.

3. The court finds that custody and physical placement have been determined in the manner required under ss. [767.405](#), [767.407](#) and [767.41](#).

4. The court finds that visitation rights have been determined in the manner required under ss. [767.405](#), [767.407](#) and [767.43](#).

5. The court finds that child support has been determined in the manner required under s. [767.511](#) or [767.89](#).

(4) ADMISSIBILITY. Except for binding arbitration, all settlement alternatives are compromise negotiations for purposes of s. [904.08](#) and mediation for purposes of s. [904.085](#).

History: Sup. Ct. Order No. [93-13](#), 180 Wis. 2d xv; [1995 a. 225](#); [1997 a. 191](#); [1999 a. 9](#); [2005 a. 443](#), s. [265](#).
Comment, 2008: See s. 807.05, formal requirements to render binding agreements reached in an action or special proceeding. In some cases, such as family law cases, court approval is required for an agreement to be effective.
Note: Sup. Ct. Order No. [05-05](#), [2008 WI 2](#), states, "the comments to Wis. Stat. §§ 807.05 and 802.12 are not adopted but will be published and may be consulted for guidance in interpreting and applying the statutes."

Judicial Council Note, 1993: This section provides express statutory authority for judges to order that litigants attempt settlement through any of several defined processes. The parties may choose the type of process, the service provider, and the manner of compensating the service provider, but the judge may determine these issues if the parties do not agree.

Subsection (2) (b) prohibits the judge from requiring the parties to submit to binding arbitration without their consent; this restriction preserves the right of trial by jury. Nor may the judge order nonbinding arbitration, summary jury trial or multiple facilitated processes without consent of all parties; these restrictions allow the parties to opt out of the typically more costly settlement alternatives.

Lawyers have a duty to their clients and society to provide cost-effective service. The State Bar encourages lawyers to provide volunteer service as mediators, arbitrators and members of settlement panels.

Subsection (3) sets forth several special considerations for family actions. Even when the parties consent to binding arbitration, the court retains the responsibility of ensuring that the arbitration award in custody, placement, visitation and support matters conforms to the applicable law. The court is not bound to confirm the arbitrator's award. Rather, it must review the arbitrator's decision in light of the best interest of the child. If following this review the court finds that the arbitration process and its outcome satisfy the requirements of all applicable statutes, the court may adopt the decision as its own. *Miller v. Miller*, 620 A. 2d 1161, 1166 (Pa. Super. 1993). Reasons for deviating from child support guidelines must be in writing or made part of the record.

The Judicial Council has petitioned the Supreme Court to conduct a review and evaluation of this rule after it has been in effect for three years.

When multiple plaintiffs had similar claims against a single defendant, it was not appropriate to conduct a test case then grant summary judgment, based on the test case results, to the plaintiffs who were not part of the test case. *Leverence v. PFS Corp.* [193 Wis. 2d 317](#), [532 N.W.2d 735](#) (1995).

This section does not authorize a trial court to require resolution of an action, nor does it require any party to abandon a legal position or to settle a case. *Gray v. Eggert*, [2001 WI App 246](#), [248 Wis. 2d 99](#), [635 N.W.2d 667](#), [01-0007](#).

Sub. (3) (c) cannot limit a circuit court's power to consider the equity of agreements in confirming an arbitrated property division.

However, circuit courts must give greater deference to an arbiter's award of a property division under sub. (3) (c) than they would to other types of agreements. *Franke v. Franke*, [2004 WI 8](#), [268 Wis. 2d 360](#), [674 N.W.2d 832](#), [01-3316](#).

Wisconsin's New Court-Ordered ADR Law: Why It Is Needed and Its Potential for Success. *Weinziel*. 78 MLR 583.

Alternative Dispute Resolution in Wisconsin: A Court Referral System. *Noonan & Bostetter*. 78 MLR 609.

Hanging Up the Gloves of Confrontation? *Tenenbaum*. *Wis. Law*. Aug. 1994.

Resolving Conflicts Outside Wisconsin Courtrooms. *Soeka & Fullin*. *Wis. Law*. Aug. 1994.

Think Like a Negotiator: Effectively Mediating Client Disputes. *Frankel & Mitby*. *Wis. Law Dec.* 2003.

Next file: [Chapter 803](#)

(a) “Mediation” means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation under s. 115.797, negotiation under s. 289.33 (9), mediation under ch. 655 or s. 767.11, or any similar statutory, contractual or court-referred process facilitating the voluntary resolution of disputes. “Mediation” does not include binding arbitration or appraisal.

(b) “Mediator” means the neutral facilitator in mediation, its agents and employees.

(c) “Party” means a participant in mediation, personally or by an attorney, guardian, guardian ad litem or other representative, regardless of whether such person is a party to an action or proceeding whose resolution is attempted through mediation.

(3) INADMISSIBILITY. (a) Except as provided under sub. (4), no oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party is admissible in evidence or subject to discovery or compulsory process in any judicial or administrative proceeding. Any communication that is not admissible in evidence or not subject to discovery or compulsory process under this paragraph is not a public record under subch. II of ch. 19.

(b) Except as provided under sub. (4), no mediator may be subpoenaed or otherwise compelled to disclose any oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party or to render an opinion about the parties, the dispute whose resolution is attempted by mediation or any other aspect of the mediation.

(4) EXCEPTIONS. (a) Subsection (3) does not apply to any written agreement, stipulation or settlement made between 2 or more parties during or pursuant to mediation.

(b) Subsection (3) does not apply if the parties stipulate that the mediator may investigate the parties under s. 767.11 (14) (c).

(c) Subsection (3) (a) does not prohibit the admission of evidence otherwise discovered, although the evidence was presented in the course of mediation.

(d) A mediator reporting child or unborn child abuse under s. 48.981 or reporting nonidentifying information for statistical, research or educational purposes does not violate this section.

(e) In an action or proceeding distinct from the dispute whose settlement is attempted through mediation, the court may admit evidence otherwise barred by this section if necessary to prevent a manifest injustice of sufficient magnitude to outweigh the importance of protecting the principle of confidentiality in mediation proceedings generally.

History: Sup. Ct. Order No. 93-03, 179 Wis. 2d xv (1993); 1995 a. 227; 1997 a. 59, 164, 292.

Judicial Council Note, 1993: This section creates a rule of inadmissibility for communications presented in mediation. This rule can be waived by stipulation of the parties only in narrow circumstances [see sub. (4) (b)] because the possibility of being called as a witness impairs the mediator in the performance of the neutral facilitation role. The purpose of the rule is to encourage the parties to explore facilitated settlement of disputes without fear that their claims or defenses will be compromised if mediation fails and the dispute is later litigated.

904.085 Communications in mediation. (1) PURPOSE.

The purpose of this section is to encourage the candor and cooperation of disputing parties, to the end that disputes may be quickly, fairly and voluntarily settled.

(2) DEFINITIONS. In this section:

Appendix D

Intake Information Form

WSEMS Mediation Intake and Screening Information

Case #:

How did you hear about the mediation system?

Form Submitted by: Fax Mail Other

Child's Name/Age/Grade:

Does child live at home with both parents?

Parent(s): What is your child's disability?

District: What is the child's disability as noted on the IEP form?

Does the child receive any related services?

Does your child receive any tutoring, therapy or any type of support outside of school? No Yes

If so, what?

(Request by: parent district joint request):

School District Primary Contact

Name:

Address:

Phone:

School District: School:

Are you working with an attorney for the mediation?

E-mail address:

Parent(s) , Guardian or Adult Student

Name:

Address:

Phone:

Are you working with a parent advocate, attorney, or other support person for the mediation?

E-mail address:

Other parties and contact information:

Who are you thinking about bringing to the mediation?

Parents:

District:

Mediation Issues:

Parents:

District:

Previous Action Taken to Resolve Issues:

Is a due process or IDEA complaint pending? If so, who filed?

Are there any other circumstances we should be aware of?

Appendix E

Two Sample Letters



**Wisconsin
Special Education
Mediation System**

Burns Mediation Services

P.O. Box 107
Hartland, WI 53029-0107

(888) 298-3857 toll free

(262) 538-1348 fax

(262) 538-1618 TTY

www.wsems.us

VIA EMAIL ONLY
RE: CASE #:

Dear _____ :

On _____, the Wisconsin Special Education Mediation System (system) received a request for mediation services from _____ for a special education dispute with _____. Both the parent(s) and the school district must agree to participate before the process can begin. I will need _____ to sign the request form before starting the process.

Mediation is a process where an impartial mediator helps the parties to work together and resolve their special education disputes. The mediator assists parties in generating options, and exploring possible outcomes. Discussions in mediation are confidential and inadmissible in a future legal process.

Unlike a due process hearing, the mediator does not make decisions. Decisions are made by the parties. If a solution is reached, a written agreement can be created which is enforceable and binding.

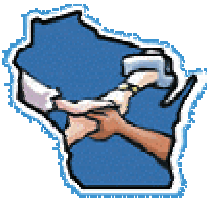
Mediation is a voluntary process. **Either the parent(s), the school district or the mediator can end the mediation process at any time** and the mediation process may not delay or deny the right to a formal due process hearing.

There are 25 mediators on the WSEMS list. The parties and I choose mediators from this list. They are trained in mediation and are located throughout the state. Either party can nominate a mediator but both parties must agree on the mediator. The system will pay for the cost of the services of a mediator on the WSEMS's list.

Enclosed is a copy of the request for mediation form that sent to the system. **If _____ to participate in this voluntary mediation process, please sign and return the form to my office by _____.** **If _____ not wish to participate, please phone or email my office by that date.** If you have any questions about the mediation process, please contact me at 1-888-298-3857 or by email at jane@wsems.us.

Sincerely,
Jane Burns
Intake Specialist and System Administrator

Cc:



**Wisconsin
Special Education
Mediation System**

Burns Mediation Services

P.O. Box 107
Hartland, WI 53029-0107

(888) 298-3857 toll free

(262) 538-1348 fax

(262) 538-1618 TTY

www.wsems.us

Re: Case#

Dear _____,

The Wisconsin Special Education Mediation System (system) has a signed request for mediation services form from _____ about a special education dispute with _____.

Mediation is a process where an impartial mediator helps the parties to work together and resolve their special education disputes. The mediator assists parties in generating options, and exploring possible outcomes. Discussions in mediation are confidential and inadmissible in a future legal process.

Unlike a due process hearing, the mediator does not make decisions. Decisions are made by the parties. If a solution is reached, a written agreement can be created which is enforceable and binding.

Mediation is a voluntary process. **Either the parent(s), the school district or the mediator can end the mediation process at any time** and the mediation process may not delay or deny the right to a formal due process hearing.

There are 25 active mediators on the WSEMS list. The parties and I choose mediators from this list. They are trained in special education, mediation, and facilitation and are located throughout the state. Either party can nominate a mediator but both parties must agree on the mediator. The system will pay for the cost of the services of a mediator on the WSEMS's list.

The above parties have agreed upon _____ as the mediator in your special education dispute. _____ bio is enclosed. A copy of the request for mediation form is also enclosed.

If you would like to attend the mediation or have any further questions or concerns about the mediation process, please contact me at 1-888-298-3857 or jane@wsems.us.

Sincerely,

Jane Burns
Intake Coordinator and System Administrator

Enclosure

Appendix F

Post-Mediation Participant Form

Wisconsin Special Education Mediation System Post-Mediation PARTICIPANT Form

Please help us evaluate the Wisconsin Special Education Mediation System by answering the following questions and returning this form in the addressed, stamped envelope that accompanies this questionnaire or fax to the number on the last page. Non-identifying information is used for data collection as well as for training purposes. Thank you for your assistance.

1. Your role (please check one):

_____ Family (1)

_____ School District (2)

SECTION A: About the Mediation Process

This first set of statements focuses on the mediation process.

Please tell us whether you **Strongly Agree, Agree, Slightly Agree, No Opinion, Slightly Disagree, Disagree, or Strongly Disagree** with each of these statements by circling one number to the right of the statement.

	Strongly Agree	Agree	Slightly Agree	No Opinion	Slightly Disagree	Disagree	Strongly Disagree
2. I understood the mediation process.	1	2	3	4	5	6	7
3. Mediation gave me the opportunity to be part of the resolution process.	1	2	3	4	5	6	7
4. Overall, I was satisfied with the mediation process.	1	2	3	4	5	6	7
5. I would use mediation again to resolve a dispute.	1	2	3	4	5	6	7

SECTION B: About the Mediator (s)

This set of statements will focus on the person who acted as the mediator.

	Strongly Agree	Agree	Slightly Agree	No Opinion	Slightly Disagree	Disagree	Strongly Disagree
6. The mediator explained the mediation process thoroughly.	1	2	3	4	5	6	7
7. The mediator was impartial.	1	2	3	4	5	6	7
8. The mediator did not try to pressure me into an agreement.	1	2	3	4	5	6	7
9. The mediator created a comfortable environment.	1	2	3	4	5	6	7
10. The mediator used time adequately.	1	2	3	4	5	6	7
11. The mediator kept the meeting focused.	1	2	3	4	5	6	7
12. I would use this mediator again to help resolve a dispute.	1	2	3	4	5	6	7
13. Did you reach an agreement during the mediation process? (1/Y, 2/N)							

Yes (GO to SECTION C and SKIP SECTION D)

No (SKIP SECTION C and GO to SECTION D)

SECTION C: About the Agreement If you did not reach an agreement, skip this section and proceed to SECTION D).

	Strongly Agree	Agree	Slightly Agree	No Opinion	Slightly Disagree	Disagree	Strongly Disagree
14. I am satisfied with the agreement reached.	1	2	3	4	5	6	7
15. I think the agreement will help resolve the dispute.	1	2	3	4	5	6	7
16. I believe that the other parties will follow through with the agreement.	1	2	3	4	5	6	7

Strongly Agree	Agree	Slightly Agree	No Opinion	Slightly Disagree	Disagree	Strongly Disagree
----------------	-------	----------------	------------	-------------------	----------	-------------------

17. The outcome of the mediation was better than I expected.

1	2	3	4	5	6	7
---	---	---	---	---	---	---

SECTION D: Agreement not reached If you reached an agreement, please skip this section.

Strongly Agree	Agree	Slightly Agree	No Opinion	Slightly Disagree	Disagree	Strongly Disagree
----------------	-------	----------------	------------	-------------------	----------	-------------------

18. The mediator was ineffective.
Explain:

1	2	3	4	5	6	7
---	---	---	---	---	---	---

19. The other parties' were unwilling to negotiate a resolution.

1	2	3	4	5	6	7
---	---	---	---	---	---	---

20. I believe the other party would not follow through with an agreement.

1	2	3	4	5	6	7
---	---	---	---	---	---	---

Any Additional Comments:

Thank you.

Fax to: 262-538-1348 or email to: jane@wsems.us

Appendix G

Agreement to Mediate Form

**WISCONSIN SPECIAL EDUCATION MEDIATION SYSTEM
AGREEMENT TO MEDIATE**

We hereby agree that _____ will be the Mediator between us regarding:

Case # _____

Parties _____

Child _____

We understand and agree to the following:

PURPOSE OF MEDIATION: We understand that the purpose of mediation is to develop a satisfactory resolution to our issues and that our goal is to identify areas of agreement and disagreement and to work together to explore options for settlement.

ROLE OF THE MEDIATOR: The mediator does not have the authority to impose a settlement and no person shall serve as a mediator in any case, in which the mediator has any financial or personal interest in the result of the mediation. Before accepting the role as a mediator, the prospective mediator shall disclose to us any circumstances likely to create a perception of bias or to delay the mediation. We may then agree to select or have appointed another mediator from the WSEMS roster. Further, if during the course of the mediation, the mediator becomes aware of any conflict of interest, the mediator will immediately disclose the conflict to us and we may choose to waive the conflict in writing or choose (or have appointed) another mediator from the WEMS roster.

IMPARTIALITY OF THE MEDIATOR: We understand that:

a) the mediator will remain impartial in all contacts with either party and that she/he will not advocate any interest of either party over the other;

b) the mediator, whether an attorney or not, shall not provide us with legal advice and that we are encouraged to seek independent legal counsel if legal questions arise;

c) if the mediator is an attorney, that the mediator will only mediate between us, and, therefore, will never represent either of us as attorney of record or in any adversary capacity in any legal proceeding in the future regarding our issues.

THE MEDIATION PROCESS: The mediation shall be conducted at a time and a place designated by the mediator that is accessible, convenient and acceptable to all of us.

We understand that:

a) we may be represented or accompanied by person(s) of our choice with

the consent of the other parties. These person(s) may or may not be attorneys or advocates. We agree to list the names of such persons on the Request for Mediation form, if possible;

b) the process may include both separate and joint meetings. We understand that conversations in the separate sessions are confidential, unless the party in the private session agrees to have it disclosed in a joint session;

c) the mediator may receive oral and/or written recommendations for settlement from us as necessary;

d) the mediator may seek expert advice regarding technical aspects of the dispute, however, the mediator will consult with us and if there are any costs or expenses related to the advice, inform us of the costs and seek our agreement to assume the expenses before proceeding;

e) if mediation results in a written agreement, we agree that the written agreement must include the following language "All discussions that occur during mediation are confidential and may not be used as evidence in any hearing or civil proceeding."

CONFIDENTIALITY OF THE MEDIATION PROCESS: The confidentiality of the mediation process shall be governed by Wis. Stat. 904.085. We shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any subsequent proceeding, whether that proceeding is judicial, administrative, or arbitral any of the following:

a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

b) admissions made by another party in the course of the mediation;

c) proposals made or views expressed by the mediator, or;

d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator. The mediator will destroy his or her notes and/or written materials at the conclusion of the mediation.

Further, we agree that there shall be no stenographic or other record made of the mediation process.

WITHDRAWING FROM MEDIATION: We understand that either party or the mediator may withdraw from mediation at any time. The mediation may be terminated by

a) a statement by any of the parties indicating that we not longer wish to proceed in mediation;

b) a statement by the mediator indicating that in her/his belief that further mediation sessions will not contribute to the resolution of the dispute or,

c) by the execution of a settlement agreement signed by us.

EXCLUSION OF LIABILITY: We understand that the mediator is not a necessary party in any subsequent proceeding relating to the mediation. Neither the Wisconsin Department of Public Instruction or an individual or entity working with the Department, nor any mediator, nor the Wisconsin Special Education Mediation System, shall be liable to any part for any act or omission in connection with any mediation conducted under this agreement.

COSTS AND EXPENSES: We understand that services of the mediator are provided by WSEMS without cost to us and pursuant to Wis. Stat 115.797. WSEMS will not pay for any participant's attorney fees or any other costs of the parties associated with mediation (e.g. mileage, lodging, wage loss, etc.).

REPORTING FORMS: By signing this form, I am acknowledging that I will receive a WSEMS Post-Mediation Participant Form. I understand that the information on this form is helpful to the WSEMS in maintaining the high quality of the mediation services and is helpful in providing feedback to our mediator.

SIGNATURES: This agreement may be signed in separate identical copies. When all copies are brought together, it shall be considered the same as if we had all signed the same copy.

Date: _____

Signed: _____

Signed: _____

Signed: _____

Signed: _____

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Appendix H

Request for Special Education Mediation Form



**Wisconsin Special
Education Mediation
System (WSEMS)
REQUEST FOR SPECIAL
EDUCATION MEDIATION**

INSTRUCTIONS: Complete and submit one (1) signed copy.
Retain a copy for your records. Submit signed form to:

WISCONSIN SPECIAL EDUCATION MEDIATION SYSTEM
Burns Mediation Services
PO Box 829
Madison, WI 53701-0829
Website: wsems.us
E-mail: jane@wsems.us

1 - 888 - 298 - 3857
1 - 262 - 538 - 1618 TTY

FAX: 1- 608- 283-9106

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1. Either the parent or school district may initiate the mediation process by completing this Request for Special Education Mediation form and sending the completed form to WSEMS.
2. Both the parents and school district administrator may jointly complete a single Request for Special Education Mediation form. The form should be sent or faxed to WSEMS at the address or phone number shown. WSEMS will arrange mediation at a location, date, and time convenient to both parties.
3. If a **nonjoint request**, WSEMS will notify the other party in writing of the request for mediation with a request that the other party notify WSEMS **within five (5) business days** after receiving the notice of their willingness to participate in mediation. If the responding party agrees to mediate, WSEMS will appoint a qualified mediator to arrange a mediation session. If WSEMS does not receive a timely response or if the other party notifies WSEMS of their refusal to participate in mediation, WSEMS will so notify the requesting party.

	MEDIATION REQUEST (Attach additional page if needed)	
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We wish to request that WSEMS will convene a special education mediation session regarding the following unresolved issues:

GENERAL INFORMATION									
Name of School District Administrator (Superintendent)					Name of Student			Date of Birth	
Name of School District					Name of Parent/Guardian				
Address					Address				
City		State	Zip		City		State	Zip	
Telephone Area/No.			E-mail		Telephone Area/No. (Daytime Telephone)			E-mail	

SIGNATURES									
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We understand mediation is a voluntary dispute resolution option available to encourage early resolution of issues whenever possible. We understand that mediation may not delay or deny the right to a formal due process hearing. We understand that mediation is confidential and that the information will not be shared with others.

Signature of School District Administrator (Superintendent)				Date Signed	Signature of Parent/Guardian			Date Signed	

02/01/15

