

## **SPECIAL EDUCATION MEDIATION CONFERENCE PROCEDURES**

All documents relating to a mediation conference need to be date stamped by the department. The original is kept in the bureau. Copies are made for the mediator and other parties.

1. **Mediation request arrives**. Date stamp and check for required information under Education [281]—41.106 (1)IAC. Check to see if it is one of these appropriate issues:
  - a. Identification.
  - b. Evaluation.
  - c. Educational placement.
  - d. Provision of free, appropriate public education.

If it appears that the issue/s identified does not fit within the above requirement, request the attorney for the Department of Education to render a decision and the attorney will write the letter to the requesting party providing rationale for the denial. The communication will also remind the requesting party about the AEA Resolution Facilitator process or any other information that may be helpful in addressing the issue, e.g., other resources that could be used.

### **Required information:**

- a. Name of child.
- b. Address of residence of the child (in the case of a homeless child or youth available contact information).
- c. The name of the school the child is attending.
- d. Identify the resident district and AEA.
- e. The facts.
- f. Identified issues of concern or the reasons for the conference.
- g. A proposed resolution of the problem to the extent known and available to the party at the time.

2. **If the request for the mediation is complete, create a new file in the data base, assigning a new docket number (e.g., "PRE-000")**. The database should contain the following information:

- a. Parent's name, address and phone. *Find out if another parent should be invited to be a part of the process.*
- b. Name, address and phone for parent's attorney/advocate, if applicable.
- c. District name of residence, address and phone, and names of superintendent, and LEA special education director if there is one (refer to list of Urban Education Network Directors and Mid-Size District Directors, making certain list is kept current).

- d. AEA name, address and phone, names of Sp. Ed. Director.
- e. Name, address and phone for AEA/LEA attorneys, if applicable.
- f. If Department of Education is named, include Thomas Mayes, Carol Greta and Jeanie Vaudt, Asst. Attorney Generals Office.
- g. If Department of Human Services is named include, Thomas H. Miller, Attorney General, and Insert current name, Director of DHS.

**3. If the student is tuitioned to another school district, the district of residence is named as the party in the mediation and the receiving district is invited.** If the receiving district wishes to become a party, then add address/phone and names of superintendent, and LEA Special Ed. Director to this filing information.

*All the non-advocates listed in #2 and #3 make up the "parties" to the mediation. Any information sent to parties is to include everyone on this list as well as all attorneys and other non-legal advocates listed.*

1. **For the Bureau use a file for each case using letter-size expandable pocket folders.** Type label (blue) with child's name, school district, AEA, and PRE #. Also make a copy of the information sheet (this paper has all information such as phone numbers and address of all parties) on bright colored paper for this folder. The white goes to the mediator.
2. **Within five business days after receipt of a request for a valid mediation, send letter to AEA and LEA of notification of mediation request and inform superintendent (or designee) that pertinent records relevant to the mediation and the checklist must be sent to the department and to all other parties named (e.g., the parents, AEA, Department of Education, and/or Department of Human Services).** Advise the district that the completed checklist and records can be sent electronically to the DE, copying the parent, attorney for parent if one has been identified, assigned mediator and other pertinent parties deemed to be appropriate. A copy of the letter is sent to all parties. Attach copy of request for mediation for all but appellant.

The checklist will inform the AEA and LEA that the most recently developed IEP (that includes any evaluation or progress monitoring data recorded on IEP) must be sent (including electronic mailings) within 10 business days after the district/AEA's receipt of the notice. The letter from the DE will state that the student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing by the parent at least ten calendar days before the mediation. The individual's complete school record shall be available to the participants at the mediation conference.

Enclosures to LEA: Special Education Mediation Conference Checklist, Copy of Request for Mediation (LEA and AEA), *Timeline Expectations When Mediation Conference Request Is Filed with Department.*

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Enclosures to parents: same as LEA with exception of including copy of request for mediation.

**Placement during proceedings.** Unless the parties agree otherwise, the student involved in the mediation must remain in the student's present educational placement during the pendency of the proceedings. 281 41.106(3) IAC).

**6. Send parents a letter that provides free or low cost attorney fee list.**

Enclosures: *Procedural Safeguards Manual for Parents*, December 2008

Depending on history of attorney filing the mediation and being agreeable to idea or if no attorney involved: The DE secretary or consultant will contact the AEA Special Education Director (typically through e-mail) to remind the director that the AEA Resolution Facilitator Process offer may be made to the parent by the AEA or LEA, assuming a discussion has been held with the LEA, about offering this option. The benefits of the AEA RF process--as opposed to the mediation-- will be discussed. The purpose of the contact with the parent by the AEA or LEA would be to determine whether the parent would be willing to use the AEA RF Process instead of the mediation. During the conversation the secretary or consultant will address paperwork materials that may be available from the DE or will remind the director of materials the AEA RF Coordinators may also have.

**7. Assign mediators as soon as possible.**

- a. Within 5 business days of receiving mediation request, contact mediator in line for assignment, using rotation system (and availability), to see if he or she is available and if so, when mediator will be available for teleconference call (and who should be involved) to set up dates, location and time for mediation. If that mediator is unable to take the case, so indicate on list, noting date called, have that mediator's name go to the back of the line and go to the next mediator on the list.

**Reassignment of mediator when party voices need**

- Any person serving or designated to serve as a mediator is subject to disqualification for bias, prejudice, interest, or any other cause for which a mediator is or may be disqualified.
- Any party may, within three calendar days, request the disqualification of a mediator after learning who has been assigned as mediator or upon discovering facts establishing grounds for disqualification whichever is later. Such a request must be made to DE in writing.
- A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

- If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute must be appointed by the department from the list of other qualified mediators.

Contact parties to arrange teleconference call with mediator on mutually agreed date and time. As soon as conference call date and time are known, send e-mail. If no email available DE make phone call. U.S. mail to be used only if person doesn't have email or phone.

**8. Conduct the conference call. At the beginning of the conference call the mediator should ask whether the participants are aware of the AEA Resolution Facilitator process and have still chosen to proceed with the mediation.**

Objectives of a Mediation Conference Call:

- a. Disclosures of prior associations with any of the parties if necessary.
- b. Say a few words about mediator's special education mediation experience and that the mediator is under contract with DE to provide mediation services.
- c. Check on possible objections to the assigned mediator in this matter. If there are objections provide guidance about needing to put something in writing to the department within three calendar days and that based on the request, the mediator will be making a decision whether to remove himself/herself.
- d. Check understanding of mediation and role of the mediator.
- e. Discuss IDEA 2004 federal law that makes explicit the legally binding nature of agreements.
- f. Clarify issues – or check to see that district and AEA have the request for mediation. "These are the issues. Is that correct?"
- g. Check to see if there is information that needs to be exchanged prior to the mediation.
- h. Schedule the mediation. During the conference call, the dates, times, and location for mediation are determined. The mediator is required to provide the option of meeting in a neutral site. However, it is not a requirement the mediation be in a site outside of the LEA/AEA. Check with all parties during the conference call. Request the district (or AEA when appropriate) to find the location, making certain there is an awareness about the size of the room/s, indicating there will be a need for a smaller location for caucusing. Inform the responsible person for finding the location to bill the Iowa Department of Education if there is a charge for use of the facility.
- i. During the conference call the mediator will mention the option of parents having legal representation at a mediation (if attorney not involved with parents) and also reference the assistance that may be available from the PEC. Include reminders about representation to un-represented parties (not just parents).

m. In order to support the mediator in his/her role as facilitator, mediator may check with the school district or AEA to arrange for a typist from one or the other to type any agreement reached on a computer connected to a projector and projected for all to see during the mediation. This is so that the mediator can continue to facilitate without being distracted by doing the typing. Projection of a draft would also ensure that all participants have the opportunity to assist with crafting the language of the agreement. Additionally, the draft could then be printed so all could have a copy to review.

n. The mediator will ask that parties contact the DE secretary if additional people plan to attend mediation other than those already designated. The DE wants all parties to know who will be attending in advance of the meeting and the DE wants to make certain all people attending the mediation will have the materials (*Agreement to Mediate for all participants and Legally Binding Mediation Agreement Form for one designated person at both AEA and LEA*) before the meeting.

j. It should be made clear to unrepresented parents that they can bring support persons with them to a mediation session if they desire and if they inform the mediator and the LEA/AEA in advance.

k. During the group conference call the mediator will indicate that all parties will be contacted by the mediator by phone prior to the mediation conference so that the mediator can explain the process that will be followed and answer any questions that parties have about mediation. The mediator then will inquire as to whether anyone on the conference call does not wish to receive such a pre-session call. When calls are made explaining about preparing for the mediation, discussion of the issues identified in the request for mediation or mediation is to be avoided.

l. Ask the age of the student. As appropriate, ask parent if student will be attending the mediation conference. (Depending on the situation, the mediator may say: "In some cases it is helpful for the student and for the process if the student attends the mediation conference. Please consider this as an option and let Michelle know if (child's name) plans to attend.")