

## PROCEDURAL SAFEGUARDS: MEDIATION

(See also **Procedural Safeguards: Resolution Meetings and Due Process Hearings, 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 August 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.<sup>1</sup> This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding mediation.

### IDEA Regulations

#### **1. Requires 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)]

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind 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; 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 website at: <http://IDEA.ed.gov>.

**2. Gives 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. Sets 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. Includes 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. Requires 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(a) is enforceable in any State court of competent jurisdiction or in a district court of the United States.<sup>2</sup>

[34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(F)]

**7. 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)]

**8. 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)]

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<sup>2</sup>Notwithstanding 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)]