



Information UPDATE

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

BULLETIN NO. 08.02

April 2008

TO: District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: SPECIAL EDUCATION MEDIATION (Replaces Bulletin #98.07)

To encourage early resolution of issues, the Individuals with Disabilities Education Act (IDEA) mandates that all states offer mediation to parents and local educational agencies as an initial process for the resolution of special education disputes. Chapter 115.797, Wis. Stats., also mandates that Wisconsin offer mediation as an option.

Since the 1997 reauthorization of IDEA, the Wisconsin Special Education Mediation Project has assisted the department with implementation of this requirement. The Wisconsin Special Education Mediation System's (WSEMS) role includes coordinating case intake and referral; training and supporting the roster of mediators; providing outreach and promotion including a web site, conducting regional day-long conferences on mediation and early conflict prevention and resolution, and other presentations and activities; and conducting an on-going evaluation of the system.

Mediation is facilitated negotiation in which a neutral third party, a trained mediator, helps parties (LEAs and parents) resolve their disputes in a private setting. The mediator does not impose a decision on the parties, as is done in a due process hearing, but rather assists the parties to work together to identify issues, generate options, and create their own solutions. Because mediation is voluntary, either party (or the mediator) may terminate the process at any time. Discussions that occur during the mediation process are confidential. A due process hearing does not need to be initiated in order to access mediation services. However, mediation may not deny or delay a student's rights to a due process hearing.

This bulletin provides the following guidelines for parents and school districts interested in mediation.

- **Who May Request Mediation**

Either a parent or school district, or both, may initiate a request for mediation services. A request for mediation services will be accepted by telephone or fax to the WSEMS, but must also be confirmed in writing using a [Request for Special Education Mediation form](#). The request must include a brief description of the dispute and identify both parties.

- **Joint Request**

In the case of a joint request, which is the most ideal and efficient method of requesting mediation, both parties to the dispute jointly sign and send a single [Request for Special Education Mediation form](#) to the WSEMS. The WSEMS will appoint a qualified mediator from the mediator roster in a timely manner.

- **Non-Joint Request**

In the case of a non-joint request, a [Request for Special Education Mediation form](#) should be sent to the WSEMS by the requesting party. The WSEMS will notify the other party, within 5 business days of the request for mediation, by a written notice (certified mail or dated fax) which will include a request that the other party notify the WSEMS within 5 business days after receiving the notice regarding its willingness to participate in mediation. The WSEMS is available to either party to encourage the use, and explain the benefits, of the mediation process. If the WSEMS does not receive a timely response or if the other party notifies the WSEMS of the refusal to participate in mediation, the WSEMS will so notify the party that requested mediation. If the responding party agrees to mediate, the case will be referred to a qualified mediator from the roster in a timely manner.

- **Roster of Mediators**

As provided by law, the department maintains a roster of mediators qualified to resolve disputes. Mediators have completed a 5-day intensive training program on special education law and mediation and are required to participate in at least one day of additional WSEMS training annually to remain on the roster. The roster includes mediators with a wide variety of mediation experience who are geographically distributed statewide. Parties must agree on the mediator. WSEMS may appoint an alternative mediator if agreement is not reached on the initial appointment. The mediator will receive a copy of the request for mediation. The department will provide compensation for the mediator who is listed on the department's roster.

- **Using A Non-Roster Mediator**

If there is an objection to the mediator appointed from the roster, or if the parties have agreed to mediation by a mediator who is not on the roster, parties to the dispute will be expected to procure private mediation services at their own expense.

- **Mediation Session**

Unless both parties agree otherwise, mediation shall begin within 21 days after the mediator is appointed and shall not delay hearings or appeals related to the dispute. The mediator will contact the parties to arrange the mediation session. Mediation sessions will be conducted at a neutral site and at a day and time convenient to all parties. The mediator will require the parties to sign an agreement to mediate which contains a confidentiality provision.

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

- **Written Agreement**

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 agreement is in writing, signed by the parties, and that a copy of the agreement is given to each party. The agreement must state 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. A signed mediation agreement is legally binding upon the parties, and is enforceable in any State court of competent jurisdiction or in a district court of the United States.

A brochure with information about mediation and the WSEMS is available for distribution to parents and district personnel. Additional information, including the Request for Special Education Mediation form, state special education law (Chapter 115.797, Wis. Stats.); and federal special education law (IDEA) may also be accessed on the WSEMS web site at: <http://www.wsems.us>.

Contact information for the WSEMS:

Wisconsin Special Education Mediation System
Burns Mediation Services
P.O. Box 107
Hartland, WI 53029-0107

Mediation information - (888) 298-3857 (toll-free); (262) 538-1618 (TTY)
Mail Request for Mediation to: **Intake Coordinator**
Or fax *Request for Special Education Mediation* form to - (262) 538-1348

Questions regarding this bulletin can be directed to the Special Education Team at (608) 266-1781.

bco

This information update can also be accessed through the Internet:

<http://dpi.wi.gov/sped/bulindex.html>