

Considerations for Mediating with People who are Culturally Deaf

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FALL 2002

Updated August 2007

CADRE is funded by



U.S. Office of Special
Education Programs

Published by

CADRE

Helping Parents and Educators

*Create Solutions That Improve Results
for Students with Disabilities*

This document was developed by CADRE, a project of Direction Service pursuant to Cooperative Agreement CFDA H326D98002 and updated pursuant to Cooperative Agreement CFDA H326D030001 with the Office of Special Education Programs, United States Department of Education. The opinions expressed herein do not necessarily reflect the position or policy of the United States Department of Education.

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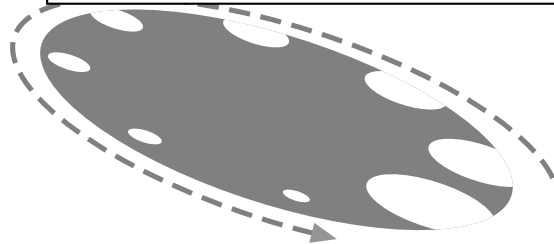
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ACKNOWLEDGMENTS

Thanks to Ellen Yamshon for her substantial insights and editorial contributions; Philip Moses, Melissa Mueller and Marshall Peter for their editorial assistance and expertise; Lynne Rossi for technical editing; Tom Kelly for layout and design; and Aimee Taylor for administrative support. Special thanks to CADRE's Project Officer, Peggy Cvach, for her thoughtful review and comments.

This document is a publication of the Consortium for Appropriate Dispute Resolution in Special Education (CADRE). Funding for this document was provided to CADRE, a project of Direction Service, through Cooperative Agreement CFDA H326D98002 from the Office of Special Education Programs, United States Department of Education.

Historically, mediation has not been an effective venue for dispute resolution for Deaf¹ people because of linguistic inaccessibility and cultural non-recognition. Like other linguistic minority groups who experience and resolve conflict in a manner consistent with their social and communicative norms, Deaf people have some unique perspectives. The following article illuminates some of these perspectives and explains how mediators can address these differences when working with Deaf people, in order to make mediation a more linguistically and culturally respectful and responsive endeavor.

THE AMERICAN DEAF COMMUNITY: AN IN-DEPTH LOOK

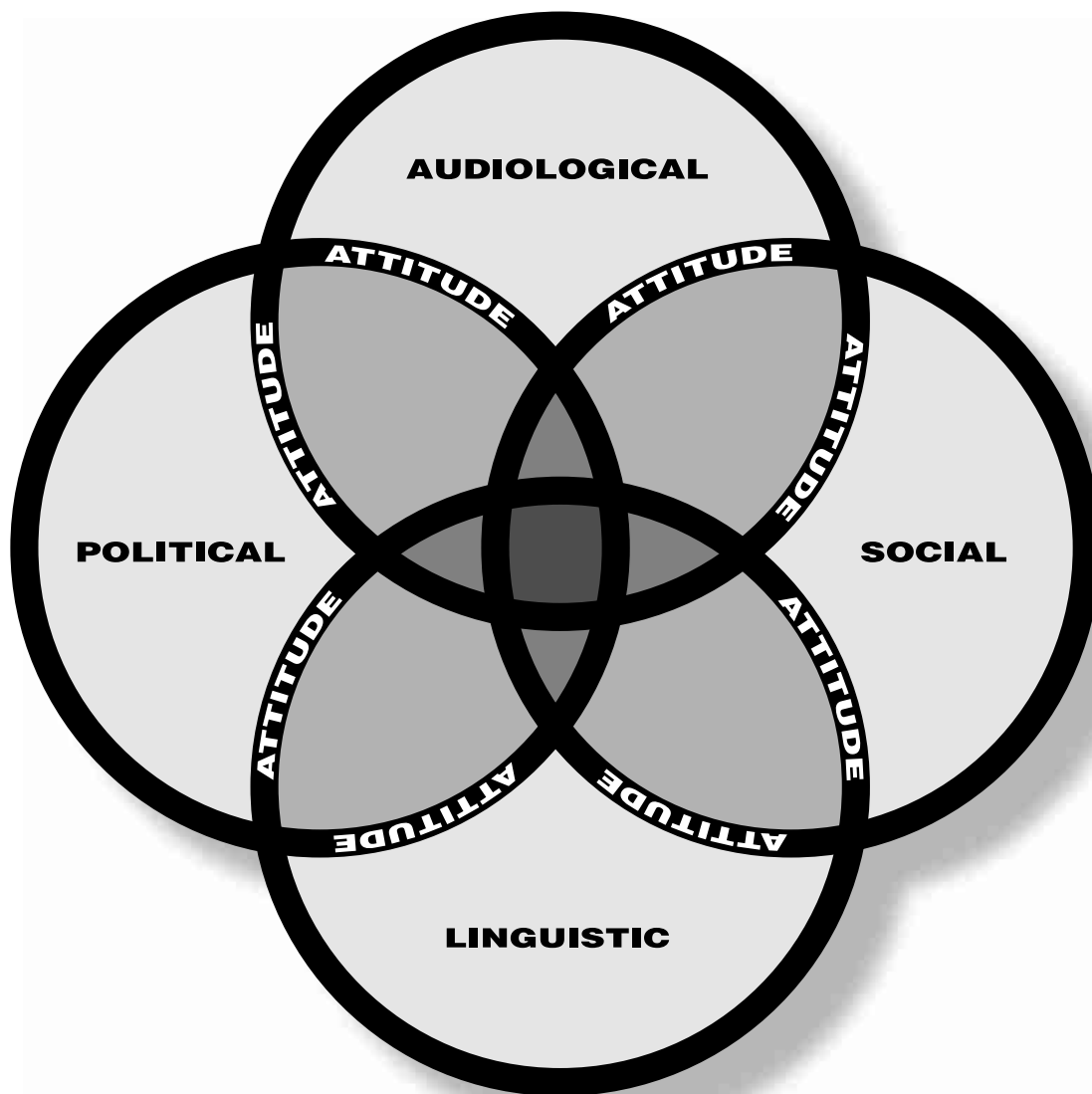
Bound together by a common language, American Sign Language (ASL), the Deaf community in the United States views itself as a cultural and linguistic minority. Through friendships, marriages, clubs, formal organizations, shared experiences and culture, the Deaf in America have created a community. While most hearing people see deafness as a disability, Deaf people don't view themselves as disabled. As I. King Jordan, the president of Gallaudet University (the only University for the Deaf in the world) put it: "Deaf people can do anything anyone else can — except hear." Affiliation with the Deaf community is based not on a physical location or ethnicity but on a shared language and shared experiences.

In America today, 90% of all deaf children are born to hearing parents.² Many hearing people have never met a deaf person unless they have a deaf family member. Because of the obvious barriers that learning English without the benefit of hearing presents, many deaf children have poor communication with their parents and hearing family members. Associating with other Deaf people thus becomes desirable and is the means by which Deaf culture is transmitted. People in the Deaf community believe that ASL is "the most accessible and primary language" for Deaf individuals and typically view English as a second language.³ For this reason residential schools play a significant role in Deaf culture. At these schools values, traditions, acceptable behavior, and other aspects of Deaf culture are learned through interaction and instruction. These schools have a place of high value and esteem in the culture: when Deaf people meet each other for the first time, it is typical for them to introduce themselves not only by giving their name but also by identifying what residential school they attended.

According to Carol Padden, a Deaf activist and scholar, membership in the Deaf community is based on four points of entry: political involvement, social identity, language use and audiological profile.⁴ Taking a leadership role to advance political issues related to deafness and Deaf culture evidences *political involvement*. This includes large and small scale activism such as lobbying state governments to accept ASL for foreign language credit at colleges and universities, or working with the local residential school to adopt a bilingual / bicultural philosophy of education. *Social identity* means that a person identifies herself or himself as culturally Deaf and participates in the life of the Deaf community. Supporting Deaf clubs, attending sporting events at Deaf schools, and providing leadership in Deaf organizations are examples of the social aspects of the Deaf community.

Linguistic access to the Deaf community is limited to the use of American Sign Language. Because language and culture are so tightly linked, this is a central requirement for an individual's involvement in the Deaf community. Baker and Padden explain the importance of ASL by recognizing that “at the heart of every community is its language. This language embodies the thoughts and experiences of its users, and they, in turn, learn about their own culture and share in it together through their language. Thus, Deaf people learn about their own culture and share their experiences with each other through American Sign Language.”⁵ Finally, some degree of hearing loss is the audiological requirement for full participation in the Deaf community. However, degrees of hearing loss, audio grams, and specifics about frequencies and decibels are not descriptions of value to the Deaf community at large; it is the experience of being Deaf — not the condition of being audiotogically deaf that is significant.

Figure 1. AVENUES OF MEMBERSHIP IN THE DEAF COMMUNITY



While hearing people play important roles in the Deaf world, they can never become “core” members of the Deaf community. Growing up with Deaf parents, having a Deaf sibling, working as an interpreter, or teaching at the Deaf school are some ways that hearing people gain access to the Deaf community. In general, hearing people’s proximity to the Deaf community depends on the degrees to which they (hearing people) are informed and sensitized about Deaf people (see figure 2).

Figure 2.



HEARING PEOPLE: WHO ARE THEY?

- **The general public**
uninformed hearing people
- **Hearing people**
informed, yet not sensitized
- **Hearing people who have been culturally assimilated into the Deaf/HH Community**
informed and sensitized

Characteristics of the Deaf community include the high value placed on interpersonal relationships, the prevalence of reciprocity, affiliations with Deaf schools, and clubs and national organizations of/for the Deaf. Because Deaf people spend so much time in the “hearing world” — at work, with family, and in day-to-day living — relationships with other Deaf people are particularly valuable. It is common for calendars to be marked months in advance of upcoming social events in the Deaf community, and time with Deaf friends locally and around the country is cherished. These kinds of gatherings happen in homes, at schools, in Deaf clubs and at larger scale events like the annual World Deaf Timberfest and the World Deaf Games (the Olympics of the Deaf).

As is true for any minority group, the Deaf community has a shared heritage that is the foundation of its literature, culture, traditions, values, and organizations (e.g., Deaf clubs, the National Association of the Deaf, the American Athletic Association of the Deaf, the National Fraternal Society of the Deaf, as well as other local, state, national and international associations and groups). Within the Deaf community there is a sense of pride in affiliating with these organizations, and a high value is placed on ensuring that Deaf people comprise the leadership of these associations. Just as it would be unusual for a white person to preside over the United Negro College Fund, it would be unlikely that a hearing person would lead the National Association of the Deaf.

While some cultural differences between the hearing majority and the Deaf community are obvious, other differences are more subtle. One of the most common and unifying experiences Deaf adults describe (much to the surprise of most hearing people) is the realization of their own deafness. This “breakthrough” experience occurs when one’s identity as a Deaf person and a member of the Deaf community becomes clear. So many deaf people are raised by hearing parents or thinking of themselves as “hearing impaired” that they don’t become aware of their cultural identity until later in life. When one recognizes the implications of being Deaf, and therefore the importance of ASL and shared experiences with other Deaf people, there is a freedom that comes with this new perspective. “The essence of Deafness is not the lack of hearing, but the community and culture based on ASL. Deaf culture represents not a denial but an affirmation.”⁶ Part of the collective identity of the Deaf community is a strong commitment to cohesion. Because the use of ASL has been threatened for more than a century by those who would rather see deaf children educated through oralism (the use of spoken English, rather than ASL), the Deaf community has had to band together to create a unified front in the face of those who would invalidate or endanger their language. Unlike the hearing majority in the United States, who seeks autonomy and independence and makes decisions based on what is most useful for the individual, the Deaf community values collectivism — considering community needs more than individual needs, seeking group success rather than personal gain.

When hearing parents of a new baby first learn about their child’s deafness, they are typically informed about the baby’s condition from a medical perspective, and they see their new child as imperfect and lacking.⁷ There is in fact a grieving process associated with a parent learning that their child is deaf.⁸ However, most of those parents do not seek out Deaf adults and do not know about the existence of the Deaf community. Because parents of deaf children get their information from the medical community and not Deaf adults or organizations, deafness has historically been viewed from a pathological perspective as something to be fixed.

The state of having diminished hearing has been seen as a deficiency, as if a person with a hearing loss were broken. Since deafness in the Deaf community is not seen as an inadequacy, Dolnick explains that “talk of cures and breakthroughs and technological wizardry is both inappropriate and offensive — as if doctors and newspapers joyously announced advances in genetic engineering that might someday make it possible to turn black skin white.”⁹

The stigma associated with being deaf combined with external attempts to discontinue the use of ASL and otherwise undermine Deaf people’s linguistic and cultural integrity are strongly suggestive of oppression. In his groundbreaking work, *The Pedagogy of the Oppressed*, Freire, a Brazilian sociologist, identified some common characteristics of oppressed people: ambivalence, self-deprecation, distrust of oneself/peers, horizontal violence, passivity/adaptation/fatalism, emotional dependence, and fear of freedom or backlash. These responses and patterns of action, however subtle, will have a direct impact on mediations when a Deaf person is involved in a dispute with a hearing person. Recognizing these characteristics of the oppressed and the oppressor is an important step in balancing the power between Deaf and hearing participants.¹⁰

MEDIATING WITH DEAF PARTICIPANTS

When mediation involves Deaf participants, their language and culture must be a primary consideration in shaping the process and structure of the mediation. To that end, we suggest five guidelines for mediators:

1. Ensure that the mediation process honors and accommodates Deaf people’s linguistic needs and differences.

Recognizing that Deaf people often have limited English comprehension, it is best to be sensitive about using written English in mediation. Whether it’s making use of intake forms, mediation agreements, or flip charts, it is important that language is accessible for all clients, not just those with advanced English skills.

Additionally, it is helpful to consider and limit the use of euphemisms, idioms, and metaphors. Not only are these phrases more difficult to interpret, but they are also often culturally based and not relevant to the lives and experiences of Deaf people. However, since language ability differs from person to person, no assumption should be made that a linguistic approach that worked well with one Deaf person will be successful for all Deaf people.

If there are materials to be read, participants should be allowed adequate time to read them thoroughly without talking or receiving an explanation until they are finished reading. Hearing people are accustomed to reading and listening at the same time. For example, a hearing person can look at an Agreement to Mediate contract and simultaneously listen to the mediator’s description of that contract without difficulty. However, when someone accesses information visually, he or she cannot take in both sets of information (the written contract and its signed description) at the same time.

When working with participants who use a different language, it is also extremely important to define concepts and terms to ensure accurate comprehension. Any opportunity to clarify meaning, check with the participants' perspectives, and restate essential ideas should be utilized.

2. Recognize the cultural values that will influence both the Deaf and hearing parties' behavior, response and understanding of the mediation process.

Mediation is a foreign concept for most Deaf individuals. In fact, mediation is likely to be viewed as an extreme measure, as another method of oppression (the outcome of which will automatically favor the hearing person), or at least as a culturally unfamiliar way to manage a conflict. Therefore the "normalization" of mediation is an important concept. By explaining the process of mediation (addressing any fears of an oppressive procedure), placing mediation within a continuum of dispute resolution alternatives, and validating clients' reasons for being part of a mediation, mediators can ease Deaf participants discomfort and thus heighten the likelihood of an effective and egalitarian process.

Mediators should learn about and be attentive to Deaf cultural norms [see the *Additional Resources* at the end of this paper]. Some of the most significant cultural cues are related to eye contact and body language.

Eye contact is a necessary part of visual communication with Deaf participants. When a mediator or hearing participant is addressing a Deaf participant, he or she should consciously maintain eye contact. Likewise, when a Deaf person is talking, it is respectful to watch him or her rather than the interpreter.

As visually oriented people, Deaf individuals have a heightened awareness of body language, and tend to notice inconsistencies in words and actions. Therefore, mediators should be attentive to their physical habits and gestures. If a mediator covers her mouth while thinking or speaking, for example, it may seem to a Deaf person that she is trying to hide something. Mediators should also be aware of their attending habits. A mediator's habit of nodding to show that she is listening to a participant may easily be misconstrued as a sign that the mediator is agreeing.

Because Deaf individuals are typically more group-focused (as opposed to individual-focused) in their behaviors, a Deaf participant is prone to feel isolated during the process of mediation. While many hearing participants are often grateful for the one-on-one nature of mediation and perceive it to be best for the sake of autonomy and anonymity, a Deaf person is more likely to feel disadvantaged as a result of the individual-focused mediation process. For this reason, it is important that the mediator be aware of the group-centered orientation that embeds the Deaf individual in social and interpersonal networks that transcend self-dependence and the Deaf culture's value of interdependence above individualism. The presence of mutually agreed-to third parties in an initial mediation session can be one mechanism for accommodating the group-centered orientation.

Lastly, because the Deaf community is so small and its members are often intimately connected with one another, it is wise to thoroughly review the confidentiality policy with both parties to avoid future disagreements or misunderstandings about the control of information.

3. Collaborate with interpreters to improve communication during the mediation.

Mediators must take steps to ensure that, when necessary or requested, sign language interpreters are present at all stages of the mediation, from intake interviews to closing statements. (This right is guaranteed under the Americans with Disabilities Act.) Mediators who don't have experience working with or locating sign language interpreters can often get resource information (i.e.; names of interpreters or interpreting agencies) from the Disabilities Commission in their state. [See the *Additional Resources* section of this paper.]

It is important that the mediator(s) and interpreter(s) meet together before the first mediated session in order to discuss their roles and to ensure that the interpreter understands the mediation process. Similarly, the mediator will benefit from a clear description of the interpreting process so that she can become more familiar with issues like lag time, simultaneous and consecutive interpretations, and clarification procedures.

The physical setting will also require attention. Because the interpreter needs to be visible to the Deaf participant at all times, he or she will probably be positioned slightly behind the mediator or hearing participant, although the interpreter's position may need to change during the course of the mediation. Other considerations include the size of the room, the lighting, and whether or not there are any visually distracting features, such as people walking past an open door or a flickering light bulb.

Finally, the sign language interpreter and mediator should be sensitive to potential confusion about their roles on the part of the participants. Just as it is possible for the participant who is Deaf to view the hearing mediator as allied with the hearing participant by virtue of the fact that they both communicate verbally, it is also possible that the hearing participant might perceive the sign language interpreter as affiliated with the Deaf participant. The interpreter's role, her neutrality and ethical guidelines, should be explained at the beginning of the mediation. To further reduce possible misunderstandings, it should be clarified that the interpreter is not here *for* the Deaf participant, but to ensure communication access for *all* participants. To emphasize the fact that the interpreter is not biased toward individuals or outcomes, the interpreter should enter and leave the mediation with the mediator; they should carry themselves with a similar demeanor and attempt to model themselves as a cohesive team.

4. Emphasize ground rules and strategies that will lead to a more fair procedure.

A fair process is critically important in mediation. The mediator is primarily responsible for ensuring that ground rules are followed and people are behaving respectfully. One consideration that should be emphasized when working with a Deaf participant (or any party who is using an interpreter) is the need for turn-taking.

While interruptions are not desirable, some amount of interrupting or talking-over is expected in a typical mediation. People jump in to correct each other, ask a question, or emphasize a particular point. However, when the Deaf participant is receiving all of his information through an interpreter, it is impossible for a single interpreter to simultaneously hear and interpret the words of more than one person. Because of this, the protocol for turn taking should be that no one speaks while anyone else is talking.

Caucusing is another procedure that should be carefully evaluated when mediating with Deaf individuals. Some Deaf people's lives are riddled with experiences of being isolated — experiences like eating dinner with their hearing family and being excluded from conversation, or missing a supervisor's informal feedback to a co-worker. Further, as Cripps and Pizzacalla explain, an examination of deaf education shows “(a) that most, if not all, of the [educational] decisions were made by hearing people, with little or no input from the Deaf community and (b) that there is a strong tendency for the same mistakes to be repeated time and time again.”¹¹ Because of this history of exclusion, Deaf people will be more sensitive to being asked to leave while the hearing person caucuses with the mediator and are likely to feel embarrassed about the need for individual attention if / when asked to meet in private with the mediator. Therefore, it is up to the mediator to thoroughly explain the role of caucusing to the participants at the beginning of the session, to try to minimize the need for caucusing, and to consider meeting with the Deaf person first if caucusing is required.

It is common in mediation to use techniques like paraphrasing, restating, reframing, and reinterpreting. When the participants in mediation are from different cultures or use different languages, it is even more important to use these clarification tools. The opportunity for misunderstanding is amplified by the use of an interpreter and the realities of a bilingual setting. Whenever possible the mediator should take the time to restate and clarify, or have one of the participants paraphrase what they heard so that the participants can be more certain that they fully understand each other.

5. Understand how being a linguistic minority affects the Deaf party's participation in and expectations of mediation.

Regardless of how empowered an individual seems, she is coming to the table as a Deaf person and may experience disadvantage based on her historic experience of and exposure to painful and limiting stereotypes. Mediators must therefore be sensitive to and aware of characteristics of oppressed and oppressor behaviors in order to facilitate a balanced mediation. Understanding theories of oppression in relation to the mediation setting is thus an important requirement for mediators working with culturally Deaf individuals. While the hearing participant may or may not be responsible for directly oppressing the Deaf participant, society enforces the idea that people with disabilities should be discounted.¹² For this reason, it may be necessary for the mediator to assist the hearing participant in recognizing the Deaf participant as a valuable and contributing member of society.

The mediator should actively try to ensure that power differentials are considered and addressed. A model that promotes a high degree of fairness and emphasizes autonomy and choice is recommended. For example, Bush and Folger's model of Transformative Mediation suggests that:

*... mediation can give people a sense of their power to solve problems for themselves, even with limited resources, and a sense of control over their lives — it can empower people. Another aspect of the reasoning [is] that mediation can “humanize” people to each other, helping them to look beyond their assumptions and see each other as real persons with real human concerns and needs, even in the midst of a disagreement — it can evoke recognition.*¹³

CONCLUSION

By considering the effects of language, culture, and power, the mediator can structure a mediation that is fair, respectful, and inclusive of the needs of Deaf people. But perhaps most important is the attitude of the mediator: “a good mediator must have a very good attitude regardless of whether or not they can sign. Having a good attitude means understanding [and respecting] the cultural values of the Deaf community.”¹⁴ A mediator who is working with Deaf individuals for the first time should seek to familiarize herself with the unique experiences, values, and needs of the Deaf community. The mediator, as steward of the process, is charged with structuring a mediation that accommodates Deaf participants. While the task may seem daunting, having an open mind and a commitment to learning will be handsomely rewarded as the mediator is introduced to a new culture and way of experiencing the world.

REFERENCES

¹ In keeping with recent conventions accepted by members of the Deaf community and many professionals in the field of deafness, “Deaf” with a capital “D” is used when discussing individuals who are members of the Deaf community and consider themselves to be culturally Deaf; “deaf” with a lower case “d” is used to describe an audiological condition.

² Rainer, J., Altschuler, K., & Kallman, F. (Eds.). (1963). *Family and mental health problems in a deaf population*. New York: Columbia University.

³ Cripps, J., & Pizzacalla, H. (1995). Conflict resolution program for the culturally deaf. *Proceedings of the 1995 Conflict Resolution Symposium at Carlton University*. Ottawa, ON: Carlton University Press.

⁴ Baker, C., & Padden, C. (1978). *American Sign Language: A look at its structure, history, and community*. Silver Spring, MD: Linstok Press. (Figure 1 depicts the avenues of membership.)

⁵ Ibid.

⁶ Dolnick, E. (1993, September). Deafness as culture. *Atlantic*, 37 (12).

⁷ Sloman, L., Springer, S. & Vachon, M.L. (1993). Disordered communication and grieving in deaf member families. *Family Process* 32 (2) 171-183.

⁸ Ibid.

⁹ Ibid.

¹⁰ Freire, P. (1970). *Pedagogy of the oppressed*. New York: Continuum Publishing Company.

¹¹ Ibid., #3.

¹² Smart, J. (2001). *Disability, society and the individual*. Gaithersburg, MD: Aspen.

¹³ Bush, R. B., & Folger, J. P. (1994). *The promise of mediation: Responding to conflict through empowerment and recognition*. San Francisco: Jossey-Bass Publishers.

¹⁴ Ibid., #3.

ADDITIONAL RESOURCES

Registry of Interpreters for the Deaf (RID)

333 Commerce Street

Alexandria, VA 22314

(707) 838-0030

This national association is the primary certifying and training organization of professional sign language interpreters in the United States.

<http://www.rid.org/>

On this web site one can access:

- The professional sign language interpreters Code of Ethics
- Answers to frequently asked questions
- Standard practice papers about professional sign language interpreting
- Information about the payment and hiring of sign language interpreters
- A searchable database to locate certified interpreters in a specific state or city

The Americans with Disabilities Act (ADA)

An amendment of the Civil Rights Act, the ADA was signed into law in 1990. This statute outlines the requirements of accommodating individuals with disabilities. Information can be found on the Department of Justice web site:

<http://www.usdoj.gov/crt/ada/adahom1.htm>

On this web site one can access information related to:

- Technical assistance
- Requirements of the ADA
- Enforcement

Specific questions can be addressed by calling (800) 514-0301.

Information about mediating disputes pertaining to the ADA can be found at:

<http://www.usdoj.gov/crt/ada/mediate.htm>

ADA Mediation Guidelines

http://www.cardozo.yu.edu/cojcr/final_site/ADA_guidelines/guidelines.html

This site hosts the full text of the mediation guidelines as well as comprehensive links about the guidelines. Completed in January 2000, these guidelines propose specific strategies and requirements for mediating with people who are protected by the ADA. Deaf individuals are included in this population.

<http://www.mediate.com/adamediation/>

This page on the Mediate.com web site has a wealth of current articles and publications about the ADA mediation guidelines. Specific disabilities, questions, and cases are considered and discussed. These articles change periodically.

The Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

PO box 51360

Eugene, OR 97405

(541) 686-5060

(800) 695-0285 (NICHCY)

CADRE is the National Center on Dispute Resolution in Special Education. CADRE's major emphasis is on encouraging the use of mediation as a strategy for resolving disagreements between parents and schools about children's educational programs and support services.

<http://www.directionservice.org/cadre/>

CADRE published a major resource on making mediation accessible to families and individuals of different backgrounds, *Keys to Access: Encouraging the Use of Mediation by Families from Diverse Backgrounds*. This document offers practical recommendations that school personnel, early intervention service providers, mediation providers, and families can use to develop the knowledge, positive attitudes, skills and strengths necessary for genuine collaboration.

The document can be found at: **<http://www.directionservice.org/cadre/keys.cfm>**

The National Association of the Deaf (NAD)

814 Thayer Avenue
Silver Spring, MD 20910
(301) 587-1788

Established in 1880, NAD is the oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications.

<http://www.nad.org>

On this web site one can access information related to:

- Deaf culture and community
- Legal rights and requirements for working with Deaf people
- American Sign Language

The National Consortium on Deaf-Blindness

The Teaching Research Institute

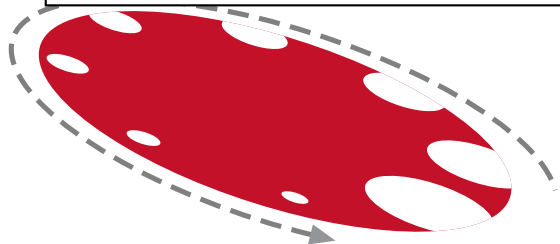
345 North Monmouth Avenue
Monmouth, OR 97361
(800) 438-9376
(800) 854-7013 tty

NCDB works collaboratively with families, federal, state and local agencies to provide technical assistance, information and personnel training.

<http://www.nationaldb.org>

On this web site one can access information related to:

- NCDB Publications
- NCDB Databases
- Internet & State-based Resources
- Research to Practice



The Consortium for Appropriate Dispute Resolution in Special Education (CADRE) works to increase the nation's capacity to effectively resolve special education disputes, reducing the use of expensive adversarial processes.

CADRE works with state and local education and early intervention systems, parent centers, families and educators to improve programs and results for children with disabilities.

CADRE is funded by the Office of Special Education Programs at the US Department of Education to serve as the National Center on Dispute Resolution in Special Education.

CADRE's Priorities

Identify effective, cost-beneficial dispute resolution practices and support their implementation

Enhance collaboration between education/early intervention agencies and parent organizations

Promote improved problem-solving skills across stakeholder groups

Assist states to implement the dispute resolution provisions of IDEA'04

Support integration of dispute resolution management and improved state system performance

Compile State Performance Plan data and information on the characteristics of state systems

