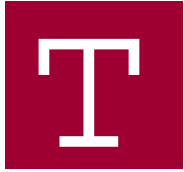


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The purpose of the Virginia State Special Education Mediation Services (SSEMS) program is to provide parents and school administrators assistance in negotiating any issue around the identification, provision of services or placement of a child thought to need special education services, specialized instruction, or reasonable accommodations to benefit from education. The program is designed to quickly respond to joint requests made by parents and school administrators for assistance.

In 1998 eight Virginia mediators were selected by the Virginia Department of Education and trained to work with parents and schools on issues concerning special educational services provided by public schools to students. The first year, there were 59 cases. In 2002 there were 104. In the current year to date, the caseload is 38% larger than last year. The mediators work in a framework defined by federal and state laws and regulations, case law, and effective educational methodology. They are convened twice a year for training in these areas along with discussion on considerations in mediating special education disputes. Karen Donegan Salter provides consultation for the program along with guests who address specific issues. The mediators are evaluated annually. Parties to a mediation are given consumer evaluations to complete and return to the coordinator, who reviews them for training and supervisory information.

Several elements make this form of mediation unique. It is carried out within a complex regulatory framework. Since 1975 federal law has required that the planning for individual students who need support to benefit from their education be developed through consensus among a team composed of parents and educators. These parties have access to mediation or a due process hearing to resolve issues that might arise in the consensual planning process. Students currently identified as needing specialized instruction or other modifications are eligible for services until graduation from high school or their twenty-second birthday. This creates a *history of negotiations* between parties, which influence subsequent expectations, negotiations and events.

The mediators who work in other venues report that differences between people in special education contexts are more likely to be strongly emotional than in many other assisted negotiations. The issues involve high stakes because a student's growth and development is in question. People's belief systems are engaged in a

**Sidebar**

Considerations for administrators in approaching negotiations and mediations with parents

- Regardless of the negotiations history or the stakes in the contested issues, this is a process where the people and the issues can be separated. If you approach the parents with an open and unguarded stance, you may elicit the same. You can then each put the energy which otherwise might be assigned to "defense" into identifying and resolving the issues.
- Don't forget to ask people what they need and what they think their child needs. I can't tell you how many people have told me that they were first asked that question in a mediation.
- Some advocates and attorneys have been trained to approach people and issues from an adversarial stance. Negotiations are not combat. Don't be drawn into an adversarial stance. Furthermore, keep in mind that the parents regard their advocate as a surrogate for themselves. Treat the advocate with the same care, respect and affection as you would your favorite colleague.
- Don't rush to the bottom line. Any negotiation requires attention to new information and attention to basic human needs. The basic human needs include relationship maintenance and building and being closely listened to by an active listener. The negotiation also requires attention to establishing the interpretation of observations and evaluations, defining the issues carefully, outlining the available resources, seeking agreement on the student's needs, considering the available and potential programs which might be successful. The more this process is jointly defined, the more likely the outcome will be agreement.
- Help parents to understand your own thinking about a student's needs. Presenting a single option as a *fait accompli* is less revelatory than letting people know why you are favoring certain courses of action over others. If you engage parents in reviewing what has informed them or led them to certain conclusions, you will open up possibilities which would be unreachable if you were only trading conclusions.
- Try to avoid becoming committed to a single option as if there is just **one best way** to proceed. This stance is a prelude to conflict. If you view the best outcome as the one supported by the consensus of the people involved in the planning process, in part because it will receive the broadest support and commitment from them, you'll provide a flexibility in the negotiation which may uncover an unforeseen, but fully supportable outcome.
- Your natural approach toward problem solving may be a *collaborative* mode. People in high stakes negotiations may adopt a *competitive*, "my way or the highway" mode. Some of the discomfort you may feel in approaching difficult negotiations may be from the energy this shift in modes draws. In a successful negotiation, many things shift and change. One of the things which may change is the mode in which people approach problem solving, back to a joint collaborative stance.

larger way than they are in contests where identity does not figure so strongly. Consequent to belief and identity figuring into the process, the temptation to see only one acceptable outcome, one right way of doing things, often visits the parties. For the same reasons, the issues become personalized fairly early.

The influences on individual decision makers are complex. An administrator may have to resolve conflicts between his or her own values and professional opinion; what staff members feel is the right decision; conflicting views of what a student needs; competing expert opinions; the view of what the law requires; preferences presented by parents; the history of the negotiations; resources available to support changed circumstances; and the individual's instinct and judgement about a practical and supportable outcome.

A parent may have to sort through different ideas offered by people who work with the child; the proper and productive stance as his or her child's advocate; the attainability of her wishes and preferences regarding the student's programming; credible sources of information about the child's progress in a given program; competing professional opinions; what the student prefers; the merit of the offer the school is making; advice given by family, friends, neighbors and advocates; and the negotiating history.

The kinds of issues that may arise include eligibility for services; the categorical lens through which a student's needs for support are viewed; sufficiency of services; the progress of the student's learning; the order of priority of the student's needs; and the advisability of reducing or completing special education support services.

Searching for common ground and establishing a productive dialogue among experts who have tested the student or provided services may shape part

of the mediator's task. Sometimes people have different perceptions of the student and what he or she needs based on the context in which they have observed or tested the individual and the training and beliefs which inform their practices.

Mediators are working among individual and institutional interests in an assisted negotiation. Multiple parties are present at the mediation conference. This provides opportunities for the mediator to assist the intramural negotiations by focusing attention on the speakers offering the best new thinking.

Mediation is most effective when it is sought and employed as early as possible. Having successive IEP meetings with the same format and the same people attending is not as likely to produce a different outcome as when you create a new opportunity for understanding and fresh thinking by changing the dynamic. Bringing in a mediator to assist with negotiations is a creative administrative act. Parents and school administrators retain all of the responsibilities and prerogatives they have as negotiators. Adding a third party to the negotiations, changes the dynamics, the process, the relationships, and is thus likely to change the outcome. Mediators are trained to elicit fresh thinking, to seek clarity of purpose and to provide hygiene in communications. They are skilled in listening for what is said and unsaid and conduct a process which is structured, although informal. Because people invest trust in the mediator, they disclose things that they would not readily share in an unassisted negotiation in which the sides are defined and polarized and the issues are high stakes: the development of a child.

Consequently, new text is developed in the assisted negotiation. The mediator helps

people to feel at ease and the abandonment of a guarded and defensive stance in the negotiations makes things possible that would otherwise not be.

Here's a recent example of why mediation is more effective if sought early. I got a call from an administrator recently who wanted mediation. The parents of a child with special needs had made a placement three months earlier at their own expense in a private program. The scope of the issues, which now were likely to be discussed, included whether the school division would pay for the program. The mediator could explore how parents would inform themselves of how the child was progressing in the program and could see what their goals and exit criteria from the program might be. However, at this juncture, parents would be unlikely to want to review the best offer which could be constructed by the school division, regardless of its intrinsic merit, because their hopes and faith were now invested in the placement which they had selected and in which the student had begun.

Had the issue been brought earlier to mediation, when the parent was feeling uncomfortable with the then current placement, the parent and school administrator could have explored the sources for dissatisfaction, the elements which were attractive in alternate programs, and done a comparison of programmatic elements and the fit between several possible programs, including one which might be newly offered or amended by the division. The potential scope of the discussion and negotiation would be larger and would get to the utility of several choices, not the supportability of only one. Parents might be more willing to consider and to evaluate alternatives, not yet having vested their faith and sunken costs in a single program. School administrators, not faced with a *fait accompli*, might have broader latitude for creative thinking about what might best work for an individual student.

The chief task at this point for the State Special Education Mediation Service lies in expanding public awareness of the program. It is an effective, low-cost and efficient way of resolving differences among team members who plan services for students. It can directly address relationship issues, a hostage taken by continued conflict.

**For more information about the program, you may contact Art Stewart at 804-786-0711 or by e-mail at [astewart@mail.vak12ed.edu](mailto:astewart@mail.vak12ed.edu). The department maintains descriptive information at its website: [http://www.pen.k12.va.us/path:site index>special education and student services>student services>mediation](http://www.pen.k12.va.us/path:site%20index%20special%20education%20and%20student%20services%20student%20services%20mediation).**

**Please send FAXES to: 804-786-8520. Please call to confirm receipt.**