

Iowa Department of Education Model Standards of Conduct for Mediators On the State Roster of Special Education Mediators

Introduction

These model standards of conduct for special education mediators are adapted from standards developed and adopted by the Iowa Association for Dispute Resolution (IADR) in 2003.

They are intended to serve as a general framework for the practice of special education mediation in Iowa. They are also intended to help mediators assess and improve the practice of mediation. The model standards apply to the facilitation of preappeal conferences and mediations that are conducted after a due process hearing has been requested.

The Model Standards are aspirational in character. They describe good practices for mediators. They are not intended to create legal rules or standards of liability. The Model Standards also recognize the need for flexibility in style and are not intended to unduly restrict the practice of special education mediation. This document should be viewed as a living document. Mediators on the state roster have adopted the standards in their current form. Proposed amendments may be made to the Iowa Special Education Administrative Law Judge/Mediator group, which will periodically consider suggested improvements.

Preamble

These are the model standards of conduct for mediators who are on the Iowa Department of Education special education mediation roster. The standards listed here are intended to perform four major functions:

- To serve as a guide for the conduct of Iowa special education mediators;
- To inform the mediating parties as to what they can expect from mediators;
- To promote public confidence in mediation as a process for resolving special education disputes; and,

- To assist the Iowa Department of Education in adding mediators to the roster if and when the need arises.

These standards draw on the IADR code of conduct for generalist mediators as well as other such codes in the United States and Canada and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, programs, organizations, and institutions involved in mediation.

Mediation is a process in which an impartial third person—a mediator— facilitates a conversation among parties to assist them in making mutually agreeable decisions regarding the dispute that brings them to mediation. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and encourages creative problem solving to make it possible for the parties to make their own decisions. These standards give meaning to this definition of mediation.

Standards of Ethics and Professional Responsibility

- I. Appropriateness: A Mediator Shall Help the Participants Evaluate the Risks and the Benefits of Mediation as Compared to Other Forums for Dispute Resolution in Special Education.**
 - A. The mediator shall help the parties evaluate the risks and benefits of mediation and the alternatives available to them before, and, when appropriate, during mediation.
 - B. The mediator shall explore with the parties whether they are capable of making freely chosen and informed decisions within the mediation. The mediator has a duty to withdraw from the mediation whenever he or she perceives that continuation of the process would harm one or more of the participants.

Comments:

- A mediator may conduct a preliminary meeting with the parties, either in person or by phone, during which the mediator defines mediation, describes

the process to be employed, describes his or her style and approach to mediation, and answers the parties' questions about the process.

- The parties and the mediator may also discuss the benefits and alternatives to mediation and decide whether to continue with mediation.

II. Self-Determination: A Mediator Shall Recognize that Mediation Is Based on the Principle of Self-Determination by the Parties.

A. Self-determination is a fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary agreement. Any party may withdraw from mediation at any time.

B. The mediator shall make reasonable efforts to prevent manipulation and intimidation by any party.

Comments:

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a conversation about a dispute leading to voluntary decision making by the parties. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement. It is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

III. Impartiality: A Mediator Shall Conduct the Mediation in a Fair Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and not take sides. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

Comments:

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the performance of the mediator.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation. It is understood that all mediators have personal biases, and it is important for the mediator to work toward becoming aware of his or her own biases and not permitting any personal bias to influence his or her conduct of the mediation.
- A mediator will give due consideration to all parties and may employ different techniques to assist the parties based on their diverse needs.

IV. Conflicts of Interest: A Mediator Shall Disclose All Actual and Potential Conflicts of Interest Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct That Occurs During and After the Mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. Even though the parties might agree to continue, the mediator shall decline to proceed if the conflict of interest casts serious doubt on the integrity of the process.

A mediator must also avoid the appearance of conflict of interest both during and after the mediation. A mediator shall not subsequently establish a professional relationship with one of the parties in a matter related to the mediation, which would raise legitimate questions about the integrity of the mediation process.

Comments:

- Potential conflicts of interest may arise between administrators of mediation programs and mediators, and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should not influence the mediator to coerce parties to settle.

V. Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Adequately Address the Needs of the Parties.

Training and experience in mediation are necessary for effective mediation. A person who offers her or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the process skills to mediate effectively.

Comments:

- Mediators should have information available for the parties regarding their relevant training, education and experience.

VI. Confidentiality: A Mediator Shall Inform the Parties as to the Nature of Confidentiality in Special Education Mediation and Shall Meet the Reasonable Expectations of the Parties with Regard to Confidentiality.

The mediator shall maintain confidentiality and shall explain what confidentiality involves for the parties as detailed in the Iowa Administrative Rules for Special Education and the Individuals with Disabilities Education Act (IDEA).

Comments:

- The IDEA establishes a particular set of expectations with respect to confidentiality. Since the parties' expectations regarding confidentiality are also important, the mediator should discuss these expectations with the parties.

- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations and interviews with participants.

VII. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall promote a quality process and encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligent and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate mediation.

Comments:

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should accept cases only when they can satisfy the reasonable expectations of the parties concerning the timing of the process.
- The presence or absence of persons at mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be included in or excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary decision making. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is improper, and mediators must therefore refrain from providing professional advice. Where appropriate, a mediator may remind parties that they may want to consider resolving their dispute through other processes. In particular, when preappeal conferences do not result in an agreement among the parties, the mediator shall remind the party filing the request for the preappeal of his or her right to request a due process hearing.
- A mediator shall withdraw from mediation when incapable of serving or when unable to remain impartial.

- A mediator shall withdraw from mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

VIII. Obligations to the Mediation Process: Mediators Have a Duty to Improve the Practice of Mediation and to Enhance Their Own Skills.

Special education mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible (user friendly) to those who would like to use it; to correct abuses within the profession; and, to improve their professional skills and abilities.

Comments:

Mediators should:

- Maintain high standards of professional competence;
- Pursue continuing education, experience and professional consultation, both with respect to mediation and the law and regulations of special education, in order to strengthen skills and effectiveness in serving parties and to advance the understanding and practice of mediation in special education;
- Be amenable to review of their practice;
- Seek and offer mentoring and peer consultation to fellow special education mediators, and
- Work together with other interested professional groups to develop and improve mediation in special education.

IX. Obligations to Other Mediators.

Mediators shall refrain from any conduct, which could be interpreted as disagreeing with or criticizing fellow mediators during the mediation process.