

Nevada Department of Education

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**MEDIATION MANUAL
FOR
SPECIAL EDUCATION**



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NEVADA'S MEDIATION SYSTEM

PREFACE

The Nevada Department of Education is responsible for providing state supervision of public preschool, elementary, and secondary education for children with disabilities age three through twenty-one years who receive a free appropriate public education (FAPE) in accordance with state and federal laws and regulations. In addition, the Nevada Department of Education is responsible for ensuring that special education and related services are provided for children with disabilities in accordance with the student's individual needs.

The Nevada's Mediation System for Special Education Mediation Manual is designed to provide operational procedures for the Nevada Department of Education and the mediators on the special education mediation process, including intake procedures; appointment of mediators; and model forms and handouts.

A general overview of the mediation system and helpful information for all participants in the mediation process, including parents and school district personnel, can be found in the document: **Special Education Mediation in Nevada-Frequently Asked Questions and Answers**. While the designated audience for this Mediation Manual are the Nevada Department of Education personnel and the mediators, the Manual may further assist parents and school district personnel and other interested parties to more fully understand the mediation process and assist in making the mediation process a meaningful experience for all parties.¹

¹ The Nevada Department of Education acknowledges the excellent resources provided by the Consortium for Appropriate Dispute Resolution (CADRE) and relied upon in this document, including the exemplars from the states with identified model mediation systems and practices:
<http://www.directionservice.org/cadre/exemplar/artifacts/MN-4%20Q&AmedAUG2012.pdf>

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NEVADA'S MEDIATION SYSTEM FOR SPECIAL EDUCATION

MEDIATION MANUAL

CHAPTER ONE

THE LAW

Availability of Mediation

The Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, §300.506) and the Nevada Administrative Code (NAC), Chapter 388 (NAC §388.305) require the availability of mediation if a dispute arises between the parents of a child with a disability or a child suspected of having a disability and a public agency¹ regarding the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child or any matter under IDEA, Part B (20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300). Mediation is available to the parents and school district prior to and after the filing of a due process complaint under NAC §388.306 or a State administrative complaint under NAC §388.318. (34 C.F.R. §300.506(a); NAC §388.305(1))

The mediation process must be voluntary on the part of the parties and may not be 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 IDEA, Part B. (34 C.F.R. §300.506(b)(1); NAC §388.305) If mediation is requested:

- The Nevada Department of Education will pay for the costs incurred by the mediation; and
- Each session of mediation must be scheduled in a timely manner and must be held at a location that is convenient for the parties to the dispute. (34 C.F.R. §300.506(b); NAC §388.305(5))

Discussions that occur during the mediation process are confidential and must not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state that receives assistance under the IDEA, Part B. (34 C.F.R. §300.506(b); NAC §388.305(8))

Qualifications of Mediators

¹ NAC §388.092: "Public agency" means any school district or other governmental entity responsible for providing education to a pupil with a disability. While the term "school district" is used throughout this Manual, if another entity meets the definition of public agency under the NAC §388.092 with respect to the education of a child with a disability, or a child suspected of having a disability, the provisions of the manual are intended to apply to that public agency.

Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (34 C.F.R. §300.506(b)(1); NAC §388.305) In addition, mediators:

- May not be an employee of the Nevada Department of Education or the school district that is involved in the education or care of the child. A person who otherwise qualifies as a mediator is not an employee solely because he or she is paid by the agency to serve as a mediator;
- Must not have a personal or professional interest that conflicts with the person's objectivity; and
- Must be knowledgeable in laws and regulations relating to the provision of special education and related services. (34 C.F.R. §300.506(b) and (c); NAC §388.305(3) and (4))

The Nevada Department of Education will maintain a list of persons who are qualified mediators. If mediation is requested, the Nevada Department of Education will select a mediator on the list on a random or rotational basis or by using some other impartial method. (34 C.F.R. §300.506(b)(3); NAC §388.305(3))

Mediation Agreement

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement which sets forth the resolution and which 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. The mediation agreement must be signed by both the parent and a representative of the school district who has the authority to bind the agency. (34 C.F.R. §300.506(b)(6); NAC §388.305(6))

A written, signed mediation agreement is enforceable in any court in this State with competent jurisdiction or in a district court of the United States. (34 C.F.R. §300.506(b)(7); NAC §388.305(7))

ROLE AND RESPONSIBILITY OF THE NEVADA DEPARTMENT OF EDUCATION

CHAPTER TWO

I. MEDIATION PROCESS

The Nevada Department of Education has established and implements an impartial mediation system at the state level to allow parties to disputes involving any matter under IDEA, Part B, to resolve these disputes through a mediation process. (34 C.F.R. §300.506(a); NAC §388.305)

II. IDENTIFICATION OF MEDIATION COORDINATOR

The Nevada Department of Education has identified a Mediation Coordinator in the Office of Special Education. This individual is the single point of contact for all inquiries regarding access to the mediation process. Once a mediator has been appointed, the mediator becomes the single point of contact for that particular mediation.

III. RECEIPT OF REQUEST FOR MEDIATION SERVICES AND COMPLETION OF MEDIATION TRACKING FORM

A. A model Request for Mediation Services is available to facilitate the processing of a request for mediation (see Attachments). Mediation requests may also be submitted through other correspondence directed to the Nevada Department of Education, Office of Special Education. If possible, requests for mediation services should be sent directly to the Mediation Coordinator for review and processing. The Mediation Coordinator will review the request for mediation to ensure that all necessary information is included and to confirm the request involves a matter under IDEA, Part B. The components of a request for mediation services should include:

1. Who requested mediation services? (If the request is not a joint request, the agreement of the other party to mediate must be verified prior to the appointment of a mediator.)
2. Name of the child.
3. Date of Birth of the child.
4. Name(s) of the parent(s).
5. Contact information for the parent(s).

6. Name of the school district and contact information.
7. Brief summary of matter(s) in dispute.
8. Signature and title of the individual completing the request and the date the request is signed.
9. If appropriate, the following optional information must be included in the request or later included in the Mediation Tracking Form:
 - Any special assistance required by any party (e.g., interpreters, accessibility, etc.).
 - Whether a due process complaint or a state complaint has been filed and the timelines for the due process complaint or state complaint. In the case of a due process complaint: the name and contact information for the Hearing Officer, if known.

B. The Mediation Coordinator is responsible for ensuring that the Mediation Tracking Form (see Attachments) is completed to the extent information is available at the time of intake. Upon the appointment of the mediator, the mediator will verify the intake information and complete the Mediation Tracking Form as additional information becomes available. The request for mediation is to be attached to the Mediation Tracking Form. In addition to the information in the request for mediation, the Mediation Tracking Form will also include the following information:

1. If the mediation is the subject of a pending due process complaint:
 - a. Verification that a due process complaint is pending;
 - b. Name and contact information for the Hearing Officer;
 - c. Whether the mediation is in lieu of the resolution meeting and part of the 30-day resolution period, or within the 45-day hearing timeline; and
 - d. Timeline for the due process hearing, including the scheduled date(s) for hearing, if known; the date the decision must be rendered; and any continuances granted by the Hearing Officer;
2. If the mediation is the subject of a pending state complaint: Verification that a state complaint is pending and the timeline for the issuance of a state complaint investigation report, including any extensions;
3. Name of the appointed mediator and contact information for the mediator;
4. Date of notification of appointment of mediator to both parties;

5. List of participants scheduled to attend from both parties;
6. Mediation dates, times, and logistics;
7. Record of contacts with both parties (type of contact, date of contact, contact with whom, and notations of contact content);
8. Whether agreement is reached;
9. Whether no agreement is reached; and
10. The signature of the Mediator and date the completed Tracking Form is submitted to the Mediation Coordinator.

IV. APPOINTMENT OF THE QUALIFIED MEDIATOR

- A. The Mediation Coordinator is responsible for the maintenance of the list of qualified mediators who have been selected to serve in that capacity. The Coordinator is also responsible for the appointment of a mediator on a random or rotational basis (or other impartial method) upon the receipt of the request for mediation from a parent and school district.
- B. Prior to appointment, the Mediation Coordinator is responsible for ensuring that the mediator has no known personal or professional interest that conflicts with the mediator's objectivity. (If the mediator identifies such conflict of interest after appointment, the mediator will recuse himself/herself from the mediation and notify the Coordinator of the need to appoint a new mediator.) Notwithstanding the impartial method for the appointment of a mediator, consideration will be given to the availability of the mediators and the geographic location of the mediators in relation to the parties in dispute.
- C. The Mediation Coordinator is responsible for ensuring that written notice of the appointment of a mediator is provided to the mediator and the parties. In addition, the Mediation Coordinator is responsible for providing a copy of the Mediation Tracking Form to the mediator.

V. ONGOING EVALUATION OF PROCESS

The Nevada Department of Education will conduct an ongoing evaluation of the effectiveness of the mediation system. This will include an evaluation form that requests information from all parties to the dispute and the mediator.

VI. ONGOING PROFESSIONAL DEVELOPMENT FOR MEDIATORS

The Nevada Department of Education has established a system of professional development for mediators that includes an initial training for mediators and ongoing training activities and information, including the availability of technical assistance and identification of necessary resources, if requested by the mediator.

VII. MAINTAIN A CONFIDENTIAL COPY OF ALL MEDIATION AGREEMENTS

The Nevada Department of Education is responsible for maintaining a copy of all mediation agreements.

VIII. COSTS OF MEDIATION

As noted previously, the Nevada Department of Education is responsible for the cost of the mediation process.

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ROLES AND RESPONSIBILITIES OF THE MEDIATOR

CHAPTER THREE

I. MAINTAIN QUALIFICATIONS

The mediator is responsible for maintaining adequate skills in effective mediation techniques and knowledge of the laws and regulations related to the provision of special education and related services.

II. MAINTAIN IMPARTIALITY

The mediator is responsible for maintaining impartiality at all times throughout the mediation process. If the mediator discovers a personal or professional interest that conflicts with the mediator's objectivity after appointment, the mediator must recuse himself/herself from any mediation. Upon recusal, the mediator must notify the Coordinator of the need to appoint a new mediator.

If a change in personal or professional circumstances causes the mediator to no longer meet the qualifications for a mediator under the IDEA and the NAC, the mediator must notify the Nevada Department of Education of that change of circumstances and the mediator will be removed from the list of qualified mediators.

III. PERFORM RESPONSIBILITIES OF SINGLE POINT OF CONTACT

Once appointed, the mediator is the single point of contact for the mediation. It is the mediator's responsibility to maintain ongoing contact with the parties and the Mediation Coordinator and update the Mediation Tracking Form on an ongoing basis.

IV. THE ROLE OF THE MEDIATOR

The mediator's responsibility in all components of mediation is to the process, not the outcome. The mediator's role is to guide the process, encourage each participant to clearly communicate their concerns, help the parties find common ground and explore possible solutions. The mediator will not impose an agreement, but rather help the parties reach their own mutually agreeable resolution. If an agreement is reached, the mediator will assist the parties with writing down the terms of the agreement.

V. PREPARE FOR THE MEDIATION SESSION

The mediator is responsible for adequately preparing for the mediation session as set forth in this Manual.

VI. FACILITATE THE MEDIATION SESSION

The mediator is responsible for facilitating the mediation process as set forth in this Manual. Throughout the process, the mediator will keep the discussion moving; handle conflicts so that it becomes an impetus to movement rather than a contribution toward polarized positions; and phrase and rephrase the parties' positions and areas of possible agreement.

VII. COMPLY WITH REPORTING REQUIREMENTS

The mediator is responsible for being knowledgeable about all reporting requirements, including timelines, completion of necessary forms, and proper distribution of all forms.

VIII. MAINTAIN CONFIDENTIALITY

The mediator is responsible for maintaining proper procedures to ensure confidentiality at all times in accordance with the IDEA, Part B (34 C.F.R. §§300.506 and 300.610 et seq.) and the Family Educational Rights and Privacy Act (FERPA: 20 U.S.C. §1232g; 34 C.F.R. Part 99).

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PRE-MEDIATION ACTIVITIES

THE MEDIATOR

CHAPTER FOUR

I. ESTABLISH INITIAL CONTACT WITH ALL PARTIES

Once the mediator has been appointed, the mediator must contact the parent(s) and the school district. If there is more than one participant for the school district, the mediator will request a designated representative for all contacts, who must be the individual with the authority to bind the agency. The parent and the designated school district representative will be responsible for the notification of any participant who will assist the parent or the school district designee at the mediation.

The mediator is responsible for the logistics and scope of the mediation session. Initial contact may be by phone; however, the following information, at a minimum, must be provided in writing to all parties as soon as possible following appointment:

- A. Introduction of the mediator
- B. Name and contact information for the mediator
- C. Role of the mediator
- D. Structure and purpose of the mediation session
- E. Need for information to facilitate mediation session
 - 1. Identification/clarification of issues
 - 2. Participants (who and how many)
 - 3. Time allocation for session
 - 4. Location for session
 - 5. Identification/clarification of any special needs
- F. Notification that the mediation process is voluntary and either party withdraw at any time. It is recommended that the parties be provided the Guidelines for Mediation and the Agreement to Mediate in advance of the mediation session (see Attachments).

II. IDENTIFICATION/CLARIFICATION OF ISSUES

Prior to the initial contact, the appointed mediator must review the request for mediation and the Mediation Tracking Form to ascertain the nature and complexity of the dispute(s) and to determine any need for further clarification. During the initial contact, the mediator must clarify the issues sufficiently to determine the scope of the mediation session, the time limits for the mediation session, and the number of anticipated sessions.

III. IDENTIFICATION/CONFIRMATION OF PARTICIPANTS

The mediator is responsible for providing parameters regarding the number and type of participants to be involved in the mediation session.

- A. At a minimum, the parent(s) and a representative of the school district who is authorized to make decisions with regard to the matters in dispute (and sign a binding agreement if the matter is resolved) must participate in the mediation. For students that attain the age of 18 years, any rights previously accorded to the parent are transferred to the student. (See Nevada law and regulations for additional information on the transfer of rights and the authorization for parents to represent the educational interests of an adult student (NAC §388.071 and NRS §§388.492 and 388.493) When appropriate for older children, their attendance should be considered on an individual basis.
- B. The number of individuals who accompany each party and participate in the mediation will generally be limited to no more than two persons to encourage the informal nature of the process and to allow for more interactive discussions among a small number of individuals. The number of participants is, preferably, also balanced so that no side feels overwhelmed.

The type of participants will vary based on the nature and complexity of the dispute and need for particular expertise. The number and type of participants may be agreed upon by the parties and can be a matter to be mediated before the mediation session.

In Nevada, the inclusion of advocates and attorneys in the mediation session is not encouraged to promote the informal nature of the process. Due to the voluntary nature of mediation, both parties must be satisfied with the arrangements for conducting the mediation, including the designation of the participants to be in attendance at the meeting. If a parent or the school district wishes to bring an individual to the mediation, including an advocate or an attorney, and the other party does not want the individual to attend, that party can elect not to proceed with mediation.

IV. IDENTIFICATION OF MAXIMUM TIME LIMIT FOR MEDIATION SESSION(S)

The mediator is responsible for providing parameters regarding the maximum time limits for the mediation session and the number of anticipated sessions. Mediators are encouraged to address the issues in one mediation session; however, additional sessions may be necessary.

- A. The mediator must use the following factors when establishing the time limits and the numbers of anticipated sessions:
 - 1. Scope and complexity of the issue(s);
 - 2. Number of participants;
 - 3. Geographic location for the mediation session; and
 - 4. Any additional factors specific to the dispute.
- B. The mediator must notify all parties of the maximum time limits for all sessions prior to the initial mediation session.
- C. The mediator must also notify all parties that the mediation session will begin on time and will conclude at the specified time. This will allow all parties the opportunity to schedule the mediation session and make all necessary arrangements such that their full attention can be devoted to the process.
- D. The mediator may elect to offer an additional mediation session if in the course of the initial session it is determined by the mediator that an additional session(s) is warranted. The parties may also request additional mediation sessions; however, the mediator will make the final decision as to the appropriateness of this request based on the progress of the current session. If an additional session(s) will be held, the mediator will schedule the date and time with the parties.

V. IDENTIFICATION/CLARIFICATION OF TIMELINES

- A. The mediator is responsible for determining dates and times which are convenient and agreeable to all parties.
- B. Prior to the initial contact, the appointed mediator must review the Mediation Tracking Form to ascertain the applicable timeline and the need for further clarification. During the initial contact the mediator must confirm the understanding of both parties of the legal parameters regarding timelines. If the mediator is not available to timely conduct the mediation, the mediator must notify the Mediation Coordinator of the need to reassign the mediation. This is especially important as it relates to those disputes involved in a due process hearing or state complaint.

In the case of a due process hearing or a state complaint, the mediator is required to schedule the mediation session at a time which complies with the applicable timeline. In all cases, the mediation must be conducted in advance of the date for the issuance of the decision and, in the case of the due process hearing, taking into consideration the dates for the hearing.

If the parties are unavailable to timely participate in mediation involving disputes in a due process hearing or state complaint, the mediation may only proceed if the Hearing Officer grants an extension of the timeline for the issuance of the decision or the parties agree to extend the state complaint timeline to engage in mediation and notify the Nevada Department of Education to permit the extension of the state complaint timeline. The mediator must:

1. Notify both parties that the timelines do not comply with the due process hearing or state complaint timelines and, therefore, mediation cannot be conducted without an extension.
2. Inform the parties of the process for requesting an extension of the due process hearing timeline if they choose to do so (or, for a state complaint, notifying the Nevada Department of Education.) While either party may request an extension of the due process hearing timeline, in the case of mediation, joint extensions are recommended.
3. If an extension of a due process hearing timeline is requested, require the parties to notify the mediator whether it is extended and the new decision date. The mediator will confirm that the mediation can timely occur with the extension and notify the parties of the new date for the conduct of the mediation.

VI. IDENTIFICATION OF A LOCATION FOR MEDIATION SESSION(S)

The mediator is responsible for identifying a location for the mediation session(s). This location must be convenient to the parties participating in the mediation.

VII. CONFIRMATION OF ALL LOGISTICS

The mediator is responsible for providing written confirmation of all logistics for the mediation prior to the mediation session.

- A. The mediator will provide the parties with an estimated allowance of time for each phase of the proposed session. This information provides some guidance to each party about the adequacy and use of the allocated time.
- B. Based on the issue(s) of the dispute, the mediator will decide how to manage any documentary material during the mediation session. If it is

decided that documentary materials will be allowed during the session, then all parties will be advised of this fact and informed as to the process.

VIII. PREPARATION AND THE PHYSICAL ARRANGEMENTS FOR THE ROOM

The mediator is responsible for selecting and securing a room at a convenient location and is responsible for the physical arrangements of the room, including the number of and positioning of the table and chairs.

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MEDIATION PROCESS

CHAPTER FIVE

I. MEDIATOR'S OPENING STATEMENT

The first phase of a mediation session includes an opening statement which should include the following:

- A. Introductory remarks
- B. Review of the principles of mediation

The mediator will confirm that the parties understand the principles of mediation described in the Guidelines for Mediation, including the role of the mediator.

- C. Agreement to Mediate

If not previously submitted, the mediator will request that all parties sign the Agreement to Mediate, including the statement of confidentiality (see Attachments).

- D. Review of roles and responsibilities

The mediator must review the roles and responsibilities of the parties and the ground rules for the session.

- E. Outline process

1. The mediator will review with the parties the phases of mediation. As a part of each of these phases, the mediator will provide the parties with an estimated allowance of time for each phase; thus providing some guidance to each party and an assurance that all phases will be given adequate time.
2. The mediator will review the starting time and ending time for the mediation session and, if appropriate, reconfirm any additional sessions which have been scheduled.
3. If the mediator has decided to allow parties to provide documentation, the mediator will remind the parties that this process should not interrupt the flow of information or the discussion and that the mediator will return any documentation provided by the party(s) at the end of the mediation session.

4. Each party will be given an opportunity to make an opening statement without interruption. This statement should highlight the issues from the party's perspective. The mediator will decide which party should go first; however, it is customary that the party who initiated the dispute be allowed to make the first statement. These comments generally take no more than 15-20 minutes each.
5. After both parties have completed their opening statements, a joint discussion follows. The joint discussion provides the mediator and all parties a chance to:
 - a. Summarize what has been heard thus far and ask questions for clarification purposes.
 - b. Identify potential and creative solutions.
6. The mediator may decide that a single session or a series of single sessions with both parties is warranted to increase the likelihood of agreement. Both parties will be provided with an opportunity for a single session with the mediator should the mediator decide this approach is warranted.
7. Following the single session(s), the mediator will convene the parties and review the results of the single sessions in joint session.
8. If the parties are able to come to a resolution of some or all of the issues in the dispute through the mediation, the resulting agreement will be recorded by the mediator and signed by the parties involved. A copy of the agreement (duplicate of the original) will be given to each party at the end of the conference. The original copy will be filed with the Nevada Department of Education.
9. If the parties are not able to come to a resolution, the mediator will terminate the mediation.

II. REMARKS BY THE PARTIES

Following the mediator's opening statement, the representative of each party involved in the dispute is allowed to make opening remarks in the order set and in the time allocated for each party. Remarks should:

1. Clarify and summarize the issue from the party's perspective;
2. Focus on the strengths of the child; and

3. Focus on possible solutions to resolve issues and differences between the parties.

III. JOINT SESSION(S)

A. Joint discussions offer the following opportunities:

1. The mediator summarizes the parties' opening statements.
2. The mediator asks clarifying questions.
3. The parties ask clarifying questions.
4. Parties identify possible solutions.

B. Based on the mediator's understanding of the parties' positions following the joint discussions, the mediator has three possible options:

1. Points of agreement have been reached.
 - a. The mediator should identify the perceptions of the areas of agreement between the parties and possible options. The mediator must confirm that the terms are absolutely correct.
 - b. If there is partial or total agreement on the issues, the parties will proceed to the writing of the agreement (see Attachments).
2. No points of agreement have been identified and single sessions do not appear to be an option based on the mediator's best judgement.

If both parties are firm on part or all of their positions, and further time spent in mediation, as determined by the mediator, would be unprofitable, termination is the choice of action. The mediator will:

- a. Request that the parties agree to disagree;
- b. Commend the parties for their voluntary participation and answer any questions. Advise the parties that they may request mediation at any time in the future.
- c. Discuss the potential next steps for the parties.
- d. Request that the parties complete an evaluation form regarding the process.

3. Reconvene the mediation session.
 - a. If the mediator feels that additional consideration or gathering of information will be productive, and both parties agree, the mediator may reconvene the mediation at a later time.
 - b. The mediator will identify the issues that both parties have agreed to discuss at the next mediation session.
 - c. The mediator will reschedule the mediation session taking into consideration any timelines for the due process hearing or the state complaint, if applicable. If this requires an extension request for a due process hearing, the parties will be advised of the process to seek an extension from the Hearing Officer. In the case of a state complaint, if the parties agree to extend the state complaint timeline to engage in mediation, they will be informed of the process to notify the Nevada Department of Education to permit the extension of the state complaint timeline.
 - d. The mediator will notify the Nevada Department of Education, Mediation Coordinator, of this action.

IV. SINGLE SESSION(S) (CAUCUS)

After all parties have presented their opening remarks and clarifying questions have been asked, single sessions may occur at the discretion of the mediator. If single sessions are not offered, the mediator can explore options for agreement with the parties together.

A. Purpose

A single session is a confidential, separate meeting with each party to the dispute to enhance the opportunity for successful resolution.

B. Role of the Mediator

1. Determine appropriateness of use of single session.
2. Manage separate sessions.
3. Recognize potential areas of agreement and encourage parties to concentrate on the possible agreements.

4. Investigate possible solutions that perhaps neither party has considered.
5. Ask questions about issues that a party has indicated may not be negotiated.
6. Identify the positive aspects of the situation concentrating on the feasibility of the agreement.

V. RECESSES

At any time during the mediation session, the mediator may find it helpful to call for a short break to allow time to sort through the information presented and to identify points of agreement and possible options or solutions. Recesses can also be requested by any party to talk privately or to discuss a proposed solution.

VI. RECONVENING JOINT SESSIONS IF SINGLE SESSIONS HAVE BEEN USED

The mediator should reconvene the parties after it has been determined that all points have been explored in single sessions and the process is ready for a change in action. Based on the mediator's understanding of the parties' positions following single sessions, the mediator has three possible options:

- A. Points of agreement have been reached.
 1. Sharing of information
 - a. If points of agreement have been reached, this information should be shared. The mediator should decide who should share the information--the parties or the mediator.
 - b. The mediator will decide if further joint discussions are warranted or if there is a need to reconvene single session(s) and subsequent joint session(s).
 2. If there is partial or total agreement on the issues, the parties will proceed to the writing of the agreement.

- B. No points of agreement have been identified.

The mediator will follow the procedures outlined previously if no points of agreement have been identified as a result of the single session(s).

- C. Reconvene the mediation session.

The mediator will follow the procedures outlined previously if it is determined that the mediation session should be reconvened.

THE WRITTEN MEDIATION AGREEMENT

CHAPTER SIX

I. THE WRITING PROCESS

A. The final phase of the mediation session consists of writing the agreement of the parties (see Attachments).

1. The mediator writes the agreement and is primarily responsible for the expression of the terms of agreement.
2. The parties are responsible for the substance of the agreement. Although the mediator may make suggestions, the final product must reflect the agreement of the parties.

B. Writing of the agreement

1. The agreement should be written in the presence of the parties.
2. Discussions often continue during the writing process because the agreement must be detailed. Often it is not until the mediator begins to write that unresolved details emerge.
3. If the agreement is likely to be long or complex, the mediator may make an outline or rough draft before writing the actual agreement. This draft is usually reviewed with the parties. The mediator may request a recess for a brief period of time to collect and organize thoughts. However, it is vital that the parties remain available during the writing process.
4. The agreement may be hand written or word processed if a computer is available.

C. The document: a well-written agreement

1. Mediation agreements must be clearly written.
 - a. Each term should be clearly stated; avoiding legal or governmental and bureaucratic language which could be misunderstood by the parties.
 - b. The agreement should:
 - 1) State clearly who will do what, when and how;

- 2) Include dates, times and other specifics;
 - 3) Include important details (e.g., number of hours per day which hours, which subjects, how many children with disabilities, how many teachers are present). Consider whether the details are sufficient to avoid any disagreement on the terms of the agreement later;
 - 4) Be as specific as possible about the future behavior of both parties and focus on future conduct. Avoid language placing blame on past problems or dissatisfaction; and
 - 5) Ensure clarity for the future reader. Consider the impact of the wording of the agreement as if it will be read in a month following the mediation session.
- c. The agreement should organize each point. Agreements are usually written in numbered paragraphs and each paragraph should be limited to one idea.
- d. The agreement should include a number on each page of the agreement in numerical amounts (e.g., page 1 of 6, 2 of 6, etc.) and line out any unused lines on the form.
- e. An effective agreement should be:
- 1) specific;
 - 2) clear about deadlines;
 - 3) balanced;
 - 4) positive;
 - 5) realistic; and
 - 6) clear and simple.
2. Mediation agreements must reflect the mediator's neutrality.
 3. Mediation agreements must be complete.
 4. If the mediation was initiated after the filing of a due process complaint or state complaint, the mediation agreement should also address how and when the Hearing Officer or, in the case of a state complaint, the Nevada Department of Education will be notified of the complete or partial resolution of the matters in the due process complaint or state complaint. This notification should include the

complete or partial withdrawal of the due process complaint or state complaint by the filing party.

5. Mediation agreements must include the statement that 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.

II. SIGNING THE AGREEMENT

- A. The completed agreement should be read aloud by the mediator.
- B. Each party should then be allowed to silently read the final proposed form of the written agreement.
- C. The mediator should ask both parties if this is their agreement, if they understand all of its terms, if it is mutually satisfactory, and if they intend to abide by it.
- D. A copy of the agreement (duplicate original) will be given to each party at the end of the conference. The mediator will retain the original copy to be filed with the Department of Education.
- E. The original and all copies should be signed by the designated representatives. Each page of the agreement must be initialed by the designated representatives.
- F. Signing the agreement implies adherence to the agreement by all parties.

III. DISTRIBUTION OF MEDIATION AGREEMENT AND OTHER DOCUMENTS

- A. The only two records that will be maintained of the mediation session(s) are the Agreement to Mediate, if signed at the session, and the Mediation Agreement. A record of the discussions will not be maintained.
 1. The original copies of the Mediation Agreement and Agreement to Mediate must be sent to the Nevada Department of Education, Mediation Coordinator.
 2. Copies of the signed Mediation Agreement and the Agreement to Mediate must be given to each party.
 3. The mediator does not retain a copy of the Mediation Agreement. However, the mediator may retain a copy of the signed Agreement to Mediate in the event that, contrary to the Agreement, the

mediator is later called as a witness in a judicial, administrative, or arbitration proceeding concerning this dispute.

- B. The Mediation Tracking Form is sent to the Nevada Department of Education, Mediation Coordinator.

IV. EFFECT OF THE MEDIATION AGREEMENT

A written signed Mediation Agreement is enforceable in any court in this State with competent jurisdiction or in a district court of the United States. (34 C.F.R. §300.506(b)(7); NAC §388.305(7))

DRAFT

MEDIATION EVALUATION

CHAPTER SEVEN

Although the mediation evaluation is optional, it can provide valuable information regarding the mediation process and the outcomes of mediation. A mediation evaluation questionnaire² is given to the parties with a stamped envelope that is addressed to the Mediation Coordinator. All information received through the mediation evaluation process is confidential and any data used for planning purposes will be aggregated. The mediator should briefly discuss the purpose and value of this evaluation feedback at the conclusion of the mediation session.

DRAFT

² Credit given to CADRE and to the Vermont Department of Education for their exemplar evaluation forms.

ATTACHMENTS

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NEVADA DEPARTMENT OF EDUCATION
REQUEST FOR MEDIATION FORM

DATE REQUEST RECEIVED: _____

Instructions:

1. *This model form may be used by the parents or school district representative to request mediation. (You may also submit a written request for mediation in another manner.) Fill out the information that pertains to you and sign the form. Send this form to the other party to be signed for a joint request or submit it directly to the Mediation Coordinator at the Nevada Department of Education, Office of Special Education. (If the request is not a joint request, the agreement of the other party to mediate will be verified before the appointment of a mediator.)*
2. *If parties fill out this form at the same time, it is the responsibility of the school district to forward the form to the Nevada Department of Education.*
3. *The Mediation Coordinator will review this form, confirm the matter in dispute is under the IDEA, Part B and assign a Mediator.*
4. *The Mediator will contact you to make arrangements for the mediation session including the dates, times, and all logistics.*

NAME OF CHILD: _____ Date of Birth: _____

Address of the residence of the child, if not the same as the parent address below: _____

School: _____

School District of Attendance: _____

NAME(S) OF PARENT(S): _____

Address of Parent(s) (or contact information if homeless): _____

Contact Phone Number(s): _____

E-Mail Address (if available): _____

NAME OF SCHOOL DISTRICT REPRESENTATIVE: _____

Address of Representative: _____

Contact Phone Number(s): _____

E-Mail Address _____

BRIEF SUMMARY OF ISSUE(S) IN DISPUTE:

Please check the following boxes that apply and provide the requested information, if known:

A due process complaint has been filed regarding this issue(s).
Date Filed: _____
Mediation instead of the Resolution Meeting? YES NO
Date the Decision is due: _____
Has a hearing been scheduled? YES NO If yes, when: _____
Name of Hearing Officer: _____

A state complaint has been filed regarding this issue(s).
Date Filed: _____ Date the Investigation Report is Due: _____

Special assistance is required to address special needs during mediation, such as an interpreter or accessibility needs. (Please specify)

Submitted by:

Parent(s) Signature: _____ Date _____

District Representative Signature: _____ Date: _____

COMPLETED FORM TO BE FAXED/MAILED TO:

**Mediation Coordinator
Nevada Department of Education
Office of Educational Opportunity
700 East Fifth Street #113
Carson City, NV 89701**

Voice: (775) 687-9171
Fax: (775) 687-9123

NEVADA DEPARTMENT OF EDUCATION

MEDIATION TRACKING FORM

Mediation # _____

NAME OF CHILD: _____ Date of Birth: _____

DATE MEDIATION MUST BE COMPLETED BY: _____

Instructions:

1. *The Mediation Coordinator is to complete as much of this form as possible with information available prior to the appointment of the Mediator.*
2. *Once the Mediator has been appointed, this form and the mediation request must accompany the appointment letter mailed to the Mediator.*
3. *The Mediator is to complete the form, tracking progress through the entire process.*
4. *Upon completion of the mediation process, the Mediator must submit the original copy of this form to the Mediation Coordinator.*

BRIEF SUMMARY OF ISSUE(S):

REQUEST FOR MEDIATION RECEIVED **Date:** _____

MEDIATION REQUEST VERIFIED **Date:** _____

REQUEST FOR DUE PROCESS HEARING HAS BEEN FILED.

Date of Filing: _____

Mediation in lieu of the resolution meeting and part of the 30-day resolution period ending or within the 45-day decision timeline: _____

Decision Due: _____ Hearing Date, if known: _____

If extension granted by the Hearing Officer, new decision date: _____

MEDIATION MUST BE COMPLETED BY _____ **Date:** _____

- REQUEST FOR COMPLAINT INVESTIGATION HAS BEEN FILED.**

Date of Filing: _____

Report Due: _____ If extension, new report date: _____

MEDIATION MUST BE COMPLETED BY _____ **Date:** _____

- MEDIATOR APPOINTED** _____ **Date:** _____

NAME OF MEDIATOR: _____

ADDRESS: _____

Contact Phone Number: _____ E-Mail address: _____

- LETTER OF APPOINTMENT**

SENT TO PARENTS _____ **Date:** _____

SENT TO SCHOOL DISTRICT _____ **Date:** _____

- CONFIRMATION LETTER OF LOGISTICS**

SENT TO EACH PARTY _____ **Date:** _____

- MEDIATION SESSION #1 SCHEDULED**

DATE: _____ **TIME:** _____

LOCATION: _____

CONTACT INDIVIDUAL: _____

PHONE # ON SITE: _____ **FAX # ON SITE:** _____

- MEDIATION SESSION #2 SCHEDULED**

DATE: _____ **TIME:** _____

LOCATION: _____

CONTACT INDIVIDUAL: _____

PHONE # ON SITE: _____ **FAX # ON SITE:** _____

- MEDIATION SESSION #3 SCHEDULED**

DATE: _____ **TIME:** _____

LOCATION: _____

CONTACT INDIVIDUAL: _____

PHONE # ON SITE: _____ FAX # ON SITE: _____

PARTICIPANTS SCHEDULED TO ATTEND WITH PARENT(S):

- Parents have been notified that communication with the parent's participants is the responsibility of the parent and that all communication from the Mediator will be with the parent only. This information is for purposes of planning and record keeping only.*

1. **Name:** _____

Child Friend Advocate Other: _____

Address: _____

Phone Number: _____

2. **Name:** _____

Child Friend Advocate Other: _____

Address: _____

Phone Number: _____

PARTICIPANTS SCHEDULED TO ATTEND ON BEHALF OF SCHOOL DISTRICT:

- Agency representative has been notified that communication with the school district participants is the responsibility of the designated representative and that all communication from the Mediator will be with this individual only. This information is for purposes of planning and record keeping only.*

1. **Name:** _____

Position: _____

Address: _____

Phone Number: _____

2. **Name:** _____

Position: _____

Address: _____

Phone Number: _____

- AGREEMENT TO MEDIATE** SIGNED AND ATTACHED

- PARTIES REACHED AGREEMENT ON SOME OR ALL OF THE ISSUES**
(Original Mediation Agreement signed and attached)

Signature of Mediator: _____

Date: _____

- REIMBURSEMENT FORM COMPLETED, SIGNED, AND ATTACHED.**

DRAFT

NEVADA DEPARTMENT OF EDUCATION

REQUEST TO WITHDRAW FROM MEDIATION PROCESS

Instructions:

1. *This form or other writing may be used by one or both parties to a dispute at any time to withdraw from mediation.*
2. *The completed form is to be mailed to the Mediation Coordinator or given to the Mediator.*

DATE: _____

TO: _____
(Mediation Coordinator or Mediator)

I am withdrawing my participation in the mediation process that was requested, on behalf of

_____ on _____
(name of child) (date of mediation request)

Name(s) and Position: _____ Date: _____

Signature(s): _____

(Section to be completed by Mediation Coordinator or Mediator)

DATE REQUEST TO WITHDRAW FROM PARTICIPATION RECEIVED: _____

DATE ALL PARTIES NOTIFIED: _____

Signature of Mediation Coordinator or Mediator _____
Date

NEVADA DEPARTMENT OF EDUCATION

GUIDELINES FOR THE MEDIATION PROCESS³

1. Agreement to Mediate

Prior to convening the mediation, the mediator will require that all parties read and sign the Agreement to Mediate. This agreement ensures the parties understand the mediation process and agree to the terms, including the confidentiality of the process.

2. Role of Mediator

- a. The mediator is the single point of contact for the mediation process.
- b. The mediator is an impartial and neutral facilitator.
- c. The mediator is responsible for the process, not the outcome.
- d. The mediator has no authority to compel any action by any party.
- e. The mediator is not acting in the capacity of an attorney or advocate for either party during the mediation session. Therefore, if a party anticipates that an attorney is needed prior to the signing the agreement, one should be identified as a participant.
- f. The mediator will terminate the mediation at any point when, in the opinion of the mediator or any party to the mediation, no resolution of the dispute is forthcoming.

3. Voluntary

- a. Mediation is a voluntary process and either party may choose to withdraw from the process at any time.
- b. Mediation cannot be used to deny or delay a parent's right to a due process hearing on a parent's due process complaint or to deny any other rights afforded under IDEA, Part B.
- c. Parties unwilling to participate in the mediation to completion or who are unable to reach settlement through the mediation process may continue through the administrative process applicable to the dispute in a timely manner.

4. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. (Information that would otherwise be subject to discovery is not exempt from discovery by virtue of it being disclosed during mediation.)

³ It is the responsibility of the mediator to provide all parties to the dispute with a copy of these Guidelines for the Mediation Process. All parties to the dispute are responsible for reviewing the document and adhering to the guidelines.

5. Documents

If it is decided by the mediator that documentary materials will be allowed during the session, the parties must bring six copies of any documents that are to be shared. The sharing of documents during the session will not interfere with the flow of the mediation session and will not be treated as "evidence."

6. Tape recording

The mediation session will not be recorded by any means. The only record that is kept of the mediation session is the Agreement to Mediate, if it is signed at the session, and the Mediation Agreement, if agreement is reached.

7. Agreement

Agreement is the desired outcome of the mediation session. It is critical that the parties actively participate in the mediation and the writing of the agreement. The agreement must be signed by the persons at the mediation who have the authority to act on behalf of the child and the school district.

8. Mediation Evaluation

At the conclusion of the mediation session, each party will be given an evaluation form for the purpose of improving the mediation process. The completion of this form is voluntary. If completed, it would be done after the parties leave the session and would be mailed directly to the Mediation Coordinator in the self-addressed envelope provided. All information received during the mediation evaluation process is confidential. Data will be aggregated and used for planning purposes.

9. Roles and Responsibilities of the Parties to the Dispute

- a. It is important that the parties remain receptive to the process and maintain respect for the positions and feelings of others. This requires that the parties:
 - 1) Separate the individuals from the problem.
 - 2) Focus on the interests, not the positions.
 - 3) Invent options for mutual gain.
 - 4) Use objective criteria at all times to ensure that the solutions are based on fair and independent information.
 - 5) Maintain flexibility and respect.
- b. Participants in the mediation session must include at least one designated representative who has the authority to act on behalf of the child/student and the one designated representative who has the authority to act on behalf of the school district.
- c. All parties must show good faith and commitment to implementing the final agreement.

NEVADA DEPARTMENT OF EDUCATION

AGREEMENT TO MEDIATE⁴

We the undersigned have been informed of the procedures and guidelines governing the mediation process. We understand and agree to the following:

1. Mediation is voluntary for all parties and cannot be used to deny or delay a parent's right to a due process hearing on a parent's due process complaint or other rights under the IDEA, Part B.
2. The mediator is a specially-trained impartial third party whose role is to help us in making mutually-determined decisions. The mediator will make no decisions and has no authority to compel any action by either party. The mediator is not acting as a lawyer, judge, hearing officer, investigator, counselor, therapist or advocate.
3. Mediation participants for both parties include persons who have the authority to act on behalf of the child or school district.
4. Mediation requires the full participation and commitment of both parties. It is important that parties carefully listen to each other and focus their attention on the discussion.
5. If I'm not sure about my legal rights or how signing a mediated agreement may affect my rights, I may seek information/advice from an advocate or an attorney, but neither an advocate nor an attorney is required for mediation.
6. The mediator will terminate the mediation at any point when, in the opinion of the mediator or either party to the mediation, no resolution of the disagreement(s) is forthcoming.
7. The number of participants accompanying each party will generally be limited to two persons for each party.
8. A reasonable time will be set from the time of initiation to completion of mediation (e.g., fourteen or twenty-one calendar days). If a due process complaint or a state complaint has been filed, the mediator needs to be kept informed of the date the decision will be due or other dates affecting the timeliness of the mediation.

⁴ S. Rep. No. 105-17, 105th Cong., 1st Session. 46 p. 27-8 (1997); Credit also given to CADRE and the Minnesota Department of Education for their exemplar Agreements.

9. The mediator will chair all mediation conferences and assure that they are convened in a timely fashion, according to an orderly process, and with due regard to the rights and responsibilities of the parties to the mediation.
10. The mediation, following an initial sharing of perspectives regarding the past, will be present and future oriented; historic problems will not be the continuing focus of the mediation conference.
11. The mediation will be conducted in accordance with agreed upon ground rules that maximize mutual respect.
12. A record of the mediation discussions will not be maintained.
13. Discussions that occur during the mediation process are confidential, even if the parties are unable to reach agreement through mediation. As such, the discussions may not be used as evidence in any subsequent due process hearing or civil proceeding. (Information that would otherwise be subject to discovery is not exempt from discovery by virtue of it being disclosed during mediation.)
14. The mediator cannot, under any circumstance, be called as a witness in any judicial, administrative, or arbitration proceeding concerning this dispute. (If at a later date, either party decides to subpoena the mediator, the mediator will move to nullify the subpoena.)
15. A copy of the final mediation agreement will become part of the student's school records, unless otherwise negotiated.
16. Both parties will show good faith and commitment to carrying out the final agreement.
17. A signed mediation agreement is enforceable in any State court of competent jurisdiction or in a Federal district court.

Signature - Parent(s)

Date

Signature - Parent(s)

Date

Signature - School District Representative

Date

NEVADA DEPARTMENT OF EDUCATION

SAMPLE MEDIATION GROUND RULES⁵

1. We will take turns speaking and not interrupt each other.
2. We will call each other by our first names, not "he" or "she."
3. We will not blame, attack, or engage in put-downs and will ask questions of each other for the purposes of gaining clarity and understanding only.
4. We will stay away from establishing hard positions and express ourselves in terms of our personal needs and interests and the outcomes we wish to realize.
5. We will listen respectfully and sincerely try to understand the other person's needs and interests.
6. We recognize that even if we do not agree with it, each of us is entitled to our own perspective.
7. We will not dwell on things that did not work in the past, but instead will focus on the future we would like to create.
8. We will make a conscious, sincere effort to refrain from unproductive arguing, venting, or narration, and agree at all times to use our time in mediation to work toward what we perceive to be our fairest and most constructive agreement possible.
9. We will speak up if something is not working for us in mediation.
10. We will request a break when we need to.
11. We will point out if we feel the mediator is not being impartial.

⁵ <http://www.directionservice.org/cadre/grs.cfm>

NEVADA DEPARTMENT OF EDUCATION

MEDIATION AGREEMENT

DATE OF MEDIATION: _____

NAME OF CHILD: _____ DATE OF BIRTH: _____

NAME OF SCHOOL DISTRICT: _____

We, the undersigned, having participated in a mediation session and being satisfied that the provisions of the resolution of our dispute are fair and reasonable; hereby agree to abide by and fulfill the following terms:

DRAFT

I understand 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.



School District Representative

Date: _____

Signature

Parent(s)

Date: _____

Signature

Page _____ of _____

Initials: _____

NEVADA DEPARTMENT OF EDUCATION

PARTIAL MEDIATION AGREEMENT

DATE OF MEDIATION: _____

NAME OF CHILD: _____ **DATE OF BIRTH:** _____

NAME OF SCHOOL DISTRICT: _____

We, the undersigned, having participated in a mediation session and being satisfied that the provisions of the resolution of our dispute are fair and reasonable; hereby agree to abide by and fulfill the following points of agreement:

We have agreed to disagree on all remaining issues of the dispute. Unresolved issues include:

I understand 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.

School District Representative

Date: _____

Signature

Parent(s)

Date: _____

Signature _____

Page _____ of _____

Initials: _____

NEVADA DEPARTMENT OF EDUCATION

**WITHDRAWAL IF AGREEMENT
AND
PENDING DUE PROCESS OR STATE COMPLAINT**

**Sample Withdrawal to be forwarded to the Hearing Officer for a Due Process, or
to the Nevada Department of Education for a State Complaint**

FULL WITHDRAWAL

I, _____, agree to withdraw the pending due process or
complaint, Case# _____ against the _____
School District. I no longer wish to pursue this due process or complaint and request
dismissal of the proceedings.

Signature(s) of individual(s) who filed the due process or complaint

_____ Date: _____

(or)

PARTIAL WITHDRAWAL

I, _____, agree to withdraw the following allegations or
claims pending in the due process or complaint, case # _____ against
the _____ School District. I request the dismissal of the following
issues:

- 1.
- 2.
- 3.

I do not agree to withdraw the following allegations or claims in the case and wish for
the administrative process to proceed with regard to these issues.

- 1.

- 2.
- 3.

Signature(s) of individual(s) who filed the due process or complaint

Date: _____

NEVADA DEPARTMENT OF EDUCATION

MEDIATION EVALUATION

Thank you for taking the time to complete this evaluation. Your responses will help us improve the mediation process. Please put the completed form in the accompanying envelope and mail to the Nevada Department of Education.

Please indicate your role in the mediation.:

- Parent School District Rep Advocate Other: _____

Name of Mediator _____

1. Mediator Performance

Please rate your mediator's performance from excellent to poor in the follow categories:

Rating Category	Excellent	Good	Satisfactory	Poor
Clearly explained the mediation process and his/her role				
Created a rapport with the participants				
Assured that all parties had ample time to express themselves				
Understood the issues and the conflict				
Refrained from imposing own judgment or opinions				
Helped participants understand each other's positions				
Helped identify and weigh options for settlement				
Remained impartial throughout the proceeding				

2. Case Management

Did the Department respond and assign a mediator promptly? Yes No

Did your mediator act promptly to schedule the mediation session? Yes No

3. Outcome and Satisfaction

Mediation resulted in: Full Agreement Partial Agreement No Agreement

Do you feel the mediation process improved communication between the parties?

- Yes No Don't Know

Would you request mediation services for any future special education disputes?

- Yes No Don't Know

Comments or Suggestions (The back of this form may be used as well.):

Signature (optional)

Date of Mediation

DRAFT