

**ADR in Special Education:
*How to Build Trust in a Mediation System
when Distrust Abounds***

Minnesota State Bar Association's Alternative Dispute Resolution Section
– Continuing Legal Education, April 12, 2011



Prepared by:

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Special Education Mediation Service (MNSEMS)
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Request for Mediation

We request that a mediator be assigned to assist in resolving the following issues:

- We know that mediation is **voluntary** and we can still have a due process hearing if we cannot agree.
- We know that the mediation session is **confidential**. We agree that we will not ask the mediator to go to any other proceedings.
- We agree to try to find a solution in the best interests of the student.
- We understand that any agreement reached in mediation is enforceable in court.
- MNSEMS will provide a mediator at no cost to the participants.

Please Print

School District / Cooperative Name and #

Student's Name

School Administrator's Name and Title

DOB (Optional) Grade Disability

Address

Parent/Guardian Name(s)

City State Zip

Address

Phone () _____

City State Zip

Fax # () _____

Phone: Home () _____

Email _____

Work () _____

Fax () _____

Date _____

Cell () _____

Email _____

School Administrator's Signature

Circle best daytime location: home work cell

Is this mediation the result of a hearing request?

Yes

No

Date _____

Parent/Guardian's Signature

I need these accommodations for the

mediation: _____

Please review instructions on the other side before completing this form.

Request for Mediation

Instructions

1. Fill out the information that pertains to you and sign the form.
2. Send this form to the other party to be completed and signed or submit it directly to MNSEMS. MNSEMS will then contact the other party to see if there is willingness to participate in mediation to resolve the dispute.
3. If parties fill out this form at the same time, the school district will forward the form to MNSEMS.
4. Upon receipt of the signed form, MNSEMS staff will contact all parties to schedule the mediation session.
5. For additional information, contact Patricia McGinnis, MNSEMS Coordinator, at 651-582-8222 or toll free at 1-866-4MNSEMS (1-866-466-7367). Fax: 651-582-8498. For TTY communication, contact the Minnesota Relay Service: 1-800-627-3529.

**MNSEMS
1500 Highway 36 West
Roseville, Minnesota 55113**

Authorization to Release Educational Data

By agreeing to participate in mediation, we are authorizing School District _____ and its employees, agents and contractors to share information with MNSEMS about our child's identity, needs, and issues surrounding disagreements about educational programming.

Date: _____ Parent/Guardian _____

Date: _____ Parent/Guardian _____

Mediation activity cannot begin without this signed authorization.



To: Parent(s) District Representative
Address Address
City State Zip City State Zip

From: Patricia McGinnis
MNSEMS Coordinator
Compliance and Assistance
Minnesota Department of Education

Date:

Re: Confirmation of Mediation Session Details
Mediation Number:

By mutual consent, a mediation session has been scheduled for STUDENT at TIME on DATE, in the BUILDING, located at ADDRESS. If you are unfamiliar with this location and need directions the building's phone number is PHONE.

This letter outlines the procedures that will be followed at the mediation session. Please review these procedures, as well as the attached *Agreement to Mediate* form.

1. Please check at the office/front desk for the room location.
2. NAME, a mediator with the Minnesota Special Education Mediation Service (MNSEMS), has been assigned to conduct the mediation session.
3. Mediation is easier with a limited number of participants at the meeting. At this time, the only participants who will be allowed at the session without prior consent are: PARTICIPANT LIST. Other individuals may be available by telephone or on an on-call basis, if desired. **Please ensure that the people you have asked to attend the mediation are aware of the time and date of the conference and given copies of these materials.**
4. Be sure to bring any documents you wish to discuss to the mediation.
5. Tape or video recording is not allowed.
6. Neither the mediator nor the mediator's records or notes will be available for

further proceedings such as a due process hearing. Any agreement reached will be provided in writing and copies given to each of you at the conference.

7. **You should be aware that the length of the mediation is unknown. Accordingly, we request that you reserve the entire day for the conference.**
8. Please note that the mediator is not acting in the capacity of an attorney or advocate for either party during the mediation session. Rather, the mediator is an impartial neutral party. Therefore, if you anticipate needing an attorney's advice before signing an agreement, you have the right to bring an attorney to the mediation conference or to have your attorney review the agreement before you sign.

After your session, we would appreciate hearing about your experience. You will be asked to complete an evaluation to help us improve our service. Your mediator will have further information for you and answer any questions you have related to the evaluation.

I am available by phone at 651-582-8222 or toll free at 866-466-7367 to discuss procedures or schedules. We appreciate your willingness to attempt mediation in this matter. Every effort will be made by the Minnesota Special Education Mediation Service to help develop a mutually satisfactory agreement.

Attch: Agreement to Mediate Form (to be signed at the mediation)
How to Prepare for Mediation

c: MEDIATOR (with signed Request for Mediation form)
ADVOCATE

Minnesota Special Education Mediation Service (MNSEMS)

How to Prepare for Mediation

The purpose of mediation is to bring the parents and school representatives together with a mediator to try to solve a dispute. Mediation is about *resolving differences and finding a workable solution*; it is not about proving points.

Your Role in Mediation

- Mediation will be only as successful as you make it. Your responsibilities are to:

Decide what the issues are for you in this dispute
Listen respectfully to the other side's point of view
Look for solutions
Work with the other parties to determine which solution is best

- The mediation session may last five or six hours. Please plan to stay that long and bring your calendar in case another session needs to be scheduled.
- If you have any documents/papers/reports you might want to use, bring them with you.
- Come with an open mind and a willingness to work on a solution.

What Will Happen at the Mediation Session?

Introduction and Sharing of Points of View/Defining Issues

First the mediator will talk about what will happen at mediation. Then each party will have a short period of time to share their view of the dispute. You should be ready to talk about what the issues are, and what you think should happen. You should also be willing to listen to the other side and see how their views may differ.

Caucus and Discussion of Options for Resolution

At some point the mediator may meet with each party privately to discuss the dispute and explore issues that might not have been brought out in the joint session. This is called a caucus. The mediator will then help everyone shift gears into problem solving. This involves all parties looking at possible ways to resolve the issues at hand. As there is usually more than one issue to work on and more than one solution, this part of mediation requires that participants be creative and flexible and willing to talk about more than just the issues and the solutions they brought into mediation.

Agreement

When you reach an agreement, the mediator will write it down for both parties to sign. Both parties will receive a copy of the agreement and everyone is expected to live up to its terms. A copy of the agreement will also be given to MNSEMS.

Things to Do Before Mediation

1. Determine what is important to you. From your perspective what would be the best possible outcome? Why?
2. Think about how you can clearly describe the situation so that the other side can understand your point of view.
3. Think about what the other side might want for an outcome. What might they accept? What can you give them?
4. Think about possible solutions and plan on sharing them in the mediation.
5. Think about what happens if you are unable to reach an agreement through mediation.

Things to Do in Mediation

1. When it is your turn, present your information in a clear manner so your views are understood.
2. Listen respectfully while the other side presents their information. Work to truly understand their perspective even though it may differ from your own. Remember, you do not have to accept the other side's point of view as the truth, only that it exists and is different from your own.
3. Try not to get bogged down in the past.
4. Keep an open mind and be willing to work with the other side to problem-solve. Remember, you chose mediation knowing you and the other party would make the decisions. It is more likely you will agree to something if you do not go out of your way to "prove something" to the other side.
5. Brainstorm with the other party for potential solutions that meet both of your interests. Evaluate them together until you reach a mutually acceptable solution.
6. Have realistic expectations regarding your case.
7. Be patient and stick to it.

Agreement to Mediate

Case No. _____

1. I understand mediation is voluntary for all parties and cannot be used to deny or delay a parent's right to a due process hearing.
2. I understand that the mediator is here to help us see both sides, think about solutions, and write up an agreement. The mediator will not make decisions or tell us how to solve the problem. I understand that the mediator is not acting as a lawyer, judge, hearing officer, investigator, counselor, therapist or advocate.
3. If I'm not sure about my legal rights or how signing a mediated agreement may affect my rights, I understand that I may seek advice from an advocate or an attorney, but neither an advocate nor an attorney is required for mediation.
4. I understand the mediator does not have to protect my interests and will not give legal or financial advice.
5. I understand that an administrator, parent or guardian, or the mediator may stop mediation, at any time.
6. I understand that discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
7. I understand mediated agreements are not admissible in a due process hearing unless the parties agree otherwise or a party to the agreement believes the agreement is not being implemented.
8. I am aware that the mediator will not testify about the mediation in any subsequent proceedings and that the mediator's records are not accessible to the parties.
9. I understand that all parties must follow any agreement reached in mediation and that the signed mediation agreement is enforceable in any State court of competent jurisdiction or in a Federal district court.

Signature - Parent/Guardian

Signature - School District
Authorized Representative

Signature - Parent/Guardian

Signature - Mediator

Date _____



MINNESOTA SPECIAL EDUCATION MEDIATION SERVICE
Participant's Evaluation of Mediation

Thank you for attending mediation. Please help us evaluate and improve our service. Completing this form is voluntary and there is no consequence if you choose not to participate. Your answers will be shared only with the mediator. A summary of everyone's answers will be used to improve the program.

1. Case Number: _____
2. Participant: _____ Parent _____ Student _____ Other _____
(please specify)
3. Had you participated in mediation before today? _____ Yes _____ No

4. What led to the request for mediation? (Select ALL that apply).

- | | |
|---|--|
| _____ Adequacy of services | _____ Needed neutral third party to help us manage our communication |
| _____ Current placement concerns | _____ We were not considering each other's viewpoints |
| _____ Disagreements on the student's needs | _____ We were not listening to each other |
| _____ Funding concerns | _____ Personality conflicts |
| _____ History of intense emotions between us | _____ Provision of school policies |
| _____ Interagency disagreements | _____ Staff availability problems |
| _____ Issues were extremely complex | _____ Staff licensure problems |
| _____ Lack of trust between us | _____ Other, please specify _____ |
| _____ Needed neutral third party to help us focus | _____ |

5. The mediation process is explained in a confirmation letter sent to the parties. In this letter were you given enough information about what to expect during the session? _____ Yes _____ No

If no, what type of information would have helped you?

6. I felt the mediation helped the other party consider my views.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

7. I felt the mediation helped me to consider the other party's views.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

8. Please select the rating that best describes your thoughts about each question. (Select one rating for each question).

1. Completely 2. Mostly 3. Somewhat 4. Not at all

Did the mediator explain what was going to happen in mediation?

Were you able to discuss the issues that were important to you?

Did the mediator make it easy to share information?

Did the mediator understand the problem(s)?

9. The mediator treated me with respect.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

10. What is one thing the mediator did that made you feel respected or disrespected?

11. During the mediation, I felt the mediator accurately rephrased what I said.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

12. The mediator suggested issues or questions that I needed to consider.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

13. During mediation I was given sufficient time to express my views.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

14. In our private meetings, the mediator helped me clarify my thinking so I could better tell my story.

Strongly Agree Agree Not Sure Disagree Strongly Disagree
 No private meetings were held

15. The mediator helped our meeting stay focused on trying to reach a solution.
 ___ Strongly Agree ___ Agree ___ Not Sure ___ Disagree ___ Strongly Disagree
16. The mediator suggested solutions.
 ___ Strongly Agree ___ Agree ___ Not Sure ___ Disagree ___ Strongly Disagree
17. I felt pressured by the mediator to reach an agreement.
 ___ Strongly Agree ___ Agree ___ Not Sure ___ Disagree ___ Strongly Disagree



18. Did the mediator favor either side? ___ Yes ___ No

Please explain. _____



19. What were the results of the mediation session? (Select ONE)

- ___ Agreement
- ___ Partial Agreement
- ___ No Agreement (*Skip to question 21*)
- ___ Other, please specify (*Skip to question 22*)

20. Please indicate what contributed to full or partial agreements. (Select ALL THAT APPLY).

- | | |
|--------------------------------------|---------------------------------------|
| ___ Advocate influence | ___ Issues or facts clarified |
| ___ Attorney/consultant influence | ___ New/additional options explored |
| ___ Both of us changed our positions | ___ One of us changed positions |
| ___ Desire to avoid hearing | ___ I felt heard and understood |
| ___ Desire to reach agreement | ___ We had the ability to be creative |
| ___ Emotions abated | ___ Rules or policy clarified |
| ___ Expectations were reasonable | ___ School personnel influence |
| ___ Forum for discussion provided | ___ Other, please specify _____ |
| ___ Interests identified | _____ |

21. Why do you think this session ended without an agreement being reached? (Select ALL that apply).

- | | |
|--|---|
| <input type="checkbox"/> Different understanding of student's needs | <input type="checkbox"/> Needed more time to consider new options presented |
| <input type="checkbox"/> Emotions too high | <input type="checkbox"/> Neither of us could compromise |
| <input type="checkbox"/> Lack of acceptable options to resolve issues | <input type="checkbox"/> I could not compromise |
| <input type="checkbox"/> Lack of trust between us | <input type="checkbox"/> We were not listening to each other |
| <input type="checkbox"/> Legal counsel not present | <input type="checkbox"/> Session too short |
| <input type="checkbox"/> Necessary parties not present | <input type="checkbox"/> Other, please specify _____ |
| <input type="checkbox"/> Mediator did not help us understand each other | _____ |
| <input type="checkbox"/> Mediator did not help us focus on the issues to resolve | _____ |



22. During the mediation session, did you notice a turning point when parties seemed more ready or less ready to negotiate with each other? Yes No If yes, please explain.



23. Overall, how satisfied were you with the mediation process? (Select ONE).
 Completely Mostly Somewhat Not at all



24. Do you think the mediation session has helped parent(s) and school personnel communicate better with each other? (Select ONE). Yes No Don't know



25. Do you think the mediation session will result in an improved relationship between parent(s) and school personnel in the future? Yes No Don't know



26. Do you think the mediation session will help team members be more effective in addressing the student's needs? (Select ONE). Yes No Don't know

27. Considering your mediation experience, what did you LIKE? (Select ALL that apply).

- | | |
|---|--|
| <input type="checkbox"/> Able to give input | <input type="checkbox"/> Mediator treated all parties with respect |
| <input type="checkbox"/> Felt heard and understood by the mediator | <input type="checkbox"/> Neutral location |
| <input type="checkbox"/> Felt heard and understood by the other party | <input type="checkbox"/> Opportunity to explore more options |
| <input type="checkbox"/> Increased respect between parties | <input type="checkbox"/> Separate meetings were helpful |
| <input type="checkbox"/> Made progress toward resolution | <input type="checkbox"/> Other, please specify _____ |
| <input type="checkbox"/> Mediator kept parties focused | _____ |
| <input type="checkbox"/> Mediator promoted a relaxed conversation | _____ |

28. Considering your mediation experience, what did you NOT LIKE? (Select ALL that apply).

- | | |
|---|---|
| <input type="checkbox"/> Did not feel heard and understood by mediator | <input type="checkbox"/> Ran out of time |
| <input type="checkbox"/> Did not feel heard and understood by the other party | <input type="checkbox"/> Scheduled during work time |
| <input type="checkbox"/> Felt pushed to agree by mediator | <input type="checkbox"/> Separate meetings were not helpful |
| <input type="checkbox"/> Mediator did not keep parties focused | <input type="checkbox"/> Unhappy with outcome |
| <input type="checkbox"/> Necessary parties were not present | <input type="checkbox"/> Unpleasant physical environment |
| <input type="checkbox"/> No agreement was reached between us | <input type="checkbox"/> Unresolved issues |
| <input type="checkbox"/> No computer or printer in the room | <input type="checkbox"/> Other, please specify _____ |
| <input type="checkbox"/> Not enough information on mediation process | _____ |

29. Would you participate in a MNSEMS mediation again? Yes No

If no, please explain. _____

30. Would you recommend mediation to others? Yes No

If no, please explain. _____

31. How satisfied were you in communicating with our MNSEMS office?

Very satisfied Satisfied Partially Satisfied Not Satisfied

32. How could we be more helpful? _____

33. Do you have suggestions for improving services provided by MNSEMS? _____

Thank you for your time and assistance in evaluating MNSEMS and the mediation process.