

**WISCONSIN SPECIAL EDUCATION MEDIATION SYSTEM
MEDIATION PARTICIPATION NOTICE**



**Wisconsin
Special Education
Mediation System**

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I. PURPOSE OF MEDIATION: The purpose of mediation is to develop a satisfactory resolution for both parties through identifying areas of agreement and disagreement and to work together to explore options for settlement.

II. ROLE OF THE MEDIATOR: The mediator does not have the authority to impose a settlement and no person shall serve as a mediator in any case, in which the mediator has any financial or personal interest in the result of the mediation. Before accepting the role as a mediator, the prospective mediator shall disclose to us any circumstances likely to create a perception of bias or to delay the mediation. The parties may then agree to select or have appointed another mediator from the WSEMS roster. Further, if during the course of the mediation, the mediator becomes aware of any conflict of interest, the mediator will immediately disclose the conflict to the parties and the parties may choose to waive the conflict in writing or choose (or have appointed) another mediator from the WSEMS roster.

III. IMPARTIALITY OF THE MEDIATOR:

- a) The mediator will remain impartial in all contacts with either party and that she/he will not advocate any interest of either party over the other;
- b) The mediator, whether an attorney or not, shall not provide legal advice to the parties, if legal questions arise, the parties shall seek independent legal counsel;
- c) If the mediator is an attorney, that the mediator will only mediate between us, and, therefore, will never represent either of us as attorney of record or in any adversary capacity in any legal proceeding in the future regarding our issues.

IV. THE MEDIATION PROCESS: The mediation shall be conducted at a time and a place designated by the mediator that is accessible, convenient and acceptable to all of us.

- a) The parties may be represented or accompanied by person(s) of their choosing with the consent of the other parties. These person(s) may or may not be attorneys or advocates;
- b) The process may include both separate and joint meetings. The conversations in the separate sessions are confidential, unless the party in the private session agrees to have it disclosed in a joint session;
- c) The mediator may receive oral and/or written recommendations for settlement from the parties as necessary;
- d) If mediation results in a written agreement, the written agreement must include the following language "All discussions that occur during mediation are confidential and may not be used as evidence in any hearing or civil proceeding."
- e) If parties reach a written agreement, copies shall be given to the two parties - district and parent/guardian/adult student - only per Wis. Stat. §115.797(6).

V. CONFIDENTIALITY OF THE MEDIATION PROCESS: The confidentiality of the mediation process shall be governed by Wis. Stat. §904.085. The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any subsequent proceeding, whether that proceeding is judicial, administrative, or arbitral any of the following:

- a) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute; as such, all mediation discussions, including all written, oral, and digital communications with both participants and their advisors or any draft resolutions;
- b) Admissions made by another party in the course of the mediation;
- c) Proposals made or views expressed by the mediator;
- d) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator. The mediator will destroy his or her notes and/or written materials at the conclusion of the mediation. The mediator does not maintain a copy of any agreements reached by the parties.

Further, no stenographic or other record made of the mediation process per Wis. Stat. §115.797(5)(e).

VI. WITHDRAWING FROM MEDIATION: Either party or the mediator may withdraw from mediation at any time. The mediation may be terminated by

- a) a statement by any of the parties indicating that they no longer wish to proceed in mediation;
- b) a statement by the mediator indicating that in her/his belief that further mediation sessions will not contribute to the resolution of the dispute or,
- c) by the execution of an agreement signed by the parties.

VII. EXCLUSION OF LIABILITY: We understand that the mediator is not a necessary party in any subsequent proceeding relating to the mediation. Neither the Wisconsin Department of Public Instruction or an individual or entity working with the Department, nor any mediator, nor the Wisconsin Special Education Mediation System, its contractors, nor Cooperative Educational Service Agency 7 (CESA 7), Fiscal Agent, shall be liable to any party for any act or omission in connection with any mediation conducted under this agreement.

VIII. COSTS AND EXPENSES: The services of the mediator are provided by WSEMS without cost to the parties and pursuant to Wis. Stat. 115.797. WSEMS will not pay for any participant's attorney fees or any other costs of the parties associated with mediation (e.g. mileage, lodging, wage loss, etc.).

IX. REPORTING FORMS: The parties will receive a WSEMS Post-Mediation Participant Form using the participant's email address. The information on this form is helpful to the WSEMS in maintaining the high quality of the mediation services and is helpful in providing feedback to the mediator.

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