

II. PROCEDURAL SAFEGUARDS REGARDING MEDIATION AND RESOLUTION SESSIONS

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses only the changes to the procedural safeguards regarding mediation and resolution sessions of IDEA that will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Requires that mediation² is available whether or not there is a due process hearing request³.

Any state educational agency (SEA) or local educational agency (LEA) that receives assistance under IDEA shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a due process hearing request pursuant to Section 615(b)(6), to resolve such disputes through a mediation process. [615(e)(1)]

2. Provides parents and schools the opportunity to meet with a disinterested party.

An LEA or SEA may establish procedures to offer to parents and schools that choose not to use the mediation process an opportunity to meet ... with a disinterested party who is under contract with:

- A parent training and information center or community parent resource center in the state; or
- An appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

[615(e)(2)(B)]

3. Adds mediation requirements.

In the case that a resolution is reached to resolve [the issues in] the due process hearing request through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

¹ Other topics in this series include: Disproportionality and Overidentification; Early Intervening Services; Changes in Initial Evaluations and Reevaluations; Individualized Education Program (IEP); Discipline; Statewide and Districtwide Assessments; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice, Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Alignment With the *No Child Left Behind Act*; Highly Qualified Teachers; Children Enrolled by Their Parents in Private Schools; State Funding; and Local Funding. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

² The mediation provision in the Part C Procedural Safeguards, Section 639(a)(8), provides parents with the right to use mediation in accordance with Section 615(e), except that any reference to a state educational agency (SEA) shall be considered to be a reference to the state lead agency established or designated under Section 635(a)(10).

³ The statute uses the term “complaint” to indicate a request for a due process hearing. The term “request for a due process hearing” will be used in this document in lieu of “complaint.”

- States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
- Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

[615(e)(2)(F)]

4. Adds “resolution sessions.”

Prior to the opportunity for an impartial due process hearing under Section 615(f)(1)(A), the LEA shall convene a meeting with the parents and the relevant member or members of the individualized education program (IEP) team who have specific knowledge of the facts identified in the due process hearing request:

- Within 15 days of receiving notice of the parents' complaint;
- Which shall include a representative of the agency who has decision-making authority on behalf of such agency;
- Which may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
- Where the parents of the child discuss their due process hearing request, and the facts that form the basis of the due process hearing request, and the LEA is provided the opportunity to resolve the due process hearing request,

unless the parents and the LEA agree in writing to waive such meeting, or agree to use the mediation process described in Section 615(e).

[615(f)(1)(B)(i)]

If the LEA has not resolved [the issues that are the subject of] the request for the due process hearing to the satisfaction of the parents within 30 days of the receipt of the request, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence. [615(f)(1)(B)(ii)]

In the case that a resolution is reached to resolve [the issues that are the subject of] the request for the due process hearing at a meeting described in Section 615(f)(1)(B)(i), the parties shall execute a legally binding agreement that is:

- Signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- Enforceable in any state court of competent jurisdiction or in a district court of the United States.

[615(f)(1)(B)(iii)]

If the parties execute an agreement pursuant to Section 615(f)(1)(B)(iii), a party may void such agreement within three business days of the agreement's execution. [615(f)(1)(B)(iv)]

5. Provides that attorneys' fees are not available for the resolution session meetings required by Section 615(f)(1)(B)(I).

A meeting conducted pursuant to Section 615(f)(1)(B)(i) shall not be considered:

- A meeting convened as a result of an administrative hearing or judicial action; or
- An administrative hearing or judicial action for purposes of Section 615(i).

[615(i)(3)(D)(iii)]