

Appendix A

Main Regulatory Provision for Mediation Under IDEA 97

Sec. 300.506 Mediation.

(a) General. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in Sec. 300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under Secs. 300.507 or 300.520-300.528.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process-- (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 300.507, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part--(i) May not be an employee of-- (A) Any LEA or any State agency described under Sec. 300.194; or (B) An SEA that is providing direct services to a child who is the subject of the mediation process; and (ii) Must not have a personal or professional conflict of interest.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.194 solely because he or she is paid by the agency to serve as a mediator.

(d) Meeting to encourage mediation.

(1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party--(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity and (ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A public agency may not deny or delay a parent's right to a due process hearing under Sec. 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1415(e))