Conflict Resolution: The Art and Science of Mediating Disputes in Special Education Matters

A Seminar Presented to the New Hampshire Association of Special Education Administrators

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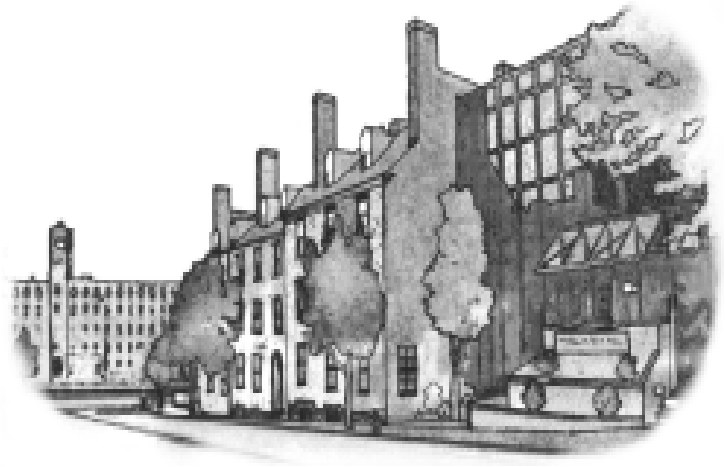

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A Word of Caution

No two cases are exactly alike. This material is designed to provide educators with an overview of various methods for resolving conflict. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

I. Overview

This material is intended to provide administrators with an overview of the conflict resolution processes in the context of special education matters, and to offer practical suggestions for reaching resolution. This material does not include every aspect of the law and you are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

II. The IEP Team Process

The IEP team process provides the first opportunity for conflict resolution. Thus, it is important that team members be familiar with methods for reducing conflict prior to, and during, IEP team meetings.

A. Reducing conflict in advance of the meeting

The following suggestions may reduce the likelihood that there will be conflict during the IEP team meeting:

- Issue accurate meeting notices reflecting the reason(s) for meeting.
- Provide documents to parents in advance of the meeting - this reduces the element of surprise and gives parents the opportunity to come to the meeting prepared.
- Prepare an agenda prior to the meeting and seek parental input on the same.
- Identify what the parents want by interviewing service providers and, when appropriate, speaking informally with the parents.
- Schedule enough time for the meeting.
- Identify the "hot spots" prior to the meeting.
- Distinguish the "hills to die on" from the "mole hills".

B. Tools to resolve conflict at team meetings

Despite the best of intentions, at times there will be conflict at team meetings. The following strategies may assist in reducing or resolving conflict as it occurs:

- Begin all meetings by reviewing the agenda.

- Give parents the opportunity to voice their concerns, ask questions, etc.
- Set the ground rules at the beginning of the meeting.
- Have a designated "peace maker" at all of your team meetings. This individual should understand how to deescalate conflict at team meetings.
- Have a designated "defender" (usually the LEA representative).
- Try not interrupting and then make that the rule.
- "Shelve" and "circle back" – put areas of disagreement on hold and continue with other items for discussion; when discussion of those items has concluded, circle back to the area of disagreement.
- Be aware of the dangers of pull out meetings.[1]
- Take a short break to allow team members time to cool off.
- Prove that you can listen by telling the parents what you heard.
- Share the burden at the meeting – "team" means team.
- Try to understand the parents' point of view.
- Avoid ambiguity.
- Build bridges.
- Avoid unexplained acronyms and educational terms.
- Keep an accurate record of the meeting.

C. Pitfalls in the IEP team process

There is a natural tendency on the part of educators to engage in informal discussions as a peacemaking strategy, and to do so outside of the team process. At times, LEAs also make undocumented offers which later come back to haunt them. The following list contains several common pitfalls that occur during the team process:

[1] This is a high risk event that should only be performed by seasoned professionals.

- Oral offers – as the following case demonstrates, failing to reduce an offer to writing may lead to a ruling that you denied FAPE to a student. Ultimately, the offer must be reduced to writing in the IEP, a written prior notice, or both. The following case illustrates this pitfall:

    - Sytsema v. Academy Sch. Dist. No. 20, 2009 WL 3682221, 53 IDELR 226 (D. Colo. Oct. 30, 2009):
        - Facts: Parents filed suit against the district, claiming (in part) that the services described in the IEP developed for the 2001-02 school year denied their 3-year old son a FAPE. The district offered an IEP in May 2001, which included, in part, ten hours of instruction in a classroom setting. The IEP did not include any individual instruction outside of the classroom. Subsequently, the district made two oral offers to provide additional services. Parents argued that the district failed to offer a FAPE because the IEP did not include enough hours of instruction and it did not include any 1:1 instruction outside of the classroom setting.

        - Holding: The services described in the IEP were not appropriate for the student's educational needs. At the time the IEP was drafted, the child was receiving 16 hours of 1:1 ABA instruction at his home. The district's "failure to provide any [1:1] services in the IEP and the small number of instructional hours show that the District did not give adequate consideration to [the child's] individual needs in preparing the IEP."

- Off the record meetings – meeting with parents outside of the team process can lead to claims that you predetermined placement or services.

- Offering to provide services without following the team process – do not discuss service provision unless you are at a team meeting.

- Failing to correct procedural errors – you should not ignore a procedural error in the hope that the parents will not discover it.

III. Resolution Sessions

A. Defining the resolution session

The resolution session, or resolution meeting, is a creature of the law. When a parent files a request for due process, the local educational agency must convene a resolution session. 20 U.S.C. 1415(f)(1)(B); 34 C.F.R. 300.510(a)(1).

The resolution session is intended to provide the parents with the opportunity to discuss the due process complaint, including the facts that form the basis for that complaint, with the district, and to provide the district with the opportunity to resolve the complaint prior to a hearing. 20 U.S.C. 1415(f)(1)(B)(i)(IV); 34 C.F.R. 300.510(a)(2).

If successful, the resolution session will allow the parties to control the outcome of the complaint, will allow both parties to avoid the costs associated with a due process hearing, and may assist in preserving the relationship between the parents and the LEA.

The following table illustrates the percentage of New Hampshire cases that have settled at a resolution session:

	FY 2006	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010**
Resolved locally	4	7	19	14	6
Total number of due process requests	71	77	84	55	31
Percentage of cases that settled at resolution	5.6%	9.1%	22.6%	25.5%	19.3%

B. Scheduling the resolution session

The resolution session must occur within 15 days of the date that the LEA receives notice of the parents' request for due process. 20 U.S.C. 1415(f)(1)(B)(i)(I); 34 C.F.R. 300.510(a)(1); Ed 1123.01.

If the district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the due process hearing may occur. 34 C.F.R. 300.510(b)(1).

If the matter involves a disciplinary issue or a manifestation determination, the resolution session must occur within 7 days of the date the district receives notice of the due process complaint. 34 C.F.R. 300.532(c)(3)(i). If the matter is not resolved within that time period, the due process hearing will occur within 15 days of the date the district received notice of the due process complaint.

The resolution session need not be held if:

- The parent and the LEA agree in writing to waive the resolution session, or

- The parent and the LEA agree to use the mediation process in lieu of a resolution session.

34 C.F.R. 300.510(a)(3)(i)-(ii).

C. Who attends the resolution session?

The following individuals must attend the resolution session:

- Parent(s);
- Relevant member(s) of the child's IEP Team who have specific knowledge of the facts identified in the request for due process; and,
- An individual with authority to make decisions on behalf of the district

20 U.S.C. 1415(f)(1)(B)(i)(II); 34 C.F.R. 300.510(a)(1).

The parent and the LEA determine the relevant members of the IEP Team who will be attending the resolution session. 34 C.F.R. 300.510(a)(4).

The district's attorney may not attend the resolution session unless the parent brings an attorney. 34 C.F.R. 300.510(a)(1)(ii). Thus, the LEA should make it a practice to inquire whether the parents will be bringing an attorney to the resolution session, and if they intend to bring one, to inform the parents that it is the district's policy to have its attorney present as well.

D. The scope of the resolution session

1. Defining the issue(s)

The purpose of the resolution session is to provide the parents and the LEA with the opportunity to discuss the issues raised in the due process complaint, and to provide the LEA with the opportunity to address and resolve those issues prior to a hearing. Thus, the issues for discussion at a resolution session stem from the four corners of the parents' complaint.

2. Opportunity to correct

Once you have defined the issue(s) to be addressed at the resolution session, the LEA then has the opportunity to address those issues. This provides the LEA with the opportunity to correct any procedural defects that were raised by the parents in their due process complaint. Even if the resolution session does not result in a full and complete settlement, it is an effective tool to repair procedural defects.

3. Limitations on the scope of the resolution session

Since the purpose of the resolution session is to provide the LEA with the opportunity to address the issues in the parent's due process complaint, the resolution session will generally be limited to resolving those issues that were set forth in the complaint.

The resolution session is not intended to provide the district with an opportunity to resolve every issue under the sun. Thus, it is unlikely that you would successfully negotiate a complete release in exchange for addressing a minor issue. Moreover, there is a danger to overreaching during the resolution session, and you need to exercise care from an ethical and legal standpoint that you do not overreach. During the resolution session, consider what you are offering to do and what you are requesting in terms of a release. You must be able to defend the scope of the parents' release in the context of what you agreed to do.

4. Partial resolution

During the resolution session, you may find that you are able to resolve some, but not all, of the issues raised by the parents in their complaint. Partial resolutions are permissible. The benefit of a partial resolution is that it will limit the scope of the due process hearing to the issues raised in the parents' complaint that remain unresolved.

E. Resolution agreements: Documenting the resolution session

If an agreement is reached at the resolution session, it must be reduced to writing, and must be signed by the parent and the representative of the LEA with decision-making authority. 20 U.S.C. 1415(f)(1)(B)(iii)(I).

Depending on your particular case, you may wish to include some or all of the following clauses in your resolution agreements:

- A clear and concise statement as to what the district has agreed to do.
- A statement that the parents will execute any and all documents necessary to effectuate the resolution session agreement.
- Determine whether or not to include a confidentiality clause: unlike mediation, resolution sessions are not confidential. Thus, if you want the parents to keep the agreement confidential, you must include a confidentiality clause in the agreement.
- A clause releasing the district from liability for claims pertaining to the issues that were resolved at the resolution session.

- If placement is involved, a clause defining the “stay put” placement.

- A clause indicating who will provide transportation, if applicable.

- When the agreement will terminate: at the close of a certain school year, if the parents no longer reside within your district; if the student is dismissed from a private placement, or is no longer attending the private placement; if the parents lose custody of the student.

- A statement that each party bears their own costs and attorney’s fees.

- A statement that the due process complaint will be withdrawn with prejudice, or, if partially resolved, a statement that the issues that were resolved will be withdrawn with prejudice.

- A statement that the parents will hold the district harmless and will indemnify the district for any liability, judgment, legal fees, or other costs from a legal proceeding pertaining to the resolution agreement and initiated by their child once he/she reaches the age of majority.

- A clause stating that the parents will agree to cooperate in securing Medicaid reimbursement, if applicable.

- A clause outlining the documents that the parents will provide to the district or authorizing the district to obtain documents from the private placement or provider (evaluations, report cards, progress reports, education plans, etc.).

- A statement that the agreement will be construed and enforced in accord with the laws of the State of New Hampshire and the relevant federal laws pertaining to the mediated settlement of special education matters.

- A statement that the resolution agreement will be appended to the student’s IEP.[2]

Resolution agreements are enforceable in State court or in the United States District Court. 20 U.S.C. 1415(f)(1)(B)(iii)(II).

[2] The Department of Education will not enforce settlement agreements unless they are adopted as amendments to an IEP and meet the requirements of the federal and state special education laws. Ed 1123.17(k).

F. Voiding the resolution agreement

If an agreement is reached at a resolution session, either party may void the agreement within 3 business days of the date the agreement is signed. 34 C.F.R. 300.510(e).

IV. Mediation

A. Legal framework

Each state must create procedures to allow parties to resolve disputes through mediation. 20 U.S.C. 1415(e)(1); 34 C.F.R. 300.506. The procedures must ensure that mediation is voluntary and is not used to deny or delay a parent's right to a due process hearing. 20 U.S.C. 1415(e)(2)(A). If an agreement is reached during the mediation, the parties must execute a legally binding agreement. 20 U.S.C. 1415(e)(2)(F). The agreement must also:

- State 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;
- Be signed by the parent(s) and a representative of the LEA who has authority to bind the LEA; and
- Be enforceable in any State court of competent jurisdiction or in a district court of the United States.

20 U.S.C. 1415(e)(2)(F). Mediation discussions are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. 20 U.S.C. 1415(e)(2)(G).

In New Hampshire, mediation is available in accord with RSA 186-C:23. Participation in mediation is voluntary and mediations are confidential; in addition, any information, documents, statements, or evidence disclosed during mediation shall not be used in a subsequent proceeding. RSA 186-C:23, III.

RSA 186-C:24 describes the procedure for mediation in New Hampshire. Mediation begins when either the parent or the district file a request with the Department of Education. RSA 186-C:24, II(a). The request must "specify the issue or issues in the dispute and the relief sought." Id. The mediation must be conducted within 30 calendar days after the request is received by the Department. RSA 186-C:24, II(b). At least 10 days prior to the mediation, each party must submit a summary of the significant aspects of their case. Ed 205.03(h). The summary must be sent to the mediator and the parents; copies of relevant documents may be attached to the summary, which is limited to four pages. Id.

The mediator's role is to facilitate communication, to define the issues and explore alternatives, and to remain neutral. RSA 186-C:24, II(c)(1)-(3). If the mediation results in an agreement, it must be reduced to writing and signed by the parties. RSA 186-C:24, II(e).

The following table illustrates the percentage of New Hampshire due process cases that have settled at mediation:

	FY 2003	**FY 2004**	**FY 2005**	**FY 2006**	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010**
Mediated cases	19	14	24	12	15	13	7	3
Total due process proceedings	111	113	94	71	77	84	55	31
Percentage of cases that resolved at mediation	17.1%	12.4%	25.5%	16.9%	19.5%	15.5%	12.7%	23.1%

B. Best Alternative To a Negotiated Agreement (BATNA)[3]

The intent of the mediation is to resolve the due process proceeding without resorting to a hearing. A mediated agreement should result in something better than you would have achieved if you did not participate in mediation. In order to achieve that result, prior to the mediation, you should calculate the district's best alternative to a negotiated agreement (BATNA). The BATNA is the best possible outcome that you could achieve at a hearing less the costs that you would incur to go to a hearing. Knowing your BATNA will give you a good estimate of the best outcome that you could hope to obtain if you left the mediation without settling.

Prior to the mediation, you should discern your district's BATNA. This involves analyzing both the complaint and the law to determine your district's best possible outcome, worst possible outcome, and likelihood of success. This will give you a bargaining range; if the matter is going to settle, it should be within that range. You should also think about the parents' BATNA – considering their best and worst possible outcomes will give you an idea of the range within which they may be willing to reach agreement.

[3] Fisher, Roger & Ury, William, Getting to Yes, Negotiating Agreement Without Giving In (2d. ed., Penguin Books 1991) (1981).

For example, if a parent files a request for due process, seeking reimbursement for a private placement, the best possible outcome would be that your district is not require to reimburse the parents. Under the worst possible outcome, the district would be required to reimburse the parents and it would also be required to pay their attorney's fees. Determining your likelihood of success requires you to consider the results of other, similar cases, and to exercise good judgment.

1. Factors to consider when creating a BATNA

- Does your position put the interest of the child first, or is it solely a cost saving position?

- Will an adverse due process result produce an adverse precedent for the future?

- What will it cost you to win in terms of:
  - The ongoing parental relationship;
  - Dollars and cents.

- What will it cost you to lose in terms of:
  - The ongoing parental relationship;
  - Dollars and cents.

- Is this an issue that is capable of repetition with these parents? (Ex: will resolving a placement issue have an impact on the future placement of the child?)

- What is the impact of "stay put"?

2. Determining your likelihood of success

- Do you have a legal basis for your position?
  - Substantive legal basis: does your position offer the child a FAPE?
  - Are there procedural errors that denied the child a FAPE by:
    - Impeding the child's right to a FAPE;
    - Significantly impeding the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child; or,
    - Causing a deprivation of educational benefits.

- Is this a question of first impression or has it been decided by other courts or hearing officers?

- Who is the hearing officer?
- What equitable factors weigh in my favor?
- What equitable factors weigh against me?

3. Hearing/Process considerations

- What are the strengths and weaknesses of your IEP Team?
- How will the parents present as witnesses?
- Do you have an expert opinion that supports the team's decision?
- Do the parents have an independent expert with opinions contrary to the team's decision?
    - Is that expert credible?
    - Will he/she be effective on the stand?
- What data points support your position on FAPE?

Once you have created it, your BATNA becomes the standard against which offers are measured. If you know your BATNA, you will protect yourself from accepting an offer that is too unfavourable and from rejecting an offer that you should accept.

C. Mediation process

The scheduling notice sent out by the Department of Education (DOE) contains dates for the mediation, pre-hearing conference and hearing. The notice will also contain the name of the assigned mediator and hearing officer. You should exercise care to ensure that the scheduling notice is immediately forwarded to your district's attorney.

Prior to the mediation, you (or your district's attorney) should draft a mediation summary. The summary should clearly identify the issue(s) that will be discussed at the mediation, and should also contain a summary of the relevant facts. The mediation summary should be sent to the mediator and the parents prior to the mediation.

Mediations are held at the NH DOE hearing offices, which are located at 57 Regional Drive in Concord. Unlike the resolution session, your district's attorney may attend the mediation regardless of whether the parents are represented by counsel.

At the beginning of the mediation, you (and your attorney, if present) will meet with the parents (and their attorney, if present) and the mediator. The mediator will

explain the process and his/her role in the mediation, and will then allow one of the parties (usually the party who requested the hearing) to provide an overview of the case. After that party has completed their presentation, the mediator will allow the other party to do the same. If the party who requested the hearing did not include a demand in their mediation summary, the mediator will usually ask that person to explain what he/she wants to resolve the case. After that happens, the mediator and one party will usually leave the room. From that point forward, the mediator usually meets with each party individually, relaying offers and communicating counter-offers. Prior to the close of the mediation, the mediator may decide to bring the parties back together. If the mediation is successful, a mediation agreement will be drafted and signed by both parties.

D. Successful mediation strategies

- Clearly identify the issue(s) for mediation in your mediation summary to ensure that the mediator understands the same.
- Enter the mediation with sufficient authority to settle your risk.
- Provide an opportunity for catharsis.
- Listen to the parents.
- Exercise judgment as to what should be said in the common session.
- Identify bridges in the common session.
- Exercise civility, diplomacy, and compassion in your delivery.
- Explain weaknesses in the parents' position.
- Concede mistakes where appropriate.
- Build a relationship with the mediator (the price of unreasonableness).
- Pre-draft your mediation agreement.
- Always remember that the mediator is not your attorney.
- Act in good faith.
- Create risk for the party that leaves the table.
- Be prepared to allow attorneys/advocates to caucus without you.

- Know when to bypass the mediator.

E. Mediation agreements

As with a resolution session agreement, mediation agreements are enforceable in court. 20 U.S.C. 1415(e)(2)(F)(iii). Settlement agreements, including mediated agreement, are contractual in nature, and are governed by the principles of contract law. Poland v. Twomey, 156 N.H. 412, 414 (2007). If a court is called to interpret a written agreement, it will give the language used by the parties its reasonable meaning, as "intended by the parties when they wrote [the agreement]." Behrens v. S.P. Construction Co., Inc., 153 N.H. 498, 503 (2006). If a contract is unambiguous, courts "will determine the parties' intent from the plain meaning of the language used." Pope v. Lee, 152 N.H. 296, 302 (2005) (citation omitted). The case of Irvine Unified School District, 53 IDELR 204 (Ca. State Ed. Agency 2009), illustrates the importance of drafting an unambiguous mediated settlement agreement:

Facts: Student, a 16-year old with type one diabetes, had been insulin dependent for most of his life. He had a history of tardiness and absences from school, a history of failing to complete homework and long-term assignments, and he failed many of his classes during high school. In March 2008, the student was evaluated and it was determined that he did not qualify for special education services under the IDEA. Instead, the district offered to try various general education interventions. In July 2008, parents obtained an independent evaluation; the evaluator recommended that the student be identified for services due to an other health impairment. Parents filed a request for due process, challenging the district's eligibility determination. In July 2008, the parties entered into a settlement agreement, which provided for a Section 504 plan, and which contained the following provisions:

> (1) a release of any obligation by the district to provide any other educational services not referenced in the agreement, or reimbursement for any educational services or assessments, other than those expressly set forth in the agreement;
>
> (2) a release of any claim of compensatory education that may exist to date or that may arise as a result of the Student's educational placement through the 2008-2009 school year; and
>
> (3) a release of any procedural or substantive violation of IDEA which may have occurred to date or which may occur as a result of the agreement.

(emphasis added).

The parties developed and agreed to a Section 504 plan in September 2008. By January 2009, however, the student's truancy had not improved and the district

convened a meeting of the School Attendance Review Board to discuss the same. The student also continued to fail his classes; as a result, the district decided that it was necessary for the student to enroll in an alternative public school, designed for pupils who needed to make up high school credits. Parents initially agreed with the transfer, but later revoked their consent, informing the district that they had initially agreed because they were afraid that the district would refer them to the District Attorney for a truancy prosecution. Parents then filed for due process, alleging in part, that the district violated its child find duties.

The district argued that the terms of the July 2008 settlement agreement (paragraph 3, above) barred the parents from raising the child find issue through the end of the 2008-2009 school year.

Issue: Did the district comply with child find?

Holding: For the parents. The settlement agreement clearly released the district from any claims through July 28, 2008, the date the agreement was signed. However, the language pertaining to the waiver of future claims and services was ambiguous.

> . . . The language 'as a result of this Agreement' is very narrow and limited in scope compared to the other waiver language in the agreement. By contrast the language in the agreement which waives claims incurred prior to the date of the settlement agreement is broad and unequivocal. There is no doubt that all claims prior to July 28, 2008 are waived. . . . Even the language regarding waiver of compensatory education is broader than the language at issue. The waiver of claims for compensatory education waived any claim through the end of the 2008-2009 school year. Compared to that language the 'as a result of this Agreement' language is far more limited.
>
> Because of the limited language, it does not appear that the parties intended the waiver to affect all substantive or procedural denials of FAPE that Student might raise for the entire school year. If they had intended that, they would have stated that, just as they did for compensatory education or past claims.

After reviewing the entire agreement, the court held that the intent of the agreement was to preclude the student from raising any claims regarding child find/eligibility up to and including the date that the Section 504 plan went into effect, and to give the district a reasonable time to see if the 504 plan would be effective. However, the agreement did not release the district from liability for the entire school year, and by January 2009, the district knew, or should have known, that the Section 504 plan was not working and that further interventions were necessary. Accordingly, the hearing officer found for the parents.

Depending on your particular case, you may wish to include some or all of the following clauses in your mediation agreements:

- A clear and concise statement as to what the district has agreed to do.
- A statement that the parents will execute any and all documents necessary to effectuate the resolution session agreement.
- A statement that the district's compliance with the agreement fulfills its obligation to offer and provide a FAPE to the student.
- If placement is involved, who is making the placement?
- If placement is involved, a clause describing the "stay put" placement.
- A clause indicating who will provide transportation, if applicable.
- When the agreement will terminate: at the close of a certain school year, if the parents no longer reside within your district; if the student is dismissed from a private placement, or is no longer attending the private placement; if the parents lose custody of the student.
- A clause describing what will happen when the agreement terminates: will the team reconvene by a certain date?
- A statement that each party bears their own costs and attorney's fees.
- A statement that the due process complaint will be withdrawn with prejudice.
- A clause that addresses unanticipated circumstances, such as a change in the disabling condition, and the impact the change will have on the agreement.
- A "general release" clause, releasing the district from liability for any accrued claims, causes of action, suits, damages, injunctive relief actions, complaints, controversies and demands, including but not limited to, those pertaining to the provision of a FAPE, Section 504, and the ADA.
- A statement that the parents will hold the district harmless and will indemnify the district for any liability, judgment, legal fees, or other

costs arising from a legal proceeding pertaining to the mediation agreement and initiated by their child once he/she reaches the age of majority.

- A clause stating that the parents will agree to cooperate in securing Medicaid reimbursement, if applicable.

- A clause outlining the documents that the parents will provide to the district, or authorizing the district to obtain documents from the private placement or provider (evaluations, report cards, progress reports, education plans, etc.).

- A statement that the agreement will be construed and enforced in accord with the laws of the State of New Hampshire and the relevant federal laws pertaining to the mediated settlement of special education matters.

F. Post mediation considerations

There will be times that you will be unable to resolve a contested matter and it will proceed to due process. In such cases, it is important to remember that there are opportunities for resolution prior to the hearing.

The following table illustrates the number of New Hampshire cases that settled outside of mediation:

	FY 2003	**FY 2004**	**FY 2005**	**FY 2006**	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010**
Settled cases	26	11	16	10	15	22	18	4
Total due process proceedings	111	113	94	71	77	84	55	31
Percentage of cases that settled outside of mediation	23.4%	9.7%	17.0%	14.1%	19.5%	26.1%	32.7%	12.9%

Taking advantage of post-mediation settlement opportunities may assist in reducing your district's exposure if the matter proceeds to a hearing. After an unsuccessful mediation, you should:

- Define your district's ongoing risk.

- Consider returning to mediation.

- Reduce your last and best offer to writing: while the IDEA allows parents who prevail to recover attorney's fees, it also states that fees may not be awarded and costs may not be reimbursed for "services performed subsequent to the time of a written offer of settlement to a parent if –

  (A) The offer is made at least 10 days prior to the date the due process hearing begins;

  (B) The offer is not accepted within 10 days; and

  (C) The court or hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement."

  34 C.F.R. 300.517(c)(2)(i).

  Thus, if you are not able to reach agreement at a resolution session or mediation, committing your best offer to writing and sending it to the parents in accord with the IDEA may allow you to reduce your district's level of exposure.[4]

V. Conclusion

Conflict resolution can be one of the most gratifying services offered by a Special Education Director. Successful conflict resolution requires effective communication and creativity.

[4] When reducing your offer to writing, you should not reference the mediation or the discussions that occurred during the mediation. Mediations are confidential, and by referring to them in your written offer you run the risk that a court would refuse to consider your written settlement offer. J.D. v. Kanawha County Bd. of Educ., 571 F.3d 381 (4th Cir. 2009).