Advanced Negotiation Skills for Special Educators: The Art of Resolving Special Education Disputes

Presented to the New Hampshire Association of Special Education Administrators

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A Word of Caution

No two cases are exactly alike. This material is designed to provide special education administrators with in depth information about two specific types of conflict resolution: resolution sessions and mediations. 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 in depth look at two types of conflict resolution: resolution sessions and mediation, 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. Legal Framework

A. The Resolution Session

i. 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	9
Total number of due process requests	71	77	84	55	56
Percentage of cases that settled at resolution	5.6%	9.1%	22.6%	25.5%	16.1%[1]

[1] The data in this table is current as of July 6, 2010. As of that date, there were 13 ongoing due process matters.

ii. 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).

iii. 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.

B. Mediation

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

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 files 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	5
Total due process proceedings	111	113	94	71	77	84	55	56
Percentage of cases that resolved at mediation	17.1%	12.4%	25.5%	16.9%	19.5%	15.5%	12.7%	8.9%[2]

i. The Advantages and Benefits of Mediation

The advantages and benefits of mediation are summed up by the five C's: control, compromise, convenience, cost and certainty.

a. Control: Mediation is a form of alternative dispute resolution which allows the parties to control the result. Unlike the presentation of an adversarial proceeding to a third party for resolution, the parties have the say as to how and the manner in which the matter will be resolved.

b. Compromise: By definition, an adversarial proceeding is resolved in accord with the law. The law rarely produces a compromised result and in fact, usually results in the designation of one individual as a prevailing party. By definition, the mediation process allows both parties to calculate their respective risk and reach a compromised result.

c. Convenience: The adversarial proceeding occurs at the convenience of the Hearing Officer. The mediation can often be scheduled at the mutual convenience of the parties. It also occurs in a manner which allows for fewer parties to participate and yet still produce a result. In addition, the mediated result does not produce subsequent appeals which

[2] The data in this table is current as of July 6, 2010. As of that date, there were 13 ongoing due process matters.

in turn can produce tremendous disadvantages with regard to educational decision making.

d. Cost: A mediation while certainly still requiring the assistance of legal counsel, is far less costly than an adversarial proceeding.

e. Certainty: The mediated result produces certainty and avoids the uncertainty of subsequent appeals.

ii. The Potential Disadvantages of Mediation

Mediation is not without disadvantages. One of the most challenging decisions an educator will encounter is whether or not to mediate. For example, a mediated agreement with regard to placement may irrevocably alter the "stay-put placement" and pragmatically tip the scales such that year after year results in an out-of-district placement. Not all cases allow themselves to be mediated. For example, it is extremely difficult to reach a compromise when the issue has long term precedental impact on a district or for that matter, would produce a result detrimental to the child.

iii. 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 the **Walker Building, 21 South Fruit Street, 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 its 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 its 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.

III. Key Differences Between the Resolution Session and Mediation

A. The scope of the resolution session

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.

B. 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.

C. 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.

D. 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). There is no similar provision for agreements reached during mediation.

IV. Negotiated Agreements: Documenting the resolution session or the mediation

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

Agreements reached at either a resolution session or mediation are enforceable in State court or in the United States District Court. 20 U.S.C. 1415(e)(2)(F)(iii); 20 U.S.C. 1415(f)(1)(B)(iii)(II).

During the negotiation 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.

Settlement agreements 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 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.

In a similar case, a New Hampshire hearing officer held that a settlement agreement did not preclude the parents from exercising a future right to make a special education referral for their child. Student/John Stark School District, IDPH FY 10-02-031 (N.H. March 29, 2010). In that case, the parents requested due process in June 2009, raising the issue of their child's eligibility for special education services. The parties reached a settlement agreement, pursuant to which the parents dismissed their request for due process in exchange for the student being provided with services under a Section 504 plan for the 2009-2010 school year. The agreement resolved the issue of the student's eligibility based on the information that the parties had at the time of the agreement.

The district argued that the agreement also precluded the parents from referring the student to the special education process during the 2009-2010 school year because the settlement agreement resolved the issue of eligibility for that school year. The hearing officer rejected that argument, noting that the agreement did not "say that the parent [was] precluded from exercising future rights such as referring the student to the special education process if circumstances change[d] during the school year, if the student regresses at school or fails to benefit from the 504 services being provided, or if new information about the student demonstrate[d] a need to refer the student to special education."

The hearing officer held that the parties did not have a meeting of the minds with regard to whether the parents could refer their child for special education during the 2009-2010 school year. The hearing officer noted:

> If a school is asking a parent to bargain away future rights in the special education process, the agreement should expressly note this extra requirement so that the parties have a meeting of the minds on that issue.

A. Common components of a negotiated settlement agreement

Depending on your particular case, you may wish to include some or all of the following clauses in your negotiated 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 settlement agreement.

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

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

- A clause specifying 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 its 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.

B. <u>Resolution agreements</u>

In addition to the clauses described above and depending on your particular case, you may also wish to include some or all of the following clauses in your resolution agreements:

- 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.

- A statement that the resolution agreement will be appended to the student's IEP.[3]

C. Mediated agreements

In addition to the clauses described above and depending on your particular case, you may also wish to include some or all of the following clauses in your mediation agreements:

- 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, a clause specifying who will make the placement.

- A clause describing what will happen when the agreement terminates: will the team reconvene by a certain date?

- 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.

V. Best Alternative To a Negotiated Agreement (BATNA)[4]

The intent of the resolution session and the mediation is to resolve the due process proceeding without resorting to a hearing. Thus, a negotiated agreement should result in something better than you would have achieved if you did not participate in alternative dispute resolution. In order to achieve that result, prior to the resolution session or 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

[3] 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).

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

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 negotiation without settling.

Prior to the negotiation, 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.

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 required to reimburse the parents. Under the worst possible outcome, the district would be required to reimburse the parents and 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.

A. <u>Factors to Consider when Creating a BATNA</u>

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

B. 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?

C. 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 unfavorable and from rejecting an offer that you should accept.

VI. Successful Negotiation Strategies

- Enter the negotiation with sufficient authority to settle your risk.
- Provide an opportunity for catharsis.
- Listen to the parents.
- Exercise civility, diplomacy, and compassion in your delivery.
- Explain weaknesses in the parents' position.
- Concede mistakes where appropriate.
- Pre-draft your negotiated agreement.
- Act in good faith.
- Create risk for the party that leaves the table.
- Be prepared to allow attorneys/advocates to caucus without you.
- Knowing how to say no ("No thank you").
- Allocate sufficient time for the negotiation.
- PBIS, consequences.
- Understand the "competing values": parents' belief that their child deserves the best versus conservation of public resources for all students, allocating resources among students, and legal limitations.

A. <u>Unique Strategies to Resolution</u>

- Define the rules for the resolution session.
- Identify the attendees.

B. Unique Strategies to Mediation

- Clearly identify the issue(s) for mediation in your mediation summary to ensure that the mediator understands the same.
- Exercise judgment as to what should be said in the common session.
- Identify bridges in the common session.
- Build a relationship with the mediator (the price of unreasonableness).
- Always remember that the mediator is not your attorney.
- Know when to bypass the mediator.

VII. 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	7
Total due process proceedings	111	113	94	71	77	84	55	56
Percentage of cases that settled outside of mediation	23.4%	9.7%	17.0%	14.1%	19.5%	26.1%	32.7%	12.5%[5]

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.

[5] The data in this table is current as of July 6, 2010. As of that date, there were 13 ongoing due process matters.

- 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.[6]

VIII. 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.

[6] 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).

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