



WEBINAR MATERIALS

"Helping Families Prepare for Mediation and Resolution Sessions"

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presented by

Jane R. Wettach

Duke Law School Clinical Professor of Law
Director of the Children's Education Law Clinic
Duke Law School

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A not-for-profit organization dedicated to services and projects
that work to improve the lives of children, youth and adults with disabilities.

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Jane R. Wettach



- Clinical Professor of Law at Duke Law School when she teaches education law
- Director of the Law School's Children's Law Clinic, a community law office, staffed by supervised law students, offering free legal services to low-income children and their families in cases involving special education, school discipline, school enrollment, Supplemental Security Income, and other miscellaneous matters

Jane R. Wettach



- Prior to teaching at Duke Law School, Prof. Wettach was an attorney with Legal Aid of North Carolina
- Earned law degree and undergraduate degree from the University of North Carolina in Chapel Hill
- Frequent speaker on issues involving the educational rights of children, especially children with disabilities

Special education mediation



- What is it?
 - A process offered free to parents and school systems, administered by the state dept. of education
 - A focused discussion, facilitated by a mediator, designed to bring parents and school personnel in a dispute to an agreement

Special education mediation

■ Characteristics

- Voluntary on both sides
- Confidential – what people say cannot be brought up in due process hearing or court (such as offers to settle in a certain way)
- Ends either without an agreement or with a written mediation agreement that is enforceable in court



Special education mediation

■ When?

- Parent disagrees with an IEP Team decision
 - Team says the child is not eligible for services; parent thinks he is
 - Team says the child should be placed in a separate classroom; parent thinks she should be in a regular classroom
 - Team says the public school program can allow progress; parent thinks the child has not made progress and should be in a private school
- Before or after a due process petition is filed
- Within two years (or other limit set by state) of the IEP Team decision at issue

Special education mediation

■ Why?

- Parents want to avoid due process, because due process is more:
 - Adversarial
 - Costly
 - Emotionally draining
 - Time consuming
 - Formal
 - Risky



Special education mediation

- Why?
 - Parents are committed to preserving personal relationships
 - Parents are committed to mending personal relationships
 - With new personnel involved, there's a new chance of agreement
 - Parents believe a solution can be reached with the help of a third party

Special education mediation

- Why not?
 - The IEP team hasn't made a final decision on the issue
 - The issue is too old (due process would be barred by the statute of limitations)
 - Issue has been thoroughly hashed out; everyone has agreed to disagree
 - Either the parent or school system will not agree to participate

Resolution Session

- What is it?
 - A mandatory dispute resolution process following the filing of a due process petition regarding a special education issue
 - A face-to-face meeting between a parent and school district personnel to explore settlement possibilities and attempt to come to an agreement



Resolution Session

- Characteristics
 - Must be convened by the school system within 15 days of the filing of a due process petition
 - Must include "relevant" members of the IEP Team
 - Must include someone from district with authority to bind the district
 - May not include school district lawyer unless parent has a lawyer

Resolution Session

- Characteristics
 - Discussions are not confidential; they can be brought up in due process
 - Parents and district can jointly decide to waive the resolution session, or try mediation instead, but
 - Parents may suffer dismissal of due process if they don't participate
 - Case moves on to due process if district doesn't participate

Resolution Session

- Characteristics
 - Parent must present basis for complaint and facts that support it
 - District may offer to settle
 - If parent and district agree, an agreement enforceable in court must be written
 - Both sides have three business days to rescind agreement after it is signed
 - If no agreement is reached in 30 days, due process hearing goes forward

Resolution Session

- Why?
 - It's mandatory (unless waived)
 - It may provide an opportunity for higher level district personnel to consider the issues and resolve them
 - It may give parents a better understanding of the position of the district, and the district a better understanding of the position of the parents – which could help to settle the case

Resolution Session

- Why not? (i.e., when to seek a waiver)
 - Highest level personnel have already been involved and rejected parent's position
 - An unsuccessful mediation has already occurred
 - Parents are ready to go forward to due process and don't want to delay hearing

Preparing for Mediation and Resolution Sessions

Most important rule for preparation:

Do it!

(I.e., don't go unprepared)

Preparing for Mediation and Resolution Sessions

- Take care of logistical matters
- Identify and clarify the issues
- Identify and clarify goals
- Organize records

Take care of logistical matters

- With district personnel, schedule the date
 - Block off an entire day; make necessary arrangements for work, child care, etc.
- With district personnel, decide who will be in attendance
 - "relevant" members of IEP team
 - District personnel with knowledge and decision-making power
 - Parent/child support
 - Lay advocate
 - Attorney
 - Social worker, mental health worker, grandparent, guardian ad litem, therapist, private service providers, etc.
 - Facilitator

Take care of logistical matters

- With district personnel, agree on the "ground rules" before the day of the session
 - Neutral location
 - Who will and will not be there (no surprises!)
 - What is and is not on the table to be discussed
 - Whether the session will be recorded in any way
 - Whether the session will be facilitated
 - Other concerns

Identify & clarify issues

- Parent should be able to answer these questions:
 - How do the child's impairments interfere with educational progress?

 - What can special education do to improve progress?
 - Overcome the impairment?
 - Accommodate the impairment?

Identify & clarify issues

- What ways does the current IEP work and not work?

- What changes to the IEP would allow reasonable progress?

Identify & clarify goals

- Parents should:
 - Frame goals in terms of reasonable progress
 - Child needs "x" to be able to make progress

 - Avoid pursuing unrealistic goals or goals not authorized by law (Toyota, not Lexus!)

 - Generate a list of multiple possibilities for achieving goals

 - Practice (out loud) articulating concerns & goals

 - Prepare written notes to take to meeting

Prepare records

- Use a physical system that keeps papers secured (3-ring binder, folder with clips, etc.)
- Categorize documents (IEP's, evaluations, progress reports, etc.)
- Put in chronological order
- If possible, summarize and make comparison charts.

| IEP Goal 03-04 | IEP Goal 04-05 | IEP Goal 05-06 |
|---|--|--|
| <p>Jamie will improve his participation in feeding himself:</p> <ol style="list-style-type: none"> 1. Order food in the school cafeteria by pointing or showing a picture (4/5). 2. Will be able to use utensils appropriately (4/5) 3. (a) stab food with fork 4. (b) scoop with spoon 5. Refrain from taking food from a plate or area other than his own (5/5) <p><i>Jamie has shown progress in the area of self care. Jamie can feed himself, but will reach for food with his hands unless verbally prompted to use a utensil. He will attempt to poke food with his fork and scoop food with his spoon, but needs assistance with the school utensils. Jamie can carry food on the utensil to his mouth without spillage.</i></p> | <p>Jamie will assist in feeding himself:</p> <ol style="list-style-type: none"> 6. Finger feeds self small pieces of meat, vegetables, etc (4/5). 7. Will be able to use utensils appropriately (4/5) 8. (a) stab food with fork 9. (b) scoop with spoon 10. Will be able to open containers, removes food, unwraps foods (2/5) | <p>Jamie will become more independent while feeding himself:</p> <ol style="list-style-type: none"> 11. Jamie will be able to stab his food with a fork 5 of 5 times. 12. Jamie will be able to unwrap foods and open containers 3 of 5 times. 13. Jamie will learn to keep foods in the area of his plate or tray 3 of 5 times. <p><i>Jamie has made lots of progress in the area of feeding himself. He can scoop his food with a spoon and fork. Jamie can use the cafeteria utensils and it's no longer necessary for him to eat with utensils that have modifications such as bigger handles. Jamie needs reminders to keep his right hand out of the tray. Instead of using his hands and fingers to open containers, Jamie will try to bite the wrapper.</i></p> |

Produce evidence

- Parent needs to identify evidence that supports claims
 - Report cards/poor grades
 - Progress reports/limited progress
 - PLP/limited progress
 - Repetition of annual goals
 - Standardized test scores/no narrowing of gap
 - Evaluations/unimplemented recommendations
 - Disciplinary records/increased incidents
- Have relevant evidence copied and ready to share

Tips for a successful resolution

- Seek understanding
- Be willing to communicate openly
- Be open to resolution

Seek understanding

- Make a real effort to understand the school district's point of view
- Respectfully ask for answers to important questions:
 - How do you think my child's disabilities impair his ability to make progress?
 - How do you think the offered IEP responds to his needs?
 - How do you define reasonable progress for my child?
 - What evidence suggests to you that my child has made reasonable progress?
 - What evidence suggests that your proposal will result in reasonable progress for my child?

Seek understanding

- Seek to understand the interests & goals of the school district
 - Work hard to understand the heart of the difference between school district personnel's and parent's understanding of the situation
 - Is there a difference of opinion about factual matters?
 - Is there a difference of opinion about what services are needed to allow the child to make progress?
 - Is there a difference of opinion about the overall goals?
 - Focus discussion on trying to understand differences and find common ground
 - Avoid "blame" statements

Be willing to communicate

- Be explicit and specific about goals & interests
 - Put most emphasis on most important goals
 - Don't get stuck on less important goals
- Don't hold to a pre-conceived position, but do keep the needs and interests of the child at the center of the discussion

Be willing to communicate

- If parent doesn't think he/she is being heard, ask the school district personnel to articulate the parent's interests & goals
- Be willing to articulate what you think the school district's interests & goals are
- Remember: statement made in mediation are confidential; statements made in resolution sessions are not

Be open to resolution

- Have optimism about achieving a result
- Listen for openings for agreement
- Capitalize on areas of agreement
- Be open to new ideas
- Be willing to consider someone else's idea
- Be willing to compromise
- Acknowledge the concerns of others; recognize the school district must be responsive to all children's needs

Memorialize agreement

- If agreement is reached, memorialize in writing
- Parent should not dismiss due process petition until three days after signing agreement (because both sides have three days to void the agreement)

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Mediation and Resolution Session Flowchart

