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**PRACTICAL
TIPS
as Parents
Prepare for
Mediation**

Practical Tips as Parents Prepare for Mediation

- This webinar is intended for parents who have already contacted the Wisconsin Special Education Mediation System (WSEMS) and have reached an agreement with their school district to enter into mediation.
- This information and tips are based on my participation supporting families at over 75 mediations in the past 7 years.

Mediator Selection

- After the School District and the parents have agreed to mediation, each party submits several names of potential mediators. The biographies of the mediators can be found on the [WSEMS website](#). Remember, mediators are impartial, so past experience might be a consideration as well as sometimes parents like to choose a person who indicates that she/he has a child with a disability.
- Typically, there is a common mediator that each party can agree upon. After the mediator is determined, the process is turned over to the mediator and WSEMS is no longer involved.

Establishing a Mutual Time

- The mediator initially will be in contact with both parties to establish a mutual date, time, and location (if in person) for the mediation. At times, the parents or district have requested to have mediation at a neutral location.
- Most mediators set a 4-hour time frame, although that may not be needed. Also, an additional date can be established at the mediation session if the parties feel that additional time will help them reach an agreement.

Participants in the Mediation

- Often the participants are established when the parties are talking with WSEMS. If not, those will be decided when the mediator is in contact with the parties.
- By statute, each party is allowed 2 participants. It is purposely kept small so discussions can be more focused. However, additional participants can be requested, but need to be mutually agreed to. Sometimes, the district will bring their school attorney as one of their participants. The majority of WSEMS mediation sessions have been held without attorneys or advocates. The rate of agreement is about the same with attorneys or advocates present as without.

Discussion with the Mediator

- Many mediators will arrange to talk to both parties prior to the actual mediation session to get a more complete understanding of each party's position. They also may request a copy of the child's current IEP.
- If such a conversation takes place, the mediator is only listening and not making any judgments. (Mediators are impartial).

Preparing for the Mediation

- The first thing that parents need to do is make a list of their concerns. This most likely will be those things that the parents and the district were unable to reach agreement upon at the last IEP team meeting. The first item listed should be their most important concern.
- Parents should organize any documents that support their concerns. For example:
 - School evaluations
 - Current IEP
 - Any private assessments
 - IEP progress reports, discipline reports, and report cards
 - Note or emails from teachers

Preparing for the Mediation--Continued

- Next to each concern, parents should make a note of possible resolution options. What might be the best outcome? What might the parent be willing to accept as a resolution since mediation is a give and take process.
- Parents should be aware of alternatives if an agreement can't be reached during mediation. Typically, that next step would be a due process hearing and parents need to be aware of the risk that might involve as well as the potential monetary costs.

Preparing for the Mediation--Continued

- Parents should anticipate questions that school personnel may ask or information on which they might need clarification.
 - Any new medications?
 - Are same things being experienced at home?
 - What works for the parent at home?

The Mediation Itself- In Person

- On the day of the mediation try and arrive a bit before the scheduled time so that you can get settled and organized. It is also good to bring something to drink and perhaps a snack. Some districts do order lunch if the mediation is scheduled during that time period.
- The mediator will begin the mediation session with introductions as well as discuss logistics such as restrooms, breaks, possible lunch breaks etc. Then the mediator will review the agreement to mediate which all parties present sign. This should have been given to you through WSEMS, but also can be found on their website.

The Mediation Itself- Virtual

- Due to COVID precautions all mediations are being conducted virtually. Typically, this is through Zoom. You can use a smart phone to access Zoom, but it does work better with an Ipad or computer.
- Prior to the virtual mediation all participants will receive via Docusign the agreement to mediate.
- It is still possible to enter into separate caucuses if needed during the mediation session. The mediator has the capability of putting participants into breakout rooms.
- I have participated in numerous virtual meetings and this format has worked well.

The Mediation Itself

- The mediator will typically begin the actual mediation session by having the parents express their concerns about what they feel their child needs. It is helpful to have that “opening statement” in written format so nothing is forgotten. It might be at this time that the parents bring forth any additional documentation.
- Most mediators will say while it may be important to talk about the past to get some perspective, that mediation is a forward-looking process and that is where focus should be.

The Mediation Itself

- It is also suggested that parents focus on **interests** rather than **positions**. Positions are commitments to defined outcomes. Interests are informed by concerns. When parents focus on their interests rather than their position, it is often easier to arrive at multiple solutions that respond to the interests of both parties.
- For example:
 - Position-** Parents feel their child needs a full time 1-1 aide.
 - Interest-** Parents feel their daughter can't use the bathroom independently and often has to wait a long time to get someone to assist her, causing her to have frequent accidents.

The Mediation Itself

- Another example:

Position- Parents feel their child must have the Orton-Gillingham Reading program.

Interest- Parents feel their child is not making progress in learning to read. He needs to be taught using a multi-sensory approach. The parents are concerned their child is moving to the middle school and is still quite far behind in his reading skills.

While the education of their child is an emotional issue for parents, they should try not to be accusatory. Parents need to separate their emotions from the problem whenever possible.

The Mediation Itself

- After the parents have presented their concerns and possible outcomes, the district now presents their “side.” They may talk about what they are currently doing, what progress is being made and data to support that, and how potential changes can be made.
- Just as the district is expected to listen respectfully while parents are presenting, parents are expected to do the same. It is helpful for parents to take notes on areas on which they may agree or disagree so that those points can be discussed further at a later point. While participants can take notes at the session, no audio, video or written record of the session is allowed.

The Mediation Itself

- After both sides have presented opening comments, concerns and remarks, the mediator often asks clarifying questions. She also may develop a working list of the top concerns as expressed by the parents and district. The mediator may intervene to guide parties in discussion, to clarify what is intended, to elicit parties' best thinking, to maintain a civil process, and to reframe important questions in a way that engages people.

The Mediation Itself

- Sometimes, after the opening statements by the parents and the district and the mediator has focused on the issues, the mediator may ask to meet separately with both parties. This is called a caucus. The mediator often is trying to determine if there are any potential areas where the parties might be able to reach agreement. What each party discusses with the mediator in the caucus is confidential unless the party says it can be shared with the other party.

The Mediation Itself

- An example of a caucus situation using the first example of parents requesting a 1-1 aide for toileting:
- The district may tell the mediator in the caucus that they are willing to add an additional 3-hour staff person to the classroom. The aide would not be specifically assigned to the student but having another person may help solve the parents' concerns. If given permission by the district, this is shared with the parents for their reaction. This might involve the mediator going back and forth between the two parties several times, or sometimes both parties may reconvene to discuss this potential solution.

The Mediation Itself

- In another caucus example: Parents are requesting Orton-Gillingham Reading program.
- In caucus, the district may tell the mediator that the district is willing to investigate reading programs that incorporate more multi-sensory teaching strategies. However, the district is not willing to commit to a specific reading program.
- Sometimes the mediator may come back from the caucus and tell the parents that this is all the concessions that the district is willing to make. Then parents have to decide if the proposed remedy is acceptable, or if they want to offer a different counter proposal. The parents may also decide to pursue other dispute resolution options. However, parents need to understand due process and the risks that are involved.

The Mediation Itself

- This back-and-forth communication continues until both parties can hopefully agree on an agreement. Sometimes, as mentioned, it is done with separate caucusing and other times within the entire group setting. At any time, parents can ask to caucus with the mediator or just between themselves. Districts can also request the same.
- It is important to remember that mediation will not always result in exactly what parents are initially requesting. That is why it is important for parents to have considered potential options that are acceptable.

The Mediated Agreement

- If both parties reach a verbal agreement, it is then formalized in a written mediated agreement. Sometimes, the mediator writes the agreement and sometimes the district writes it. After it is written, both parties are given a copy to review.

After the Agreement Has Been Signed

- There are different ways of formalizing the components of the mediated agreement into the IEP. Some districts will change the IEP subject to the terms of the mediated agreement without an IEP meeting and other school districts will have an IEP meeting to formalize the components of the agreement.
- If the district does have an IEP meeting, the components that were agreed upon in mediation need to be put into IEP.

Final Thoughts

- The Wisconsin Special Education Mediation System prides itself on the high number of mediations that reach an agreement. (2018-19 statistics)

A full agreement was reached: 81%

A partial agreement was reached: 8%

No agreement was reached: 11%

Final Thoughts

- In summary, successful mediations result when participants are:
 - Mentally ready, open to fresh thinking, willing to entertain new ideas, and are prepared to see others' points of view
 - Open to seeing people in a new light
 - Optimistic about resolving the situation
 - Willing to accept some level of compromise
 - Willing to consider someone else's proposal
 - Assume that all parties are operating in good faith

Final Thoughts

- Finally, all parties in the mediation will be asked to complete a confidential evaluation form. WSEMS is grant funded and that data is critical in helping maintain funding. The evaluation results also help WSEMS and the mediators make improvements.
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Additional Resources

- **Effective Participation in Mediation and IEP Facilitation**

This is a short video that summarizes many of the points highlighted today.

- **Conducting Parent Friendly and Productive Virtual IEP Meetings**

While this is intended for IEP meetings, not necessarily mediation, parents may find some of the information relevant.

- **IDEA Special Education Mediation Parent Guide**

Additional information and short videos on the mediation process.