

# Mediator's Guide to Special Education Preappeal Conferences



Iowa Department of Education  
Bureau of Student and Family Support Services  
June 2010

## Table of Contents:

<b>Preface</b>	<b>Page</b>
Resolving Disagreements in Special Education.....	P-1
Differences between AEA Resolution Facilitator Process and Preappeal Conference....	P-2
Overview of Ways to Resolve Differences.....	P-3
<b>A: Before the Meeting</b>	
Special Education Preappeal Conference Procedures.....	A-1
Model Form to Assist Parent(s)/Guardian(s) in Requesting a Preappeal Conference....	A-2
Timeline of Expectations When Preappeal Conference Request is Filed with Dept.....	A-3
Letter to School District about the Preappeal Request.....	A-4
Special Education Preappeal Conference Checklist.....	A-5
Letter to Parents in Response to Request for Preappeal.....	A-6
Email Scheduling a Preappeal Conference Call.....	A-7
Email with Conference Call Details and Dial-in Instructions.....	A-8
Letter to Parties Providing Notice of Scheduled Preappeal.....	A-9
Agreement to Mediate Form.....	A-10
Brochure: Preparing for Preappeal or Mediation.....	A-11
Checklist for Legally Binding Preappeal/Mediation Agreement Conducted by Iowa Special Education Mediator.....	A-12
<b>B: During the Meeting</b>	
Special Education Preappeal Conference Procedures (cont.).....	B-1
Preappeal/Mediation Guide.....	B-2
Mediator's Opening Statements.....	B-3
Preappeal/Mediation Note Taking Guidelines.....	B-4
Legally Binding Agreement Form.....	B-5
Special Education Mediated Agreement Shepherd.....	B-6
Preappeal or Mediation Evaluation form.....	B-7

**C: After the Meeting**

Special Education Preappeal Conference Procedures..... C-1  
Preappeal/Mediation Issues.....C-2  
Letter of Dismissal of Preappeal (1).....C-3  
Letter of Dismissal of Preappeal (2).....C-4  
Preappeal Conference Agreement Follow-up (for District).....C-5  
Preappeal Conference Agreement Follow-up (for Parent).....C-6

**D: Professional Development and Responsibilities**

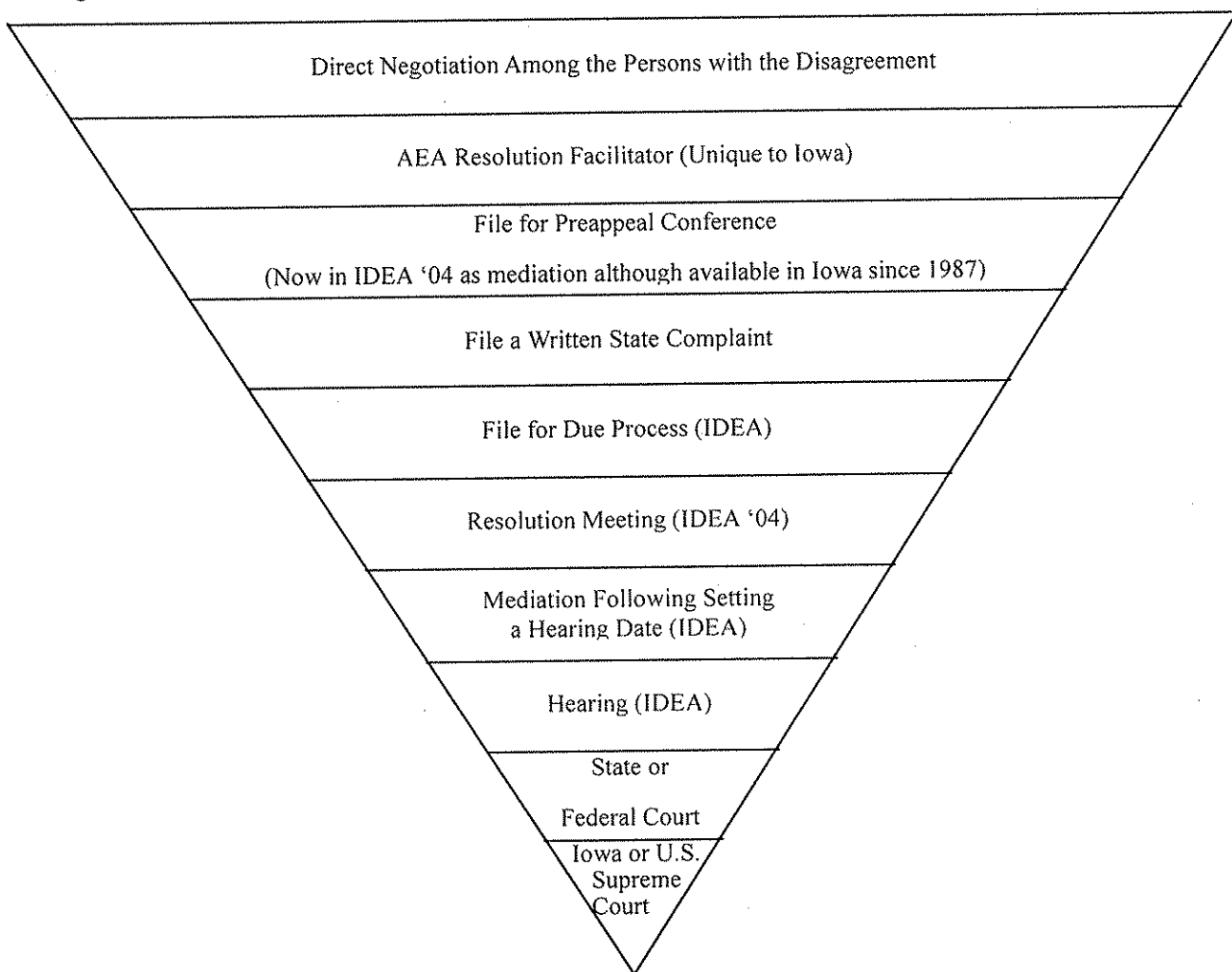
Plan of Action for New Mediators.....D-1  
Preappeal or Mediation Mentor/Mentee Evaluation.....D-2  
Assorted Issues related to preappeal discussed at Mediator Inservice.....D-3  
Iowa Department of Education Model Standard of Conduct for Mediators on the State  
Roster of Special Education Mediators.....D-4  
Mediator Contact Information.....D-5

# PREFACE

## Resolving Disagreements in Special Education

The inverted pyramid below represents an important principle in Iowa's approach to conflict resolution in special education. The preferred mode of conflict resolution is direct negotiation among the person with the disagreement. The last preferred mode is litigation. The ideal, then, is for people to address their differences themselves and work together to resolve them at the earliest possible time – not to let them fester and escalate. A close second, in terms of our preferences in Iowa, is to seek assistance of an impartial person to assist in the negotiations. In our state there are AEA Resolution Facilitators trained especially for this purpose. Each AEA has a Resolution Facilitator Coordinator. Neither direct negotiation nor use of the AEA Resolution Facilitator Process necessitates contacting the Department of Education about the disagreement.

As we move from the broadest to the narrower parts of the pyramid, the formality of the dispute resolution approach increase, and the Iowa Department of Education becomes involved because someone has to file for a preappeal conference, a due process hearing, or file a written complaint. Also, where legal issues are a part of the dispute lawyers are often hired by the AEAs, districts, and families. The preappeal conference, an uniquely Iowa approach to conflict resolution from 1987, until it was added to IDEA '04, may or may not involve attorneys as the parties wish. It always involved a mediator assigned by the Iowa Department of Education from its roster of special education mediators. Due process further limits direct party involvement; although resolution meetings, which may or may not be mediated or facilitated, or mediation using a special education mediator on the state roster, are still options at this point. Litigation (including a due process hearing) is the least desirable approach in principle because it takes decision making out of the hands of the persons directly involved in the disagreement – as does complaint investigation.



## Differences Between AEA Resolution Facilitator Process and Preappeal Conference

The Iowa Department of Education is promoting two ways of resolving differences between parties. One is the AEA Resolution Facilitator process and the other is the Preappeal Conference. Brochures and posters are available that explain both processes.

Here is a chart that should help understand the differences between the AEA Resolution Facilitator process and the Preappeal Conference process.

Explanation	AEA Resolution Facilitator	Preappeal Conference
When?	Differences between parties	Differences between parties
What kind of differences?	Issues involving general education, Section 504, special education, Early Access (Part C)	Issues involving special education only
Differences between what parties?	Parents and educators, educators and educators (AEA and/or district), other school staff	Educators and parents (or other agencies involved with providing a free appropriate public education)
Is it mandated or voluntary?	Voluntary	Voluntary. If used, "stay put" kicks in unless parties agree otherwise.
Who is contacted?	The AEA	The Iowa Department of Education
Who assists with the process?	A Resolution Facilitator appointed by the AEA. This person may or may not be employed by the AEA.	A mediator appointed by the Iowa Department of Education, selected on a rotational basis.
What type of training as been provided?	All Resolution Facilitators must be trained in mediation	All mediators have been trained in mediation
Any cost to the party requesting the process?	No	No
Desired outcome?	All parties seek common ground solutions	All parties seek common ground solutions
Who decides the solutions?	The parties, <i>not</i> the Resolution Facilitator	The parties, <i>not</i> the mediator
If meeting is successful?	Devise and implement a plan acceptable to all	Devise and implement a plan acceptable to all
If not successful?	Parties may proceed to other processes	Parties may proceed to other processes, such as requesting a hearing

## Overview of Ways to Resolve Differences

	<b>AEA Resolution Facilitator Process</b>	<b>Preappeal Conference</b>	<b>State Complaint*</b>	<b>Due Process Complaint Hearing</b>
Who provides?	AEA	Iowa DE	Iowa DE	Iowa DE
What is it?	A mediation	Mediation without requesting a hearing	Allegation of violation involving Special Education	A hearing before special education ALJ
When can it be used?	Differences occur between: General Education Special Education Section 504 Other school related situations	Differences occur involving Special Education situation	Believe AEA/LEA has violated Special Education Rules	Differences or alleged violations involving Special Education
Who can request it?	Parents AEA or LEA staff Others involved in school setting	Parent LEA AEA	An individual Organization	Parent LEA AEA
If one party requests, does the process have to be provided, regardless?	No. The process is voluntary	No. The process is voluntary. If used, "stay put" kicks in unless parties agree otherwise.	Yes, the Department must investigate and all parties must cooperate.	Yes. This is a mandatory process once a party initiates action correctly.
Is there a required timeline for requesting?	No	No	Yes. Not more than one year prior to the date that the complaint is received	Yes. Within two years of the date the parent or agency knew or should have known
When a party requests the process, who is supposed to receive notice?	The AEA Resolution Facilitator Coordinator	The Dept. of Ed. <b>AND</b> all other parties named in the preappeal.	The Dept. of Ed. <b>AND</b> all other parties named in the complaint.	The Dept. of Ed. <b>AND</b> all other parties named in the hearing.
If an agreement between the parties is reached is it considered "legally binding"?	No, unless stipulated by all parties	Yes	Not applicable	For the due process hearing, if a decision is rendered, it is final and must be implemented until appealed to civil court. If an agreement is reached in a Resolution Meetings or mediation it is legally binding.

\*The complaint process is not found in the IDEA 2004 statute. It is found in the implementing regulations.

Shaded areas denote IDEA 2004 changes.

**A. BEFORE  
THE  
MEETING**



## Special Education Preappeal Conference Procedures

All documents relating to a preappeal conference need to be date stamped by the department. The original is kept in the bureau. Copies are made for the mediator and other parties.

1. **Preappeal request arrives.** Date stamp and check for required information under Education [281]—41.106 (1)IAC. Check to see if it is one of these appropriate issues:
  - a. Identification.
  - b. Evaluation.
  - c. Educational placement.
  - d. Provision of free, appropriate public education.

If it appears that the issue/s identified does not fit within the above requirement, request the attorney for the Department of Education to render a decision and the attorney will write the letter to the requesting party providing rationale for the denial. The communication will also remind the requesting party about the AEA Resolution Facilitator process or any other information that may be helpful in addressing the issue, e.g., other resources that could be used.

### **Required information:**

- a. Name of child.
  - b. Address of residence of the child (in the case of a homeless child or youth available contact information).
  - c. The name of the school the child is attending.
  - d. Identify the resident district and AEA.
  - e. The facts.
  - f. Identified issues of concern or the reasons for the conference.
  - g. A proposed resolution of the problem to the extent known and available to the party at the time.
2. **If the request for the preappeal is complete, create a new file in the data base, assigning a new docket number (e.g., "PRE-000").** The database should contain the following information:
    - a. Parent's name, address and phone. *Find out if another parent should be invited to be a part of the process.*
    - b. Name, address and phone for parent's attorney/advocate, if applicable.
    - c. District name of residence, address and phone, and names of superintendent, and LEA special education director if there is one (refer to list of Urban Education Network Directors and Mid-Size District Directors, making certain list is kept current).
    - d. AEA name, address and phone, names of Sp. Ed. Director.
    - e. Name, address and phone for AEA/LEA attorneys, if applicable.
    - f. If Department of Education is named, include Thomas Mayes, Carol Greta, and Jeanie Vaudt, Asst. Attorney General Office.
    - g. If Department of Human Services is named include, Thomas H. Miller, Attorney General, and insert current name, Director of DHS.

3. **If the student is tuitioned to another school district, the district of residence is named as the party in the preappeal and the receiving district is invited.** If the receiving district wishes to become a party, then add address/phone and names of superintendent, and LEA Special Ed. Director to this filing information.

*All the non-advocates listed in #2 and #3 make up the "parties" to the preappeal. Any information sent to parties is to include everyone on this list as well as all attorneys and other non-legal advocates listed.*

4. **For the Bureau use a file for each case using letter-size expandable pocket folders.** Type label (blue) with child's name, school district, AEA, and PRE #. Also make a copy of the information sheet (this paper has all information such as phone numbers and address of all parties) on bright colored paper for this folder. The white goes to the mediator.
5. **Within five business days after receipt of a request for a valid preappeal, send letter to AEA and LEA of notification of preappeal request and inform superintendent (or designee) that pertinent records relevant to the preappeal and the checklist must be sent to the department and to all other parties named (e.g., the parents, AEA, Department of Education, and/or Department of Human Services).** Advise the district that the completed checklist and records can be sent electronically to the DE, copying the parent, attorney for parent if one has been identified, assigned mediator and other pertinent parties deemed to be appropriate. A copy of the letter is sent to all parties. Attach copy of request for preappeal for all but appellant.

The checklist will inform the AEA and LEA that the most recently developed IEP (that includes any evaluation or progress monitoring data recorded on IEP) must be sent within 10 business days after the district/AEA's receipt of the notice. The letter from the DE will state that the student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing by the parent at least ten calendar days before the preappeal. The individual's complete school record shall be available to the participants at the preappeal conference.

Enclosures to LEA: Special Education Preappeal Conference Checklist, Copy of Request for Preappeal (LEA and AEA), *Timeline Expectations When Preappeal Conference Request Is Filed with Department.*

Enclosures to parents: same as LEA with exception of including copy of request for preappeal.

**Placement during proceedings.** Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings. 281-41.106(3) IAC).

6. **Send parents a letter that provides free or low cost attorney fee list.**  
Enclosures: *Procedural Safeguards Manual for Parents*, December 2008

Depending on history of attorney filing the preappeal and being agreeable to idea or if no attorney involved: The DE secretary or consultant will contact the AEA Special Education Director to remind the director that the AEA Resolution Facilitator Process offer may be made to the parent by the AEA or LEA, assuming a discussion has been held with the LEA, about offering this option. The benefits of the AEA RF process--as opposed to the preappeal-- will be discussed. The purpose of the contact with the parent by the AEA or LEA would be to determine whether the parent would be willing to use the AEA RF Process instead of the preappeal. During the conversation the secretary or consultant will address paperwork materials that may be available from the DE or will remind the director of materials the AEA RF Coordinators may also have.

**7. Assign mediators as soon as possible.**

- a. Within 5 business days of receiving preappeal request, contact mediator in line for assignment, using rotation system (and availability), to see if he or she is available and if so, when mediator will be available for teleconference call (and who should be involved) to set up dates, location and time for preappeal. If that mediator is unable to take the case, so indicate on list, noting date called, have that mediator's name go to the back of the line and go to the next mediator on the list.

**Reassignment of mediator when party voices need**

- Any person serving or designated to serve as a mediator is subject to disqualification for bias, prejudice, interest, or any other cause for which a mediator is or may be disqualified.
- Any party may, within three calendar days, request the disqualification of a mediator after learning who has been assigned as mediator or upon discovering facts establishing grounds for disqualification whichever is later. Such a request must be made to DE in writing.
- A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.
- If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute must be appointed by the department from the list of other qualified mediators.

Contact parties to arrange teleconference call with mediator on mutually agreed date and time. As soon as conference call date and time are known, send e-mail. If no e-mail available DE make phone call. U.S. mail to be used only if person doesn't have e-mail or phone.

**8. Conduct the conference call.**

**At the beginning of the conference call the mediator should ask whether the participants are aware of the AEA Resolution Facilitator process and have still chosen to proceed with the preappeal.**

Objectives of a Preappeal Conference Call:

- a. Disclosures of prior associations with any of the parties if necessary.
- b. Say a few words about mediator's special education mediation experience and that the mediator is under contract with DE to provide mediation services.

- c. Check on possible objections to the assigned mediator in this matter. If there are objections provide guidance about needing to put something in writing to the department within three calendar days and that based on the request, the mediator will be making a decision whether to remove himself/herself.
- d. Check understanding of mediation and role of the mediator.
- e. Discuss IDEA 2004 federal law that makes explicit the legally binding nature of agreements.
- f. Clarify issues – or check to see that district and AEA have the request for preappeal. “These are the issues. Is that correct?”
- g. Check to see if there is information that needs to be exchanged prior to the preappeal.
- h. Schedule the preappeal. During the conference call, the dates, times, and location for preappeal are determined. The mediator is required to provide the option of meeting in a neutral site. However, it is not a requirement the preappeal/mediation be in a site outside of the LEA/AEA. Check with all parties during the conference call. Request the district (or AEA when appropriate) to find the location, making certain there is an awareness about the size of the room/s, indicating there will be a need for a smaller location for caucusing. Inform the responsible person for finding the location to bill the Iowa Department of Education if there is a charge for use of the facility.
- i. During the conference call the mediator will mention the option of parents having legal representation at a preappeal (if attorney not involved with parents) and also reference the assistance that may be available from the PEC. Include reminders about representation to un-represented parties (not just parents).
- j. It should be made clear to unrepresented parents that they can bring support persons with them to a mediation session if they desire and if they inform the mediator and the LEA/AEA in advance.
- k. During the group conference call the mediator will indicate that all parties will be contacted by the mediator by phone prior to the preappeal conference so that the mediator can explain the process that will be followed and answer any questions that parties have about mediation. The mediator then will inquire as to whether anyone on the conference call does not wish to receive such a pre-session call. When calls are made explaining about preparing for the preappeal, discussion of the issues identified in the request for preappeal or mediation is to be avoided.
- l. Ask the age of the student. As appropriate, ask parent if student will be attending the preappeal conference. (Depending on the situation, the mediator may say: “In some cases it is helpful for the student and for the process if the student attends the preappeal conference. Please consider this as an option and let Michelle know if (child’s name) plans to attend.”)
- m. In order to support the mediator in his/her role as facilitator, mediator may check with the school district or AEA to arrange for a typist from one or the other to type any agreement reached on a computer connected to a projector and projected for all to see during the preappeal/mediation. This is so that the mediator can continue to facilitate without being distracted by doing the typing. Projection of a draft would also ensure that all participants have the opportunity to assist with crafting the language of the agreement. Additionally, the draft could then be printed so all could have a copy to review.

- n. The mediator will ask that parties contact the DE secretary if additional people plan to attend preappeal/mediation other than those already designated. The DE wants all parties to know who will be attending in advance of the meeting and the DE wants to make certain all people attending the preappeal/mediation will have the materials (*Agreement to Mediate for all participants and Legally Binding Mediation Agreement Form for one designated person at both AEA and LEA*) before the meeting.

**9. Pre-session phone calls from the mediator.** Reasons for speaking individually with persons before the mediation/facilitation session:

- a. To explain what mediation is and is not and clarify the roles of those who will participate in the session.
- b. To answer questions, clear up misconceptions, or allay fears that persons may have about participating in mediation.
- c. To reinforce and/or clarify written preparation materials that all participants receive.
- d. To give the mediator the opportunity to check with participants as to whether they might want another person to be present at the session as support.

Suggested points or questions to include in mediator's conversation with a party:

- a. Explanation of mediation and roles of participants.
- b. "Have you had a chance to look at the material that was sent to you? Do you have any questions about that?"
- c. "Do you have any other questions about mediation or my role?"
- d. Discuss legally binding document, the concept of a "shepherd", and how the shepherd is chosen.
- e. Discuss people who have to sign according to IDEA 2004 in order to have a legally binding document.
- f. Ask, "Is the student going to be attending?"

**10. Once DE receives the most recently developed IEP (that includes any evaluation or progress monitoring data recorded on IEP) and checklist, place in the folder and mail a copy of the information to the mediator immediately. However, if the checklist and records were sent electronically by the district, the secretary will ascertain whether the district included the mediator. If not, this information will be sent electronically as well.**

**11. If preappeal is scheduled, send notice to persons involved and file copy in Bureau file. Send notice of preappeal with date, time and location.** In the letter denote the specific enclosures that are included for documentation.

Attachments:      Agreement to Mediate  
                            Preparing for Preappeal or Mediation (brochure)  
                            Checklist for Legally Binding Mediation Agreement

The secretary will e-mail the template for a legally binding agreement to a person in the AEA and LEA (as well as to the attorney for each). The secretary will choose each person because this is the one from each agency having the most "hands on" responsibilities for following through with the preappeal request.

**12. If any party desires a delay once a preappeal date is set, an oral or written request (stating the reason and time frame) must be submitted to the department.** The other party must be provided information about the request and an opportunity to either agree or contest the request.



## Model Form to Assist Parent(s)/Guardian(s) in Requesting a Preappeal Conference

(A *Preappeal Conference* is a mediation, without asking for a due process hearing.)

PLEASE PRINT

Date: \_\_\_\_\_ I, \_\_\_\_\_, am requesting a preappeal conference.

Your name

CHILD'S INFORMATION	_____
	Child's name
	Address where child lives (for contact information)
	Name of District, School, and AEA where child <u>lives</u>
PARENT(S)/GUARDIAN(S) INFORMATION	_____
	Parent(s)/ Guardian(s) name(s): _____
	Mailing address (or contact information): _____
	City: _____ State: _____ Zip: _____
	Phone/Contact number: _____ E-mail (if available): _____
	<b><u>If there another parent/guardian at another address with parental rights, please complete the following:</u></b>
Parent(s) Guardian(s) name(s): _____	
Mailing address (or contact information): _____	
City: _____ State: _____ Zip: _____	
Phone/Contact number: _____ E-mail (if available): _____	

Describe the following (use additional sheets of paper if more space is needed):

1. The nature of the problem:
2. The facts of this case relating to the above problem:
3. Your proposed resolution of the problem:

Name, address, phone number or contact information of person filing request, if not parent/guardian:

Position/role of person filing request, if not parent/guardian:

Send a completed form to **EACH** of the following:  
**Addresses Available at Your School**

1. The district that made the decision with which you disagree.
2. The AEA special education director.
3. Director, Iowa Department of Education  
 Grimes State Office Building, Des Moines, Iowa 50319-0146

### **Timeline Expectations When Preappeal Conference Request Is Filed with Department**

1. Iowa Department of Education (DE) receives preappeal request and determines whether it meets the requirements. DE also tries to determine if all parties, such as district(s) and the Area Education Agency (AEA), received copies.
2. Within five calendar days, DE:
  - Sends letter to the parties about the request for a preappeal and asks the district to send certain records and a checklist to the DE within 10 business days of receipt.
  - Assigns a mediator (rotational basis).
  - Contacts parties to arrange a common date for a conference call.
  - Sends various types of information to the parties that should be helpful.
3. Usually within 10 calendar days or so (but depending on the calendars of the parties), DE will organize and hold a conference call with the mediator and the parties.
4. Parties jointly determine the date, time, and location of the preappeal during the conference call. The mediator will individually contact any party wanting additional information about the preappeal process.
5. Within five calendar days from the conference call, DE will send a written notice for preappeal.
6. On the scheduled date, the preappeal is held with the mediator facilitating discussion.
7. If agreement is reached, a “legally binding agreement” will need to be signed by the parties (AEA, district, and parents). The parties typically will sign on the day of the preappeal.
8. The mediator will announce that there will be an automatic three-month follow-up by the DE to determine if the district and the parents believe agreement was implemented.






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# STATE OF IOWA

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CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
KEVIN FANGMAN, ACTING DIRECTOR

Date

Superintendent or Designee  
School/district  
Address

**RE: File number (PRE – XXX)**

Dear Supt. (last name):

Enclosed is a photocopy of a request for a preappeal conference filed in this office on (Date). The preappeal is a voluntary option available in an attempt to resolve differences between parties. The process promotes communication, mutual respect, and identification of common ground.

If you have not been involved in a preappeal before, you may want to contact the AEA special education director who can provide you with the names of other districts that have had prior experience with the preappeal conference. Because the preappeal process has a high success rate for resolving differences, parents and educators generally are extremely supportive of the preappeal conference.

Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

Attached is the Special Education Preappeal Conference Checklist, Copy of request for preappeal and the Timeline expectations. You will need to return the completed Special Education Preappeal Conference Checklist form (and certain records, such as the most recently developed IEP). This is to be sent within **10 business days of receipt of the notice**, copying the parent, parent's attorney if applicable, mediator, and other pertinent parties appropriate.

The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing by the parent at least ten calendar days before the preappeal. The individual's complete school record shall be available to the participants at the preappeal conference. **All items you send to the Department must also be sent to the parent/s.**

Grimes State Office Building - 400 E 14th St - Des Moines IA 50319-0146

PHONE (515) 281-5294 FAX (515) 242-5988

[www.iowa.gov/educate](http://www.iowa.gov/educate)

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before the preappeal. The individual's complete school record shall be available to the participants at the preappeal conference. **All items you send to the Department must also be sent to the parent/s.**

The next step in the process is to arrange for a conference call with the mediator to schedule a date, time, and location of the preappeal (if everyone agrees to participate). If you have an attorney, please contact Michelle Ray by phone at (515) 281-5494 or e-mail at [Michelle.Ray@iowa.gov](mailto:Michelle.Ray@iowa.gov) with the name, address, and phone number. Then, you must contact your attorney and provide dates and times you -- or your designee -- would be available to participate in the conference call. Your attorney will contact Michelle with your information. If you do not have an attorney, please let Michelle know, and she will work with you directly in getting your available dates and times.

If you have any questions, do not hesitate to contact me at (515) 281-5766 or [Eric.Neessen@iowa.gov](mailto:Eric.Neessen@iowa.gov)

Sincerely,

Eric Neessen  
Consultant, Dispute Resolution  
Iowa Department of Education  
Bureau of Student and Family Support Services  
400 East 14th Street  
Grimes State Office Building  
Des Moines, Iowa 50319  
FAX: 515.242.6019

EN:mr

Enclosures: Copy Special Education Preappeal Conference Checklist, Copy of request for preappeal, Timeline expectations

cc: Parent/s  
Parent/s attorney, if there is one  
AEA Spec. Ed. Director  
Principal  
Mediator  
File



Iowa Department of Education  
Bureau of Student & Family Support Services  
400 East 14th Street -- Grimes Building  
Des Moines, IA 50319-0146

### Special Education Preappeal Conference Checklist

Pupil's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Pupil's Disability: \_\_\_\_\_

Pupil's Placement: \_\_\_\_\_

Initial Referral: \_\_\_\_\_

Pupil's Grade: \_\_\_\_\_ Pupil's Weighting: \_\_\_\_\_

Date of Parental Consent for Initial Evaluation: \_\_\_\_\_

Date of Parental Consent for Initial Placement: \_\_\_\_\_

Date of Placement: \_\_\_\_\_ Date of Recent IEP: \_\_\_\_\_

Please attach a copy of the most recently developed IEP (that includes any evaluation or progress monitoring data recorded on IEP). Please send to the parent(s) and all parties listed copies of anything sent to the department, including a completed copy of this checklist.

**Send within ten (10) business days to:**

Michelle Ray  
Bureau of Student & Family Support Services  
400 East 14th Street  
Grimes State Office Building  
Des Moines, IA 50319-0146  
Phone: (515) 281-5494  
Fax: (515) 242-6019



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
KEVIN FANGMAN, ACTING DIRECTOR

Date

Parents name/address

Dear (Parents/Guardian):

You have asked or agreed to participate in a preappeal conference. I am giving you a list of free or low-cost legal and advocacy services, in case you would like legal help. You may contact the organizations listed below to determine if you are eligible for low-cost or free services. These organizations may have differing eligibility requirements. Please keep in mind you are not required to have legal help before being involved in a preappeal conference.

Lawyer Referral Services  
521 East Locust  
Des Moines, Iowa 50309  
(515) 280-7429; (1-800) 532-1108

Iowa Legal Aid  
1111 - 9th Street, Ste 230  
Des Moines, Iowa 50314  
(515) 243-1198; (1-800) 532-1275

Iowa P & A Services, Inc.  
950 Office Park Rd., Suite 221  
West Des Moines, Iowa 50265  
(515) 278-2502; (1-800) 779-2502

Curt Sytsma, Esq.  
1961 Arlington Avenue  
River Bend Historic District  
Des Moines, IA 50314  
(515) 282-2747

Our office will make arrangements for a short telephone conference call to schedule your preappeal conference. If you do not have a phone, our office will contact you by mail to schedule your preappeal conference. Otherwise, we will call you to ask for dates and times that work best for you.

If you have an attorney who filed the preappeal request for you, contact your attorney immediately to give dates and times you would be available for a phone call. If you filed this request on your own, but you have an attorney who will be helping you, please call our office and give us the name, address, and phone number of your attorney. Then, contact your attorney immediately and give the dates and times you would be available to take the scheduling call. Your attorney will contact us with your information.

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Please do not hesitate to contact me by phone at (515) 281-5766 or by e-mail at [Eric.Neessen@iowa.gov](mailto:Eric.Neessen@iowa.gov), if you have any questions.

Sincerely,

Eric Neessen  
Consultant, Dispute Resolution

EN/mr

Enclosures: Procedural Safeguards Manual for Parents (Parental Rights in Special Education) December 2008;  
Working Things Out When Things Go Wrong brochure

cc: Mediator  
File

### **Email Scheduling a Preappeal Conference Call**

Our mediator in this case is \_\_\_\_\_. The dates he/she is available for scheduling a call are:

*Dates and time would go here.*

Please let me know which of these dates and times work best for you. I will try to find something that overlaps for most people. If you cannot be available for the call, someone can sit in for you with your calendar.

This call is to schedule a time and place for the preappeal. The phone conference usually lasts from twenty to forty minutes.

## **Email With Conference Call Details and Dial-In Instructions**

*Example:*

I have a date that most people can meet –

Child's name and (PRE-#)

The instructions for connecting yourself to the phone call are listed below:

1. Dial the toll-free number: 1-866-685-1580.
2. Your conference code is 5152815494#. (Remember to type in the pound sign).
3. To connect to the conference, Press "1".
4. If you have trouble connecting to the call, please call my office neighbor, Joan, at 515-281-3176. I will dial in approximately five minutes before the conference. If you get elevator music, it means I have not yet connected myself to the call. Please hang up and try again.

Thanks for working with me on this and have a nice day!




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# STATE OF IOWA

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CHESTER J. CULVER, GOVERNOR  
 PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
 KEVIN FANGMAN, ACTING DIRECTOR

Date

RE: Preappeal Conference for PRE

Dear (Parents/Guardian):

Thank you for your willingness to meet and discuss issues related to your daughter/son, \_\_\_\_\_. This special education mediation conference is scheduled for **(time)** on **(day)**, **(date)**, and will be held at the **(location)**. **(Name of mediator)** will serve as the mediator.

Enclosed are additional materials that relate to the preappeal conference process. One form is called *Agreement to Mediate*. Please read this form and be prepared to sign at the mediation conference. Prior to signing, the mediator can also address clarifying questions.

Careful thought and consideration should be given to the enclosures to ensure a meaningful and productive session. Statistics have shown that when the preappeal is approached in good faith and all parties come prepared, mutual agreements are attainable. The mediator will do his or her best to assist all parties in reaching a mutually satisfactory agreement. You are reminded that if an agreement is reached and signed, this is considered to be legally binding.

This material has been distributed to all parties who participated in the original telephone conference call establishing the date for the mediation. If you invite additional people, please share this material with them.

If you have any questions prior to the scheduled preappeal conference, please feel free to contact me by phone at (515) 281-5766 or e-mail at [Eric.Neessen@iowa.gov](mailto:Eric.Neessen@iowa.gov).

Lastly, if there are no objections, the mediator may bring another mediator to the session to either co-mediate or observe as part of the mediation training.

Sincerely,

Eric Neessen  
 Consultant, Dispute Resolution

EN/mr

Enclosures: Agreement to Mediate, Preparing for Preappeal or Mediation (brochure) and Checklist for Legally Binding Mediation Agreement

Grimes State Office Building - 400 E 14th St - Des Moines IA 50319-0146

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**AGREEMENT TO MEDIATE**

\_\_\_ Preappeal Conference (Mediation--no hearing request)

OR

\_\_\_ Mediation (hearing request)

DE assigned number \_\_\_\_\_

Date of mediation: \_\_\_\_\_

Beginning time: \_\_\_\_\_ Ending: \_\_\_\_\_

1. I agree to participate in a mediation conducted according to the Administrative Rules of the Iowa Department of Education, Bureau of Student and Family Support Services, with \_\_\_\_\_ as the mediator.
2. I am choosing to pursue mediation in an effort to reach an agreement on issues concerning special education services for \_\_\_\_\_
3. Due to the personal and private nature of the matters to be discussed in mediation, and because open and honest communication is required in order to reach resolution, all discussions that occur during this mediation process shall be confidential. I understand this is not intended to prohibit any of us from discussing information, including any written agreement we reach, on a need-to-know basis, with appropriate staff, family members, counsel, and professional advisors.
4. I understand that discussions and offers of agreement made and not accepted in the mediation cannot be used as evidence or as arguments in future hearings or civil proceedings.
5. I understand that the mediator will not disclose anything about this mediation that in any way identifies the parties to it. I also understand that the mediator cannot be called to testify as a witness in any future hearing unless required to by law.
6. I will not blame the mediator or try to obtain compensation or reimbursement from the mediator for anything connected to the mediation--including the mediation agreement we reach.
7. If we reach a written agreement, I understand that it will be legally binding and I agree to follow it.

***Please Print Your Name, Role and E-mail Address and Sign Below Your Email***

Printed name and role (mediator)
Email:
Signature
Printed name and role
Email:
Signature
Printed name and role
Email:
Signature
Printed name and role
Email:
Signature



A-11

insert

brochure

**Checklist for Legally Binding Preappeal/Mediation Agreement  
Conducted by Iowa Special Education Mediators**

<b><i>I. Recitation of facts (can be in narrative format)</i></b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
1. Name of student (First and last)			
2. Resident district			
3. Attending district if different			
4. AEA			
5. Date of preappeal/mediation			
6. Location of preappeal/mediation			
8. Names and roles of people attending			

Optional: birthdate, disability, grade level, and other information

<b><i>II. Resolution section</i></b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
<p>1. For each issue identified:</p> <ul style="list-style-type: none"> <li>• A specific action described how to resolve the issue as agreed to by all parties.</li> <li>• A person was identified as being responsible to initiate and complete an action in order to resolve the issue.</li> <li>• A timeline was provided for a particular issue. (E.g., a strategy might be implemented a certain period of time before reevaluating the effectiveness.)</li> </ul>			
2. The agreement identified a person responsible to (a) coordinate the implementation of the entire agreement and (b) to serve as the point of contact for all parties, i.e., the "shepherd."			
3. If appropriate, the parties wrote a contingency plan because of something that has the potential to be outside the control of any party in the dispute. (E.g., an independent evaluation may be agreed upon yet there may be a waiting period.)			
<p>4. It passed the "stranger test."</p> <ul style="list-style-type: none"> <li>• If a reasonable person not in attendance read the agreement, would the person know what it meant?</li> <li>• Can all parties articulate the expectations in the agreement?</li> <li>• Was everything clearly defined?</li> </ul>			

5. The starting and ending date of the agreement was specified.			
---	--	--	--

<b>III. Signatures and dates.</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
1. Every person in attendance signed the Agreement to Mediate sheet.			
2. When a final agreement became available (following present procedures to get to that point), the written agreement was signed and given or sent to the mediator. If sent, each party may have signed on a separate signature page.)			
3. A timeline was provided (usually within three business days of receipt of the agreement.)			
4. The mediator sent via U.S. mail a copy of the signed agreement to all participants and to the DE.			

**Requirements for legally binding mediations based on:**

Section 615. Procedural Safeguards

615(e)  
 ``(F) **WRITTEN AGREEMENT.**--In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--  
 ``(i) states 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;  
 ``(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency;  
 and  
 ``(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.  
 ``(G) **MEDIATION DISCUSSIONS.**--Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

Federal Regulations (Effective October 13, 2006)

Sec. 300.506 Mediation.

(a) (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

**B. DURING  
THE  
MEETING**

## Special Education Preappeal Procedures (continued)

13. **At the beginning of the preappeal, the mediator will assume responsibility for obtaining signatures and other required information from all attendees on the Agreement to Mediate form.** (Note the space on the form for listing the starting and ending times of the session.) The mediator will mail the completed form to the Department secretary who will record in the database the number of people in attendance, as well as maintain the form in the bureau folder for that case for documentation purposes.
14. **At the end of the preappeal, make certain the mediator asks, "Are there any other things you want to discuss?"**
15. **If an agreement is reached, a legally binding preappeal agreement form must be prepared. The mediator will help the parties craft the agreement, using the words of the parties.** As was noted above, an LEA/AEA person could capture the agreement on the computer, using the template provided by the department or using a format provided by the mediator that will provide the same information.

Even if a next steps agreement is reached, it is by definition an agreement and the mediator should encourage the parties to put it in writing and sign it (with advice of counsel). The mediator could point out that even though the parties and counsel may need to meet in mediation again, an agreement has been reached for today and to avoid confusion about what is to happen next it should be reduced to writing and signed.

Mediators make it standard practice to inform those who have agreed on a next steps meeting (including an IEP meeting) that the mediator would be available to facilitate that meeting if so desired.

When signing that day is neither possible nor appropriate, the following steps will be followed:

- a) If at all possible, a draft agreement ought to be distributed to all participants by the mediator within 48 hours of the preappeal or mediation. The parties will be given three calendar days to respond with suggested changes.
- b) When a final agreement becomes available, the mediator will send or e-mail the written agreement to all parties, including the required signature page titled *Mandated Signatures for Legally Binding Written Agreement*.
- c) The mediator will request that the parent/s and a representative of the LEA and AEA (who has the authority to bind such agency) sign the final agreement and fax (first preference) or mail (if fax machine not available to party) the signature sheet to the mediator within three business days of receipt of the final agreement. (In other words, all three signatures do not necessarily need to be included on the same signature page.) The party/ies should be provided with a stamped return envelope for those not having easy access to a fax machine.

- d) The mediator will copy the final agreement and signature pages and send copies to all parties attending the mediation and to the Department of Education.

When an agreement has been finalized and sent to the parties with a request that the signature page be signed and returned to the mediator by a certain date, the mediator should make it a regular practice to follow up when it is not returned (allowing for a grace period of a week at most).

***Four mandatory components of Preappeal/Mediation are included on the legally binding mediation agreement form that will need discussion:***

- a. *A designated "shepherd" to oversee the agreement.* To help encourage implementation of the agreement and to foster constructive communication between parties following a preappeal/mediation, ask the group who should be the "shepherd" of the agreement. This would be the person with overall responsibility for coordinating the entire agreement and to serve as the point of contact for all parties should there be questions or concerns. Stress the importance of the shepherd doing a follow-up periodically of all involved parties to determine whether the agreement is on course.
- b. *There is a Job Description for the Shepherd.* There are two versions: (1) one to hand out to the shepherd and (2) one listing job qualifications (which will be for mediators and DE only). The mediators will "play it by ear" as to whether to provide the handout to others in addition to the shepherd, and as to when in the course of a given preappeal/mediation we would do that.
- c. *A contingency plan.* There will need to be a discussion regarding whether any part of the agreement needs a contingency plan. An example would be agreeing to have an independent educational evaluation conducted but not knowing the availability of the evaluator. Will that make a difference to the agreement? There is an opportunity to mark "no" or "yes." If yes, it will need to be described.
- d. *Dismissing the preappeal request.* At the end of the preappeal conference, the mediator will ask: "What do you want to do with the preappeal request relative to closure by the Iowa Department of Education?" Identify a specific withdrawal date *and include it in the agreement*, e.g., the date the signed agreement is received in the department. If the preappeal agreement does not indicate a dismissal date or the agreement does not get sent to the department with all required signatures, the department may automatically close the preappeal 45 calendar days after the preappeal conference is held unless the filing party contacts the department before that time, providing valid reasons for keeping the file open. (Alert them that Iowa special education rules allow automatic closures 281—41.1002(3) IAC. Refer to #25 below.)

**16. Toward the end of the preappeal, the mediator will assume the responsibility for providing the department evaluation instrument to all participants at the preappeal.** Say: "Take a minute, complete before you leave, put into an envelope, and designate someone to mail." (Help facilitate the discussion so someone assumes the responsibility for mailing to the department.) The mediator will promote the importance of all participants returning the evaluation to the department. Explain that the instrument is a



department form and the DE, along with the mediators, closely scrutinize the aggregate results quarterly in an effort to refine or improve the process. Also, you may want to share the DE actually enters the number of people attending the preappeal into its data system, then counts the number of evaluations received, and provides the % of evaluations returned for each individual preappeal held and puts that into a report back to the mediators.

17. **At the preappeal conference, the mediator will announce that there will be an automatic three-month follow-up by the department.** The DE will be contacting the parent/s and the district to determine whether both parties believe the settlement agreement was implemented as written. This contact will be done by sending a short survey. A copy of the agreement will be included. The department will provide a follow-up call for nonrespondents.

## **PREAPPEAL/MEDIATION GUIDE**

**Persons Participating:**

**Date:**

**Mediator:**

**Ground Rules:**

- Identify/indicate the amount of time available for the meeting.
- Review the format for the meeting.
- Review “communication guidelines”.
- Make sure there is a willingness to negotiate on the part of each person.
- Indicate you will take notes.

**Review the situation (each tell story without interruption):**

- Have the person who initiated the concern tell his/her story first, then the other person(s).
- Identify central themes, specific concerns and any potential solutions generated during their storytelling.
- Clarify INTERESTS (why they want what they want) rather than POSITIONS (what they want).
- Summarize and restate.

**Brainstorm Solution Options (without critique):**

- Invent options for mutual gain.

**Evaluate the positive and negative implications of the brainstormed solution options:**

- You may wish to acknowledge, validate, empathize, clarify, summarize, and restate.
- Reality test the options: What would happen if....
- Which solutions are acceptable?
- Which solutions are doable?

**Select Solutions:**

- Decide on the basis of objective criteria.
- Come to an agreement.
- Make commitments – put them in writing.
- Determine how the agreement will be monitored.
- Establish a follow-up date(s) for necessary persons.

## MEDIATOR'S OPENING STATEMENTS

\_\_\_\_\_ Welcome and thank you for coming. My name is \_\_\_\_\_. I would like you to call me \_\_\_\_\_. I will be your mediator today. I am a trained and impartial facilitator. [Disclosures]. Are we expecting anyone else?

\_\_\_\_\_ Please introduce yourself, indicating what you wish to be called.

\_\_\_\_\_ *Housekeeping:* Restrooms, breaks, lunch, etc.

\_\_\_\_\_ I would like to thank both you (or groups) for deciding to use this process. I realize you had other options. As you know we're here to seek resolution of some issues on behalf of \_\_\_\_\_.

\_\_\_\_\_ Do each of you (referring to the district and AEA representative) have the authority to make commitments here today?

\_\_\_\_\_ *Definition:* The Preappeal/Mediation process is voluntary. It an opportunity to clarify issues and come to your own solution. We are to approach the situation as a shared problem and an opportunity to create a mutually beneficial way to move forward.

\_\_\_\_\_ *Goals:* An agreement, but also greater clarity, and improved communication and relationships. Even if no agreement reached, a better understanding of the entire situation and where to go next.

\_\_\_\_\_ *My responsibilities:*

- Maintain confidentiality
- Be impartial, not a judge
- Facilitate the process
- Assist you to develop written agreement: I will take notes to help keep us on track.
- After we have written the agreement, I will destroy all notes pertaining to this proceeding.
- Work together to address and resolve issues.
- Speak and listen respectfully
- Listen without interrupting

\_\_\_\_\_ In order to help the process move forward, I have three guidelines for each of use to keep in mind:

- Let others finish their thought before speaking yourself
- Be considerate of other's feelings in speech and body language
- Listen deeply as if your future and the future of everyone involved depends on understand what is being said.

\_\_\_\_\_ Do each of you agree to these guidelines? Are there any additional ones we need to help make the conversation here comfortable for you?

\_\_\_\_\_ *Agenda:*

- Each of you will take a turn giving your perspective, beginning with the person who requested the process.
- Questions and clarification.
- We will identify issues and decide which issue to discuss first.
- We will discuss the issue(s) and brainstorm solutions.
- We will work on a mutual resolution or I will ask each party to propose a fair resolution.
- We will work toward consensus regarding a resolution and draft a simple written agreement.

\_\_\_\_\_ *Beginning the Session:*

- Distribute, discuss, and sign Agreement to Mediate.
- To parents: "Can you tell me about \_\_\_\_\_?"
- To educators: "Is there anything you would like to add?"
- To all: "Let's continue our discussion by reviewing the issues that brought us together today. Could we begin by identifying those issues (beginning with the person who brought the request)?"

## **Preappeal/Mediation Note Taking Guidelines**

A mediator will take notes during the process and tell all parties at the beginning of the session that the notes will be destroyed when an agreement is signed.

The purpose of taking notes during the Preappeal/Mediation process is to remember and reflect on the key words, phrases, or comments from the participants that may be useful in facilitating the conversation and drafting an agreement.

Note taking begins after the mediator's opening comments when the parties begin sharing their perspectives on the situation. Note taking typically ends when the agreement is written.

The mediator does not keep verbatim notes. Rather the mediator records selected statements from both parties as they share information and perspectives. For example, one party may bring new information to the table. After the party finishes speaking, the mediator may wish to refer to his/her notes before probing for the meaning and implications of this information for the benefit and understanding of all.

Another purpose served by note taking is for clarification. Perhaps a suggestion has been made quickly in the context of a longer set of thoughts and feelings. After the party has spoken the mediator can then request additional information so that all parties may be on the same page as they move toward resolution and be aware of their respective responsibilities if they were to commit to the recommendation.

Some mediators have found it useful to underline comments which reflect INTERESTS (why a party wants what they want) and separate these from POSITIONS (what the party wants).

It can be helpful to scan one's notes to see areas or points of agreement. Identifying and naming these common perspectives to all present can prime the discussion on yet-to-be resolved differences.

Because of the nature of the notes there is no required form or outline to follow. Some mediators use blank sheets of paper with a heading prepared in advance with the date, location, and the first name of the party initiating the Preappeal/Mediation process. If there is more than one issue to be discussed, there may be separate sections for notes regarding each issue.

It may be helpful to describe or code your intended action next to a comment. For example, you may want to ask for clarification, note that both parties agree with a particular viewpoint, or note that a specific recommendation may be part of the draft agreement.



## Legally Binding Mediation Agreement Form

\_\_\_ Preappeal Conference (mediation--no hearing request)

\_\_\_ Mediation (hearing request)

DE assigned number \_\_\_\_\_

Name of student \_\_\_\_\_ Date of Mediation: \_\_\_\_\_  
(First and last)

Resident district: \_\_\_\_\_ Attending district / nonpublic school: \_\_\_\_\_

Area Education Agency: \_\_\_\_\_ Location of mediation: \_\_\_\_\_

Other parties named (other than district/s or AEA/s): \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Names and roles of people attending \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

### I. Mediation

Identify action to resolve issue.	Person or agency responsible to initiate and complete an action	Timeline for action
1.		

<p>Did the parties designate how long this action is to occur?</p> <p><input type="checkbox"/> Not appropriate.</p> <p><input type="checkbox"/> Yes: Starting date</p> <p>Ending date</p> <p>Describe what has to happen so that parties know this part of the agreement has been met.</p>		
<p>2.</p> <p>Did the parties designate how long this action is to occur?</p> <p><input type="checkbox"/> Not appropriate.</p> <p><input type="checkbox"/> Yes. Starting date</p> <p>Ending date</p> <p>Describe what has to happen so that parties know this part of the agreement has been met.</p>		
<p>3.</p> <p>Did the parties designate how long this action is to occur?</p> <p><input type="checkbox"/> Not appropriate.</p> <p><input type="checkbox"/> Yes. Starting date</p> <p>Ending date</p> <p>Describe what has to happen so that parties know this part of the agreement has been met.</p>		
<p>4.</p> <p>Did the parties designate how long this action is to occur?</p> <p><input type="checkbox"/> Not appropriate.</p>		

<input type="checkbox"/> Yes. Starting date Ending date Describe what has to happen so that parties know this part of the agreement has been met.		
5.  Did the parties designate how long this action is to occur?  <input type="checkbox"/> Not appropriate.  <input type="checkbox"/> Yes. Starting date Ending date Describe what has to happen so that parties know this part of the agreement has been met.		
6.		
7.		
8.		
9.		
(More can be added)		

**Shepherd:** \_\_\_\_\_ is the shepherd of the agreement. (Contact information: \_\_\_\_\_) As such he/she is the person who guides implementation of the agreement, and is the person any of those involved in this preappeal will contact with questions or concerns about the agreement being followed. If anyone involved believes that additional effort is needed to resolve differences that will be shared with the shepherd. One example would be a belief that the mediator should return.

**Contingency Plan:** Is a contingency plan needed for any part of the agreement because of a potential problem outside the control of any party in the dispute? (Please include the name of a specific person who may be included during any part of the agreement).

No     Yes

If yes, describe the plan:



**If a preappeal conference:** When is it appropriate for the Iowa Department of Education to officially dismiss the preappeal conference request?

**If a mediation** (being held because of a hearing request): What is the next step of action for the ALJ? For example, will the filing party notify the Department that it can be dismissed? By when? (The Department will provide to the ALJ.) Or, are both parties agreeing to jointly request a continuance from the ALJ (specifying how long it should last) by sending to the DE? By when?

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### **Next Steps**

1. If a final written agreement becomes available on the day of the preappeal/mediation, the mediator will provide copies to all parties and request signatures on that date, if possible, from those individuals from whom signatures are required.
2. If an agreement was reached but a written agreement was not available for distribution on the day of the preappeal conference or mediation, the mediator will send or e-mail the written agreement to all parties, with separate signature pages for each party from whom signatures are required.
3. The mediator will copy the final agreement and signature pages and send copies to all parties attending the mediation and to the Department of Education.
4. Not applicable for preappeal conference request: The parent will inform the Iowa Department of Education who will inform the administrative law judge of the status of the hearing request.

### **Mandated Signatures for Legally Binding Written Agreement (Complete after the agreement is finalized)**

The undersigned parties agree:

1. All discussions that occurred in mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
2. This is a legally binding agreement enforceable in any state court of competent jurisdiction or in a district court of the United States.
3. This agreement is in force for the duration of the current school year or for the period indicated under each agreement item unless changed by the IEP team or by mutual written consent of the parties.

---

Print and Sign (Parent)

Date

---

Print and Sign (Parent)

Date

---

Print and Sign (Designated representative of LEA)

Date

---

Print and Sign (Designated representative of AEA)

Date

## 1. Special Education Mediated Agreement Shepherd

### Job Description

#### 1. Brief description of the nature of the job, its scope and responsibilities.

A shepherd guides the implementation of a mediated agreement and is the person any of those involved in a preappeal/mediation will contact with questions or concerns about the agreement being followed. A shepherd is also the point of contact for any of those involved who believe that additional effort is needed to resolve differences: a resolution facilitation session or a return to preappeal (if applicable) are examples.

As a general rule the shepherd is a LEA or AEA staff member, is present at the preappeal/mediation and is named shepherd by agreement of the others present. Exceptions to this rule are possible with the consent of the parties to a given preappeal/mediation.

#### 2. Essential job functions.

#	Responsibility
(1)	Reviews the agreement to see who is responsible for taking specific actions and by what date those actions are to be taken.
(2)	Checks with persons identified in #1 above to see whether they have done what was agreed to do by the date agreed upon.
(3)	If an agreed upon action has not been accomplished, works with the person(s) responsible for the action on the specific steps that need to be taken to comply with the agreement.
(4)	If a specific action agreed upon turns out to be unworkable for any reason, contacts the parties to seek an appropriate written modification of the agreement and/or a return to preappeal/mediation.
(5)	Contacts the DE to arrange for a return to preappeal/mediation when the parties so desire.
(6)	If an agreement is modified repeats functions 1-4 as needed.
(7)	Responds to inquiries and/or concerns from parties to the agreement about implementation and takes corrective action as needed.

Date \_\_\_\_\_



Case Number \_\_\_\_\_

## II. PREAPPEAL OR MEDIATION EVALUATION FORM

Please take a few a minutes to respond to the following questions. Your views are very important to us, and will be treated confidentially. A return envelope is provided for your convenience.

### A. Preparing for the Preappeal or Mediation

1. What did you expect to achieve from participating in the preappeal or mediation?

---



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2. What concerns, if any, did you have about participating in the preappeal or mediation?

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3. In preparing for your preappeal or mediation, how helpful were the following:

Introductory phone call from the mediator	___ Helpful	___ Not helpful	___ Not received	___ Not needed
Brochures: <i>When Things Go Wrong</i>	___ Helpful	___ Not helpful	___ Not received	___ Not needed
<i>Preparing for Preappeal or Mediation</i>	___ Helpful	___ Not helpful	___ Not received	___ Not needed

4. Comments on my preappeal or mediation preparation:

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**During the Preappeal or Mediation**

Strongly Agree    Agree    Disagree    Strongly Disagree

- 5. The mediator adequately explained the preappeal or mediation process.
- 6. I was given the opportunity to discuss and explain some or all of the issues that led to this preappeal or mediation.
- 7. My views were considered before any solutions or agreements were made.
- 8. I was treated fairly by the mediator.

9. Comments on my experience with the preappeal or mediation process:

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---

**Outcome of the Preappeal or Mediation**

10. I was satisfied with the outcome of the preappeal or mediation.  
\_\_\_\_\_ Agree    \_\_\_\_\_ Undecided    \_\_\_\_\_ Disagree

11. On how many issues did you reach an agreement  
\_\_\_\_\_ All    \_\_\_\_\_ Some    \_\_\_\_\_ None

12. If none or only some of the issues were resolved, is there anything else that could have been done to help reach an agreement on additional issues?

---

---

13. Regardless of whether or not an agreement was reached:

- Did you get a better understanding of the issues?    \_\_\_ Yes    \_\_\_ No
- Did you get a better understanding of your own interests?    \_\_\_ Yes    \_\_\_ No
- Did you get a better understanding of others' interests?    \_\_\_ Yes    \_\_\_ No
- Did you feel that communication between participants improved?    \_\_\_ Yes    \_\_\_ No

14. What is your overall evaluation of the preappeal or mediation?

\_\_\_\_\_ Excellent    \_\_\_\_\_ Good    \_\_\_\_\_ Mediocre    \_\_\_\_\_ Poor

15. Comments about your preappeal or mediation experience:

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**OPTIONAL:** What role did you have at the preappeal or mediation?

<input type="checkbox"/> Parent/Student	<input type="checkbox"/> AEA	<input type="checkbox"/> Advocate for Parent/Student
<input type="checkbox"/> School	<input type="checkbox"/> Other	<input type="checkbox"/> Advocate for School
		<input type="checkbox"/> Advocate for AEA
		<input type="checkbox"/> Advocate for School/AEA

**C. AFTER  
THE  
MEETING**

## Special Education Preappeal Procedures (continued)

19. **After the preappeal conference is held, regardless of whether a settlement is reached, the mediator will need to fill out the form entitled "Preappeal Issues" and answer the question: "What were the issues addressed?"** This completed form needs to be forwarded to the department. Also, indicate the status of the preappeal conference.
  
20. **After the agreement has been finalized and signed, if differing perceptions about the agreement emerge and the department is contacted, the department will inquire whether it should arrange a conference call with the parties in an attempt to establish next steps.** If the next step desired by the parties is a reconvening of a preappeal, one of the parties will need to put in writing this request and the routine procedures will be implemented. The mediator originally assigned to the case will be asked whether he/she wants to continue acting as the mediator for the next preappeal.
  
21. **Assurances. The special education preappeal process shall in no way deny or delay a party's right to a full due process hearing if the party wishes to utilize the formal process.** In addition, special education preappeal conference proceedings and offers of agreement during the conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in the special education preappeal conference. (281—41.106(2) IAC).
  
22. **Withdrawals or automatic closures.** According to 281-41.1002(3) IAC, the initiating party may request a withdrawal of the preappeal prior to the conference.

Automatic closure of the department file will occur if any of the following circumstances apply:

- a. One of the parties refuses to participate in the voluntary process.
- b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.
- c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.



## Preappeal/Mediation Issues

Preappeal/due process # \_\_\_\_\_

What were the issues addressed?

Check all that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> FAPE           | <input type="checkbox"/> ESY Services   |
| <input type="checkbox"/> Placement      | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Evaluation     | <input type="checkbox"/> Other          |
| <input type="checkbox"/> Identification |   |

Please list individual issues below:

Was an agreement reached?

	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1. _____	<input type="checkbox"/>	<input type="checkbox"/>
2. _____	<input type="checkbox"/>	<input type="checkbox"/>
3. _____	<input type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>
5. _____	<input type="checkbox"/>	<input type="checkbox"/>
6. _____	<input type="checkbox"/>	<input type="checkbox"/>
7. _____	<input type="checkbox"/>	<input type="checkbox"/>
8. _____	<input type="checkbox"/>	<input type="checkbox"/>
9. _____	<input type="checkbox"/>	<input type="checkbox"/>
10. _____	<input type="checkbox"/>	<input type="checkbox"/>
11. _____	<input type="checkbox"/>	<input type="checkbox"/>
12. _____	<input type="checkbox"/>	<input type="checkbox"/>

Status of Preappeal/Mediation

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# STATE OF IOWA

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CHESTER J. CULVER, GOVERNOR  
 PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
 KEVIN FANGMAN, ACTING DIRECTOR

Date

Parent's names/address

**RE: Name, PRE**

Dear (Parent's):

I am writing you about the preappeal conference that you had requested on behalf you're your daughter/son, \_\_\_\_\_, on (date). Iowa Administrative Rules of Special Education [41.1002(3)] provides the Department with the authority to be able to automatically close a file if any of the following circumstances apply:

- a. One of the parties refuses to participate in the voluntary process.
- b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day (10) waiting period after the preappeal to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.
- c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is a part of the agreement, an agency withdrawal will occur on the designated date.

In this case, [c] applies. The preappeal conference was held (date – further clarification why that applies). Based on 41.1002(3), this preappeal is dismissed, and we will close this case.

If you have any questions, please feel free to contact me by phone at (515) 281-5766, or by e-mail at [Eric.Neessen@iowa.gov](mailto:Eric.Neessen@iowa.gov).

Sincerely,

Eric Neessen  
 Consultant, Dispute Resolution

EN/mr

Grimes State Office Building - 400 E 14th St - Des Moines IA 50319-0146

PHONE (515) 281-5294 FAX (515) 242-5988

[www.iowa.gov/educate](http://www.iowa.gov/educate)

*Helping Communities Meet the Learning Needs of All Their Children and Adults*



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
KEVIN FANGMAN, ACTING DIRECTOR

Date

Parent name and address

**RE: Name and case number**

Dear (Parent's):

I am writing you about the preappeal conference you requested on (Date) concerning your son/daughter, (name).

You / Your attorney requested a dismissal of the preappeal request via a letter (date) to the Iowa Department of Education. In the letter you indicated an agreement was reached. The Department of Education now considers PRE-\_\_\_ dismissed.

If you have any questions, please feel free to contact me by phone at (515) 281-5766, or by e-mail at [Eric.Neessen@iowa.gov](mailto:Eric.Neessen@iowa.gov).

Sincerely,

Eric Neessen  
Consultant, Dispute Resolution

EN/mr

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*Helping Communities Meet the Learning Needs of All Their Children and Adults*



**This form would be sent to the district only.**

Preappeal # \_\_\_\_\_

Today's Date: \_\_\_\_\_

Date of Preappeal \_\_\_\_\_

Mediator: \_\_\_\_\_

## Preappeal Conference Agreement Follow -Up

You recently participated in a preappeal conference on behalf of a child in your district. The Department of Education would like to know how things are going after all parties reached an agreement. A copy of the agreement is enclosed. The parent is being sent a similar questionnaire. Please take a few minutes to complete this questionnaire. Use the back if you need more space. Thank you for taking the time to complete this form.

1. Are all parts of the agreement being followed? \_\_\_\_\_ Yes \_\_\_\_\_ No (If you marked no, indicate directly on the enclosed copy of the agreement what part of the agreement is not being followed.) What is your understanding of why this part of the agreement is not being implemented?

In case of dissatisfaction, did you contact the designated shepherd? \_\_\_\_\_ Yes \_\_\_\_\_ No

What resources/services would be needed to help implement the agreement?

2. What positive or good things have come about because of the agreement?
3. Has anything negative or disappointing happened because of the agreement?
4. Do you have any other comments about the agreement or the process?

Please return this form and a marked copy of the settlement agreement (in the envelope provided) in order to help us monitor district concerns with the process.

Your response will not be shared with the parents unless you indicate that you would like us to do so.

\_\_\_\_\_ No, don't share. \_\_\_\_\_ Yes, please share.



**This form would be sent to the parent only.**

Preappeal # \_\_\_\_\_

Today's Date: \_\_\_\_\_

Date of Preappeal \_\_\_\_\_

Mediator: \_\_\_\_\_

## Preappeal Conference Agreement Follow-Up

You recently participated in a preappeal conference on behalf of your child. The Department of Education would like to know how things are going after all parties reached an agreement. A copy of the agreement is enclosed. The district is being sent a similar questionnaire. Please take a few minutes to complete this questionnaire. Use the back if you need more space. Thank you for taking the time to complete this form.

1. Are all parts of the agreement being followed? \_\_\_\_\_ Yes \_\_\_\_\_ No (If you marked no, indicate directly on the enclosed copy of the agreement what part of the agreement is not being followed.) What is your understanding of why this part of the agreement is not being implemented?

In case of dissatisfaction, did you contact the designated shepherd? \_\_\_\_\_ Yes \_\_\_\_\_ No

What resources/services would be needed to help implement the agreement?

2. What positive or good things have come about because of the agreement?
3. Has anything negative or disappointing happened because of the agreement?
4. Do you have any other comments about the agreement or the process?

Please return this form and a marked copy of the settlement agreement (in the envelope provided) in order to help us monitor district concerns with the process.

Your response will not be shared with the district unless you indicate that you would like us to do so.

\_\_\_\_\_ No, don't share. \_\_\_\_\_ Yes, please share.

**D. PROFESSIONAL  
DEVELOPMENT &  
RESPONSIBILITIES**

## Plan of Action for New Mediators

New mediators will be paired with a mentor who is an experienced state mediator.

### Mentor's Responsibilities:

1. Conduct two conflict resolution processes for mentee to observe.
2. Notify mentee when assigned to preappeal, mediation, resolution meeting, or AEA Resolution Facilitator process and make certain that mentee understands what process is being used.
3. Prior to participating in the actual process, hold a conversation to assist mentee to prepare for the observation.
  - Explain how mentor views the mediator's responsibilities according to the law, according to the DE standards, etc.
  - Explain the role of a mediator in striving to improve communication and relationships among the parties, what it means to be neutral and unbiased, explain key terms, e.g., caucusing, agenda, shepherd.
  - Provide overview of forms that are used.
  - Explain to mentee the role of the mediator in facilitating the parties to reach an agreement. Include:
    - Is agreement legally binding? What does that mean?
    - Explain the role of "shepherd", contingency plan, dismissal on agreement template.
4. Debrief immediately or as soon as possible after conflict resolution session(s) ends.
  - Discuss the strengths and weaknesses of the conflict resolution process.
  - Discuss what went well, what could have been done differently after reflection.
  - Share what mentor consciously did to facilitate better communication among all parties involved.
  - Solicit input and observations from mentee. Discuss.
5. Plan with mentee for second conflict resolution process.  
Same as #2-4 above except mentee may be part of the conference call and other contracts made by DE or mentor.
  - Discuss mediator's role during conference call if involved with preappeal or mediation. Review formal written procedures of DE that directly involve the mediator:
    - Be aware of conference call time and have dial in information.
    - Know responsibilities and objectives for call.
6. After mentee has received the Introduction to Mediation training, mentor will observe two mentee's conflict resolution events.
  - Before the start of the conflict resolution process, help mentee develop an opening statement (if not already provided).
  - Provide any assistance requested by mentee, particularly processes and forms.
  - Debrief at the end of the conflict resolution processes.

What went well? What went not as well?  
What could have been done differently?

- Complete Preappeal or Mediation Mentor/Mentee Evaluation.

#### New Mediator's (Mentee's) Responsibilities:

7. Observe two conflict resolution processes conducted by mentor.
8. When mentor notifies mentee that mentor has been assigned to preappeal, mediation, resolution meeting, or AEA Resolution Facilitator process, make certain mentee fully understand what process is being used.
9. When mentor holds a conversation to assist mentee prepare for the observation ask clarifying questions so the mentee has an understanding of what the mentor has explained.
  - Review any forms, templates, documents provided to mentee before the observation. (Review Mentor's Responsibilities above). Try to have a familiarity with the terms that may be used during the conflict resolution process.
10. During the observation particularly observe how the mentor goes through the entire process. (Take notes but after the debriefing, these should be destroyed)
11. Complete Preappeal or Mediation Mentor/Mentee Evaluation after observing each preappeal conducted by mentor.
12. Debrief immediately with the mentor or as soon as possible after the conflict resolution process(s) end.
  - Discuss the strengths and weaknesses of the conflict resolution process.
  - Discuss what went well, what could have been done differently.
  - Ask questions to gain a better understanding of what you observed.
13. Plan with mentor for second conflict resolution process.  
Same as #8-11 above except when possible the mentee should be an observer during the conference calls and other contacts made by the DE or mentor.
  - Read carefully the mediator's role in the formal written procedures of the DE involving the conference call if the process involves mediation or a preappeal.  
Be aware of conference call time and have dial in information.  
Know responsibilities and objectives for call.
14. Attend Introduction to Mediation and Other Dispute Resolution Options.  
Check with Dee Ann for any scheduled events.
15. After mentee has received the Introduction to Mediation training, mentee will contact the mentor and request the mentor observe two conflict resolution events.
  - Discuss what the opening statement could look like (if not included in packet).
  - Ask assistance from mentor if needed, particularly with processes and forms.
  - Hold debriefing with the mentor at the end of the conflict resolution process.  
What went well? What went not so well?  
What could have been done differently?

#### Quarterly ALF/Mediator In-services:

All (experienced and new) mediators are expected to attend as many ALJ/Mediation quarterly in-services as possible.



Charts/Documents Showing Differences Between Processes:

There are numerous charts/documents available. These will be made available, e.g., differences between preappeal, AEA Resolution Facilitator process, resolution meeting, and mediation.

Forms needed by Mediators:

- AEA Resolution Facilitator Guide – this contains the paperwork needed for both the AEA Resolution Facilitator process AND the Resolution Meeting process. (The latter is to be used when a parent has requested a due process hearing.)
- Payment forms.
- Mediator Guide for Preappeal Conferences and Mediations. Include all forms used during preappeals and mediations.

### PREAPPEAL OR MEDIATION MENTOR/MENTEE EVALUATION

Date \_\_\_\_\_ Case # \_\_\_\_\_ (PRE- \_\_\_ or SE- \_\_\_)

Circle one to indicate the person completing the form: Mentee                  Mentor                  Other

Circle one to indicate the process:                  Preappeal                  Mediation

Please take a few a minutes to respond to the following questions.

#### Preparing for the preappeal or mediation process

1. What do you think the parties expected to achieve from participating in the preappeal or mediation?

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2. What concerns, if any, do you think that the parties had about participating in the preappeal or mediation process?

---

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3. In preparing for preappeal or mediation, how helpful were the following:

When Things Go Wrong (brochure) \_\_\_ Helpful \_\_\_ Not helpful \_\_\_ Not received \_\_\_ Not needed

Preparing for Preappeal or Mediation (brochure) \_\_\_ Helpful \_\_\_ Not helpful \_\_\_ Not received

\_\_\_ Not needed

Conversations with the mediator \_\_\_ Helpful \_\_\_ Not helpful \_\_\_ Not received \_\_\_ Not needed

4. Comments on anything from #3:

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**During the Preappeal or mediation:**

	Strongly Agree	Agree	Disagree	Strongly Disagree
5. The preappeal or mediation process was explained adequately by the mediator.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. The parties were given the opportunity to discuss and explain the issues important them.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The views of all parties were considered before any solutions or agreements were made.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. The parties were treated fairly by the mediator involved in the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Outcome of the Preappeal or Mediation**

9. I think that the parties were satisfied with the outcome of the preappeal or mediation.

\_\_\_\_\_ Agree      \_\_\_\_\_ Undecided      \_\_\_\_\_ Disagree

10. On how many issues did the parties reach an agreement      \_\_\_\_\_ All      \_\_\_\_\_ Some      None

11. If none or only some of the issues were resolved, is there anything else that could have been done to help reach an agreement on additional issues?

12. Regardless of whether or not an agreement was reached:

Do you think the parties gained a better understanding of the issues?

\_\_\_ Yes      \_\_\_ No      Comments

Do you think the parties gained a better understanding of their interests?

\_\_\_ Yes      \_\_\_ No      Comments:

Do you think the parties gained a better understanding of others' interests?

\_\_\_ Yes \_\_\_ No      Comments:

Did you feel that communication between participants improved?

\_\_\_ Yes      \_\_\_ No      Comments:

13. What is your overall evaluation of the preappeal or mediation process?

\_\_\_\_\_ Excellent      \_\_\_\_\_ Good      \_\_\_\_\_ Average      \_\_\_\_\_ Poor

14. Comments about your preappeal or mediation experience

## Selected Issues Related to Preappeals Discussed at Mediator Inservices

- *Issue: Do schools need attorneys at preappeals?*  
Some superintendents are asking, "Are we required to have an attorney?" No. However, there are some district/AEA attorneys who will say that if the parent has an attorney they will be in attendance. When superintendents feel threatened by the process, suggest they contact AEA Sp. Ed. director for names of other superintendents who have been through the process successfully.
- *Issue: Attorney fees*  
Parent attorneys sometimes request attorney fees as part of agreement. Sometimes the district must go back to board for attorney fee approval. Can the attorney fee decisions be included in the agreement? Yes (either the set fee or timeline for follow-up).
- *Issue: Discussing firing personnel at preappeal.*  
When parents state that they want somebody fired, mediators should note the concern but indicate that this is not the forum to discuss that issue. You may want to advise them that the Board of Educational Examiners is the appropriate resource to pursue if they believe a person's license should be revoked.
- *Rotational System for Mediators*  
The list of people who are only designated as mediators are to be asked first to serve as mediators, on a rotational basis. If none is available, the ALJs will be asked, using a rotational system. In using a rotation system, if a mediator on the list can't, for some reason, handle a case, does that mediator stay at the head of the line for the next case, or go to the back of the line? Go to the back of the line.
- *Role of Mandatory Reporter While Serving as Mediator or Resolution Facilitator*  
During introductory statements the mediator or Resolution Facilitator will say something to the effect that the discussions that occur during the mediation/preappeal/Resolution Facilitator process must be confidential, except as may be required under law (but don't go into the law). It is believed that if the exceptions were listed, it would put a chill on the mediation process.

The exceptions are in section 679C.106.

Are social workers or teachers who officially act as a Resolution Facilitators mandatory reporters? If they are not acting in the scope of an employee, no. Although if they act as mediator to another AEA, Carol Greta suggested err on the side of reporting it. What if the person ethically feels he/she must report it, even if he/she doesn't have to? Carol's response: I'd err on the side of reporting it. It should be noted that there would be several other mandatory reporters at the conference so one of them could report it.

- *Reconvening preappeal conference after first session*  
If there is a decision to reconvene, using the same mediator, contact the secretary responsible for arranging preappeals. The DE wants to know what is happening.

# Iowa Department of Education Model Standards of Conduct for Mediators On the State Roster of Special Education Mediators

## *Introduction*

These model standards of conduct for special education mediators are adapted from standards developed and adopted by the Iowa Association for Dispute Resolution (IADR) in 2003.

They are intended to serve as a general framework for the practice of special education mediation in Iowa. They are also intended to help mediators assess and improve the practice of mediation. The model standards apply to the facilitation of preappeal conferences and mediations that are conducted after a due process hearing has been requested.

The Model Standards are aspirational in character. They describe good practices for mediators. They are not intended to create legal rules or standards of liability. The Model Standards also recognize the need for flexibility in style and are not intended to unduly restrict the practice of special education mediation. This document should be viewed as a living document. Mediators on the state roster have adopted the standards in their current form. Proposed amendments may be made to the Iowa Special Education Administrative Law Judge/Mediator group, which will periodically consider suggested improvements.

## *Preamble*

These are the model standards of conduct for mediators who are on the Iowa Department of Education special education mediation roster. The standards listed here are intended to perform four major functions:

- To serve as a guide for the conduct of Iowa special education mediators;
- To inform the mediating parties as to what they can expect from mediators;
- To promote public confidence in mediation as a process for resolving special education disputes; and,
- To assist the Iowa Department of Education in adding mediators to the roster if and when the need arises.

These standards draw on the IADR code of conduct for generalist mediators as well as other such codes in the United States and Canada and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, programs, organizations, and institutions involved in mediation.

Mediation is a process in which an impartial third person—a mediator— facilitates a conversation among parties to assist them in making mutually agreeable decisions regarding the dispute that brings them to mediation. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and encourages creative problem solving to make it possible for the parties to make their own decisions. These standards give meaning to this definition of mediation.

## **Standards of Ethics and Professional Responsibility**

### **I. Appropriateness: A Mediator Shall Help the Participants Evaluate the Risks and the Benefits of Mediation as Compared to Other Forums for Dispute Resolution in Special Education.**

- A. The mediator shall help the parties evaluate the risks and benefits of mediation and the alternatives available to them before, and, when appropriate, during mediation.
- B. The mediator shall explore with the parties whether they are capable of making freely chosen and informed decisions within the mediation. The mediator has a duty to withdraw from the mediation whenever he or she perceives that continuation of the process would harm one or more of the participants.

### **Comments:**

- A mediator may conduct a preliminary meeting with the parties, either in person or by phone, during which the mediator defines mediation, describes the process to be employed, describes his or her style and approach to mediation, and answers the parties' questions about the process.
- The parties and the mediator may also discuss the benefits and alternatives to mediation and decide whether to continue with mediation.

### **II. Self-Determination: A Mediator Shall Recognize that Mediation Is Based on the Principle of Self-Determination by the Parties.**

- A. Self-determination is a fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary agreement. Any party may withdraw from mediation at any time.
- B. The mediator shall make reasonable efforts to prevent manipulation and intimidation by any party.

## Comments:

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a conversation about a dispute leading to voluntary decision making by the parties. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement. It is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

### **III. Impartiality: A Mediator Shall Conduct the Mediation in a Fair Manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and not take sides. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

## Comments:

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the performance of the mediator.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation. It is understood that all mediators have personal biases, and it is important for the mediator to work toward becoming aware of his or her own biases and not permitting any personal bias to influence his or her conduct of the mediation.
- A mediator will give due consideration to all parties and may employ different techniques to assist the parties based on their diverse needs.

### **IV. Conflicts of Interest: A Mediator Shall Disclose All Actual and Potential Conflicts of Interest Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct That Occurs During and After the Mediation.**

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has

a responsibility to disclose all actual and potential conflicts that are known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. Even though the parties might agree to continue, the mediator shall decline to proceed if the conflict of interest casts serious doubt on the integrity of the process.

A mediator must also avoid the appearance of conflict of interest both during and after the mediation. A mediator shall not subsequently establish a professional relationship with one of the parties in a matter related to the mediation, which would raise legitimate questions about the integrity of the mediation process.

### **Comments:**

- Potential conflicts of interest may arise between administrators of mediation programs and mediators, and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should not influence the mediator to coerce parties to settle.

### **V. Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Adequately Address the Needs of the Parties.**

Training and experience in mediation are necessary for effective mediation. A person who offers her or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the process skills to mediate effectively.

### **Comments:**

- Mediators should have information available for the parties regarding their relevant training, education and experience.

### **VI. Confidentiality: A Mediator Shall Inform the Parties as to the Nature of Confidentiality in Special Education Mediation and Shall Meet the Reasonable Expectations of the Parties with Regard to Confidentiality.**

The mediator shall maintain confidentiality and shall explain what confidentiality involves for the parties as detailed in the Iowa Administrative Rules for Special Education and the Individuals with Disabilities Education Act (IDEA).



## **Comments:**

- The IDEA establishes a particular set of expectations with respect to confidentiality. Since the parties' expectations regarding confidentiality are also important, the mediator should discuss these expectations with the parties.
- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations and interviews with participants.

## **VII. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.**

A mediator shall promote a quality process and encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligent and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate mediation.

## **Comments:**

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should accept cases only when they can satisfy the reasonable expectations of the parties concerning the timing of the process.
- The presence or absence of persons at mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be included in or excluded from particular sessions or from the entire mediation process.

- The primary purpose of a mediator is to facilitate the parties' voluntary decision making. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is improper, and mediators must therefore refrain from providing professional advice. Where appropriate, a mediator may remind parties that they may want to consider resolving their dispute through other processes. In particular, when preappeal conferences do not result in an agreement among the parties, the mediator shall remind the party filing the request for the preappeal of his or her right to request a due process hearing.
- A mediator shall withdraw from mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

**VIII. Obligations to the Mediation Process: Mediators Have a Duty to Improve the Practice of Mediation and to Enhance Their Own Skills.**

Special education mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible (user friendly) to those who would like to use it; to correct abuses within the profession; and, to improve their professional skills and abilities.

**Comments:**

**Mediators should:**

- Maintain high standards of professional competence;
- Pursue continuing education, experience and professional consultation, both with respect to mediation and the law and regulations of special education, in order to strengthen skills and effectiveness in serving parties and to advance the understanding and practice of mediation in special education;
- Be amenable to review of their practice;
- Seek and offer mentoring and peer consultation to fellow special education mediators, and

- Work together with other interested professional groups to develop and improve mediation in special education.

#### **IX. Obligations to Other Mediators.**

Mediators shall refrain from any conduct, which could be interpreted as disagreeing with or criticizing fellow mediators during the mediation process.

## MEDIATOR CONTACT INFORMATION

Larry Bartlett, J.D., Ph.D.  
 2688 Hidden Valley Tr. NE  
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