



**DEPARTMENT OF DEFENSE
EDUCATION ACTIVITY
4040 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203-1635**

AUG 28 2001

Education Division

DoDEA Regulation 2500.10

**DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
Special Education Dispute Management System**

- References:
- (a) DS Regulation 2500.10, "Special Education Dispute Management System," November 1, 2000 (hereby reissued).
 - (b) DoD Instruction 1342.12, "Provision of Early Intervention and Special Education Services to Eligible DoD Dependents in Overseas Areas," March 12, 1996.
 - (c) Title 32, Code of Federal Regulations, Part 80, "Provision of Early Intervention Services to Eligible Infants and Toddlers with Disabilities and Their Families, and Special Education and Related Services to Children with Disabilities Within the Section 6 School Arrangements," July 25, 1994.
 - (d) DoD Regulation 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," July 8, 1982.

1. REISSUANCE AND PURPOSE

This Regulation supersedes and updates the dispute management system regulation dated November 2000. It provides guidance for implementing DoD Instruction 1342.12, (Reference (b)), and 32 CFR 80, (Reference (c)), and establishes policies and procedures governing the management of potential and actual disputes arising under these Instructions, including the agency's offer to mediate special education disputes. This Regulation promulgates the agency's common principles underlying its mediation program.

2. APPLICABILITY AND SCOPE

The provisions of this Regulation apply to the parent/sponsor/guardians of minor students, and to students who have attained majority (hereinafter collectively referred to as "parent(s)"), who are enrolled under the authority of DoD Directive 1342.13, (Reference (d)) in a Department of Defense Education Activity (DoDEA) school (hereinafter, "school"). A DoDEA school includes the DoD Domestic Dependent Elementary and Secondary Schools (DDESS), the DoD Dependents Schools (DoDDS), and private or host nation public schools in which DoD

dependents are enrolled at DoDEA expense or direction. This Regulation does not create any rights or remedies and may not be relied upon by any party to allege a denial of the procedural or substantive guarantees of P.L. 105-17, The Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Reference (b), Reference (c) or any other authority. To the extent that this Regulation conflicts with References (b) or (c), the Instructions shall govern.

3. POLICY

Whenever a parent and a school have a dispute regarding the child's access to and receipt of the free appropriate education to which a student with a disability is entitled under Reference (b) or Reference (c), it is DoDEA policy to use the dispute management system prescribed by this Regulation to promote the resolution of that dispute.

4. RESPONSIBILITIES

4.1. Director, DoDEA has oversight responsibility for this Regulation.

4.2. Associate Director of Education shall:

4.2.1. Exercise principal responsibility for the maintenance of this Regulation.

4.2.2. Formulate policy and publish enclosures to this Regulation, and such other guidance, manuals, or pamphlets as necessary to ensure uniform implementation of the policies and procedures prescribed by this Regulation.

4.2.3. Coordinate with the Deputy Director, DoDEA for DoDDS Europe; Deputy Director, DoDEA for DoDDS Pacific; and Deputy Director, DoDEA for Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS) on implementing guidance they deem necessary to implement the policy and procedures of this Regulation in their respective areas of cognizance.

4.3. Deputy Directors DoDEA shall:

4.3.1. Implement the policies and procedures of this Regulation within their areas of cognizance.

4.3.2. Coordinate with the Associate Director for Education on such area-wide implementing guidance deemed necessary to ensure uniform implementation of the policy and procedures of this Regulation.

4.3.3. Budget for the expense of mediation, to include, as appropriate, mediator fees, transportation, meals, and lodging.

4.4. Principals shall manage the disputes that arise within their respective schools to comply with the policies and procedures of this Regulation and any implementing guidance.

5. PROCEDURES

The dispute management system offers each of the following processes, generally in the order shown:

5.1. Conference. This is the quickest process to convene and the most informal. One or more conferences may identify and resolve the actual or potential special education dispute.

5.1.1. Responsible Official. Local school administrator (Principal or designee).

5.1.2. Participants.

5.1.2.1. School administrator.

5.1.2.2. Sponsor, and student's teacher(s) or service provider, and secondary student, as appropriate.

5.1.3. Procedure.

5.1.3.1. The conference should clearly define the areas of disagreement over special education or related services and consist of an informal discussion centering upon possible solutions.

5.1.3.2. Issues in, and results of, the conference shall be documented by minutes/memorandum for file (Enclosure 2) and filed in the child's special education file.

5.1.3.3. At the conclusion of each conference, the school shall obtain a parent's signature on the minutes/memoranda for file (Enclosure 2) acknowledging that the school informed the parent of his or her due process rights, including administrative appeal rights under References (b) or (c).

5.1.4. Results.

5.1.4.1. Agreement. The school will prepare a memorandum for the record/minutes outlining the disagreement(s) and the agreed upon solution(s) (Enclosure 2). If the conference occurs during a Case Study Committee (CSC) meeting, the minutes of the CSC meeting will suffice to document the disagreement(s) and solution(s).

5.1.4.2. Disagreement. If the conference fails to produce a mutually agreeable solution, either the parent or the school personnel may:

5.1.4.2.1. Request Mediation. The parent may request the appointment of a mediator (Enclosure 3) by following the procedures described in paragraph 5. 2 below.

5.1.4.2.2. Request Formal Hearing. The parent/guardian must complete and sign the Waiver of Mediation form (Enclosure 4) and deliver it to the school administrator and to the Department of Defense Office of Hearings and Appeals, if the parent is requesting a hearing under References (b) or (c).

5.1.5. Distribution of Documents.

5.1.5.1. Conference - Memorandum for the Record.

5.1.5.1.1. Maintain original in student's special education file.

5.1.5.1.2. Copy to sponsor.

5.1.5.1.3. Copy to District Special Education Coordinator.

5.1.5.2. Request for Mediation or Waiver of Mediation Process.

5.1.5.2.1. Copy to the DoDDS Area Special Education Coordinator, or in the DDESS, to the District Superintendent.

5.1.5.2.2. Maintain original in student's special education file.

5.1.5.2.3. Copy to sponsor.

5.1.5.2.4. Copy to District Special Education Coordinator.

5.1.5.2.5. Copy to DoDEA Special Education Coordinator.

5.2. Mediation. This is a confidential, voluntary, informal dispute resolution process in which the disagreeing parties (school and parent) engage in a discussion of issues related to the child's free appropriate public education, in the presence of, or through, a qualified mediator appointed by the school at no expense to the parent.

5.2.1. Participants.

5.2.1.1. Mediator. **An** Educational Mediator identified and appointed by the DoDDS Area Special Education Coordinator, or in the DDESS by the District Superintendent.

5.2.1.2. School Representative (school administrator or designee with authority *to* resolve the dispute.)

5.2.1.3. Parent.

5.2.1.4. Related service provider representative, if required, and

5.2.1.5. Secondary student, as appropriate.

5.2.2. Procedure.

5.2.2.1. Either the parent or the school may request mediation to resolve a disagreement concerning a child's individualized education program, including the delivery of medically related services. A request for mediation (Enclosure 3) shall be in writing, describe the unresolved disputes, bear the signature of the requesting party and his or her relation to the child, and be delivered to the child's special education teacher, coordinator or school principal,

5.2.2.2. A parent of a student with a disability whose education is at issue must request or decline mediation before requesting a hearing under References (b) or (c) and paragraph 5.2.5, below. A parent who refuses to mediate must decline mediation in writing. No negative influence will be drawn in any subsequent due process procedures based on the sponsor's refusal to mediate or to an unsuccessful attempt at mediation.

5.2.2.3. Immediately upon receipt of a complete request for mediation, the school official receiving the request must deliver the request to the cognizant DoDDS Area Special Education Coordinator or the DDESS District Superintendent.

5.2.2.4. The DoDDS Area Special Education Coordinator or the DDESS District Superintendent must:

5.2.2.4.1. Formally acknowledge the request for mediation by contacting the sponsor and school official immediately after receiving the request for mediation. Acknowledgment will occur by telephone followed by a letter to each party.

5.2.2.4.2. Contact the parent and cognizant school official(s).

5.2.2.4.2.1. To inform the parent of his due process rights, including his administrative appeal rights and to provide him with a copy of a DoDEA publication describing those rights.

5.2.2.4.2.2. Inform the parent and school that a mediator will be appointed as soon as a mediator can be identified and scheduled, and that the mediator will notify the parties of the date and location of the scheduled mediation.

5.2.2.4.2.3. If the request/offer for mediation is not in writing, document the request/offer in the child's special education file and notify the parties that mediation has been requested.

5.2.2.4.3. Identify and appoint a mediator, promptly, at DoDEA expense.

5.2.2.4.4. Determine whether the party requesting mediation has also filed a request for a hearing with the Department of Defense Office of Hearing and Appeals

(DOHA), the date of that request, and a copy of the petition. Deliver a copy of the petition to both parties to the mediation.

5.2.2.4.5. The Agency is not obligated to mediate a dispute after the parent(s) have requested a hearing and a hearing officer has been appointed unless the parent(s) and the Agency mutually agree to delay the hearing and the hearing officer orders a delay in the hearing (Enclosure 7).

5.2.2.4.6. Designate a point of contact during times when he or she is not available.

5.2.3. Results. The Mediator will document the results of the mediation by completing a Mediation Agreement Report (Enclosure 6).

5.2.3.1. Agreement: If the disputes are resolved, summarize each issue, the nature and terms of each agreement, describe the resolution(s) of the issue(s), and obtain the signatures of all participants.

5.2.3.2. Disagreement: Same as (1) above, but addresses all issues discussed at the meeting and describes areas of agreement and disagreement.

5.2.3.3. A parent who refuses to sign the mediation agreement shall be deemed not to agree with the terms of the agreement.

5.2.3.4. The mediator will provide a copy of the mediation report to both the parent and the school and shall obtain written acknowledgment from the parent that he/she has received the report.

5.2.3.5. In addition, the school must inform the parent of his or her due process rights under Reference (b) or Reference (c), and of the next phase in the dispute management system and of administrative appeal rights.

5.2.4. Distribution of Documents.

5.2.4.1. Original to the DoDDS Area Special Education Coordinator or the DDESS District Official.

5.2.4.2. Copy to each participant.

5.2.4.3. Copy to the DoDEA Special Education Coordinator

5.2.4.4. Copy to the District Superintendent and Special Education Coordinator.

5.2.4.5. Maintain a copy in the child's special education file.

5.2.5. Due Process Hearing.

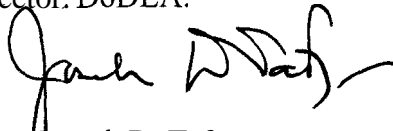
5.2.5.1. This is the most formal process by which to resolve a dispute between the school and parent. A parent after requesting, attempting or declining mediation, may petition the Director, DOHA, to appoint a hearing officer to decide the dispute and to issue orders to parents, children, and the school concerning their respective duties.

5.2.5.2. Cognizant school authorities may petition for due process pursuant to guidance issued by the Associate Director for Education.

5.2.5.3. For this portion of the Dispute Management System, refer to Reference (b) for DoDDS, and Reference (c) for DDESS. See model form for requesting Due Process Hearing (Enclosure 5).

6. EFFECTIVE DATE

This Regulation is effective immediately. Local supplementation is prohibited, except by express written permission of the Director. DoDEA.



Joseph D. Tafoya
Director

Enclosures: 10

1. Special Education Dispute Management System
2. Dispute Management Level Conference
Memorandum for File
3. Request for Mediation
4. Waiver of Mediation Process
5. Request for Due Process Hearing
6. Mediation Agreement
7. Request for Postponement of Due Process
Hearing
8. Agreement to Mediate
9. Confidentiality Pledge
10. Rules of Mediation

DISTRIBUTION: X

SPECIAL EDUCATION DISPUTE MANAGEMENT SYSTEM

LEVEL	POC	MEMBERSHIP	PROCEDURE	DOCUMENTATION
Conference	School Administrator	School Administrator Parent/Guardian & Teacher(s) Service Provider, as appropriate	Informal discussion that clearly defines area of concern and centers on possible solutions	Agreement: Memo for the Record Non-Agreement: 1. Request for Mediation 2. Waiver of Mediation
Mediation	Area Special Education Coordinator	Educational Mediator Parent/Guardian School Official	Discussion to resolve differences that should conclude in a written statement	Agreement: Mediation Agreement Report Non-Agreement: Mediation Report
Due Process Hearing	Director of the Defense Office of Hearing and Appeals (DOHA) DSO and DoDEA SPED Coordinators & DoDEA General Counsel	Hearing Officer School Personnel Parent/Guardian Legal Counsel Recorder Witnesses	Establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case	Verbatim Written or Electronic Transcript Hearing Officer's Conclusion(s)

- Upon request, technical assistance provided by DoDEA Special Education Branch.

DISPUTE MANAGEMENT LEVEL CONFERENCE
MEMORANDUM FOR FILE

Memorandum for the Record:

School _____

Date of conference _____

Administrator _____

Parents/Guardian _____

Student _____

Issue(s) under discussion:

Solution(s) agreed upon:

I have been provided a copy of the DoD special education instruction (DoDI 1342.12 or 32 CFR Part 80) and informed of my appeal rights.

Parent/Guardian _____

Administrator _____

Enclosure 2

REQUEST FOR MEDIATION

To: _____

School _____

Date of Application _____

Applicant _____

Phone Number _____

Address _____

Student Name _____

Birthdate _____

Student Enrollment Status: Space Required Space Available

If an Educational Agency is the applicant, designate contact person and phone number

Name _____

Phone Number _____

Has a due process hearing been requested? yes no

If yes, date submitted to DOHA _____

Has a hearing been scheduled? yes no

If yes, date scheduled _____

Reason why mediation is being requested: Explanation of issue(s). (Attached additional pages as needed.)

The undersigned voluntarily agrees to mediate this dispute and certifies that the administrator has explained due process rights under DoDI **1342.12** or **32** CFR Part **80** and has provided a copy of this document to the parent/guardian.

The parent/guardian understands that the parent signature on this form constitutes parental consent for the school to release the student's school records to the mediator.

Parent/Guardian _____

Administrator _____

*Must be signed by both parties

WAIVER OF MEDIATION PROCESS

To: _____

School _____

Date of Application _____

Applicant _____

Phone Number _____

Address _____

Student Name _____

Birthdate _____

Student Enrollment Status: Space Required Space Available

Issue(s) under discussion:

I am aware of the agency's standing offer to mediate set forth in DoDEA Regulation 2500.10, Special Education Dispute Management System. I have been provided a copy of and I understand, my due process rights under DoDI 1342.12 or 32 CFR Part 80. I do not wish to take part in a mediation process and waive my right to mediation. I understand that I may submit a written request for a due process hearing, in the form of a petition setting forth the facts, issues and proposed relief, to the Director of the Defense Office of Hearing and Appeals (DOHA), and enclose a copy of this waiver.

Parent/Guardian _____ Administrator _____
.....

REQUEST FOR DUE PROCESS HEARING

Memorandum to: Director of the Defense Office of Hearing and Appeals
Post Office Box 3656
Arlington, Virginia 22202

cc to: _____

School _____

Date of Application _____

Applicant _____

Phone Number _____

Address _____

Student Name _____

Birthdate _____

Student Enrollment Status: Space Required Space Available

I understand my right to mediation and I
have requested and completed (whether or not satisfactorily) mediation yes no **or**
have declined the school's offer or waived my right to mediation in writing yes no
(Attach copy of written waiver/declination).

Description of the Issue(s): (Use extra page(s) as necessary)

Proposed Solution: (Use extra page(s) as necessary)

To the best of my knowledge, the information provided in this document is correct.

Parent/Guardian _____

Date _____

MEDIATION AGREEMENT

In the Matter of Mediation between _____

Complainant _____

Respondent _____

Date of Mediation _____

Case Number _____

AGREEMENT:

Beginning on (date) _____

Ending on (date) _____

Mediator _____

Date _____

Parent/Guardian _____

Date _____

School Official _____

Date _____

**MUTUAL REQUEST FOR POSTPONEMENT OF
DUE PROCESS HEARING**

MEMORANDUM FOR _____
Name of DOHA Hearing Officer

The parties below request the postponement of the due process hearing requested, on behalf of (name) _____, currently scheduled to convene on (date) _____

This request is for a postponement effective from (date) _____ and continuing for a period of ___ calendar days, or for such period as the Hearing Officer will approve in order to afford the parties time to: (describe reasons for delay).

The parties are mutually agreed that this request is to extend all timelines specified in DoD regulation governing hearing procedures by the number of calendar days requested by this mutual request for postponement. Parties will begin to count calendar days, for example for purposes of filing pleadings, discovery, etc. on the day after the end of this postponement.

Family member: _____

School Representative: _____

Date: _____

Approval of Hearing Officer: _____

Date: _____

AGREEMENT TO MEDIATE

We, the undersigned, have been fully informed of the mediation process and agree to abide by the rules of mediation described in DoDEA Regulation 2500.10, Enclosure 9 or as described by the mediator. We understand the following:

1. The mediator is a specially-trained impartial third party whose role is to assist us in making mutually determined decisions regarding the appropriate special education program and services for _____ (name of student);
2. The mediator is not serving as a legal representative, counselor, therapist, or judge;
3. The mediator will not make decisions regarding the special education program or services;
4. The mediator cannot be called upon as a witness or consultant in any other administrative, legal, or educational process;
5. Mediation is confidential, and the only written record will be the agreement that we jointly develop and agree upon in the mediation process, the agreement to mediate, and the confidentiality pledge; and
6. Participation in a mediation session does not waive the parties' rights to proceed with a due process hearing.

Family member(s): _____

Education Agency Representative: _____

Mediator: _____

Date: _____

CONFIDENTIALITY PLEDGE AND AGREEMENT TO THE RULES OF MEDIATION

- We understand that discussions held in mediation are to be civil, conducted with respect and kept confidential and may not be used as evidence in any subsequent due process hearing or civil action.
- We agree not to reveal to anyone, including a judge, administrative hearing officer, or arbitrator the content of any discussions that take place during the mediation process. This includes statements made, settlement proposals made or rejected, evaluations regarding the parties, or whether they are acting in good faith, and the reasons a resolution was or was not achieved. This does not prohibit the parties from discussing information, on a need to know basis, with appropriate staff, professional advisors, and witnesses. Nor does it limit the use in a hearing or court of information that can be established by documents presented during the mediation, or by witnesses with knowledge of facts pertinent to the child's IEP so long as they do not testify about what occurred during the mediation.
- We agree that we will not at any time, before, during, or after mediation, call the mediator or anyone associated with the mediator as a witness in any judicial, administrative, or arbitration proceeding to testify about what occurred during the mediation.
- We agree not to subpoena or demand from the mediator the production of any of his or her records, notes, or work product for use in any judicial, administrative, or arbitration proceeding concerning this dispute.
- If at a later day, either party decides to subpoena the mediator and/or the mediator's records concerning a mediation involving either party, the mediator will move to squash the subpoena. The party making the demand agrees to reimburse the mediator for all expenses incurred, including attorney fees, plus the mediator's then-current hourly rate for all time taken by the matter.
- The agreement to mediate, this confidentiality pledge and any written agreement made and signed by the parties as a result of mediation will be retained as part of the student's school records and may be admissible in any third party proceeding (due process hearing).
- Information that would otherwise be subject to discovery shall not become exempt from discovery by virtue of it being disclosed during mediation.
- We agree to be bound by the Rules of Mediation and procedures described in DoDEA Regulation 2500.10

Family members: _____

Educational Agency Representative: _____

Mediator: _____

Date: _____

RULES OF MEDIATION

THE PARTIES TO ANY MEDIATION AGREE AS FOLLOWS

- The mediator is an impartial third party facilitator who promotes full, open, candid, and clear communication between the parties. The mediator may meet (caucus) with each party separately, or meet with the parties simultaneously, as necessary, to effectively mediate. In a caucus, the mediator can determine what each party wants, what alternatives each party is willing to consider, and what information may be shared with the other party. **A** mediator may identify points of agreement and disagreement, help the parties reach agreement and prepare a written agreement.
- The mediator may not direct any party to take any action. The mediator is not a judge and does not decide who wins or loses and does not make rulings of law or fact.
- Mediation participants must include person(s) who have the authority to act on behalf of the student and local school district.
- Mediation requires the full participation of both parties and can only begin or continue when parties are willing to listen to one another. The mediation will be conducted with respect for each other and with civility. Mediation tends to be successful when the parties approach the mediation with the commitment to find common ground and agreement.
- Either party may consult with counsel, if either wishes to do so, before signing any agreement.
- The mediator and any party may terminate the mediation at any point that, in the opinion of the mediator or either party to the mediation, no resolution of the disagreement(s) is likely.
- The number of participants for each party shall generally be limited to two or three persons.
- The mediator convenes all meetings in a timely manner at the request of either party, maintains order during the mediation, and preserves the rights and responsibilities of all parties to the mediation.
- The mediation addresses only current disputes.
- Both parties will show good faith and commitment to implementing the final agreement.