

STATE OF COLORADO
Colorado Department of Education
Memorandum of Understanding with
Colorado Department of Personnel and Administration, Office of
Administrative Courts

1. PARTIES

This Memorandum of Understanding (MOU) is entered into by Colorado Department of Education, located at 201 East Colfax, Denver, Colorado 80203, and the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), 1525 Sherman Street, 4th Floor, Denver, CO 80203, hereinafter referred to jointly as the Parties.

2. EFFECTIVE DATE

This MoU shall not be effective or enforceable until it is approved and signed both parties (hereinafter called the Effective Date), but shall be effective and enforceable thereafter in accordance with its provisions.

3. RECITALS

A. Authority

The authority for this MOU is in the United States Code at 20 U.S.C. §§ 1412(a)(6) and 1415, and codified in Colorado's Exceptional Children's Educational Act at Colorado Revised Statutes, Section 22-20-101 *et seq.* These laws require a State receiving federal funds under the Individuals with Disabilities Education Act ("Act") to maintain procedures to resolve disputes arising under the Act.

B. Purpose

The purpose of this MOU is to maintain mediation and administrative hearing processes to resolve disputes arising under the Act and the ECEA, as required by federal and Colorado law.

C. References

All references in this MOU to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. TERM

The Parties respective performance under this MOU shall commence on the effective date. This Agreement shall terminate on June 30, 2019. Either party may terminate this

MOU by giving the other Party 90 days prior written notice setting forth the date of termination.

5. STATEMENT OF WORK

A. Mediation Services

OAC shall provide mediation services for special education disputes involving any matter under Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.*, and its implementing regulations at 34 C.F.R. Part 300, consistent with 34 C.F.R. §300.506, and in accordance with the following:

1. OAC's procedures shall ensure:
 - a. The mediation process is voluntary on the part of the parties.
 - b. The mediation process is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under the IDEA.
 - c. Mediations are conducted by qualified and impartial mediators who are trained in effective mediation techniques and who are knowledgeable in state and federal laws and regulations relating to the provision of special education and related services.
2. Mediators
 - a. Annually, or in the event of an addition or removal, the OAC will update CDE with a current list of Mediators conducting IDEA Mediations, including their mediation qualifications and training background, and their specific training in legal issues under the IDEA/ECEA.
 - b. CDE reserves the right to have any mediator, including contract mediators, removed from the list of individuals authorized to conduct mediations.
 - c. OAC shall assign mediators on a random, rotational, or other impartial basis.
3. Timelines
 - a. OAC shall ensure that all mediations are conducted within thirty (30) calendar days of the date OAC received the mediation request from the CDE, unless:
 1. A shorter period of time is required due to circumstances involving an active state-level complaint or expedited due process hearing involving student discipline matters under 34 C.F.R. §300.530 through §300.534; or

2. A longer period of time is necessary due to exceptional circumstances, (e.g., scheduling difficulties, additional sessions are necessary, illness) in which case the OAC shall notify the CDE Mediation Coordinator of the extension and new deadline.

b. If, in conjunction with an active due process complaint, expedited due process complaint, or state complaint, the parent and LEA agree to and request mediation, CDE shall promptly notify OAC in order to have a mediator assigned.

4. Location

OAC shall conduct mediations at a location that is convenient to the parties to the dispute. Alternatively, parties may agree to mediate through telephone or web conferencing.

5. Agreement to Mediate

The Agreement to Mediate, provided by OAC and signed by the parties, shall establish the parameters and expectations of the mediation, including: i) maintaining confidentiality; ii) the requirement that each party shall have present at the mediation a person with authority to bind that party; iii) the requirement that any agreements must be in writing and signed by the parties; and iv) the advisement that parties who execute agreements outside of the mediation process may be limited in their ability to enforce such agreements in federal court under the IDEA (i.e., under a district court's "federal question" jurisdiction). If, in conjunction with an active state complaint, the parties request mediation, CDE shall immediately notify the assigned mediator of the complaint allegations to be mediated and any additional mediation terms agreed to by the parties.

6. Settlement Agreement

OAC shall ensure that cases fully or partially resolved through mediation result in a written settlement agreement that:

- a. Sets forth the agreements of the parties;
- b. States that all discussions during the mediation process remain confidential and may not be used as evidence in any subsequent due process or civil proceeding;
- c. States that agreements signed by both parties in mediation are enforceable in a state court of competent jurisdiction or federal district court; and
- d. Is signed by both the parent and a representative of the agency who has the authority to bind such agency (i.e., the Special Education Director).

7. Referral and Reporting Procedures

- a. CDE and OAC shall designate staff who shall jointly develop mediation referral procedures.
- b. For each mediation, OAC shall submit a CDE Mediation Tracking Report to CDE by facsimile within two (2) business days of the conclusion of mediation. This information must be provided to CDE for the purposes of tracking and reporting responsibilities to the U.S. Department of Education, Office of Special Education Programs.
- c. OAC shall submit to CDE on a monthly basis case accountings of services provided which includes time spent on mediation preparation and mediation sessions.

8. Mediation Closeout

At the conclusion of each mediation, the assigned mediator shall:

1. Return to each party all documentation provided by the parties;
2. Destroy mediator notes as well as all recordings and electronic records regarding the mediation (the record should maintain only the Agreement to Mediate, the CDE Mediation Tracking Report, and any invoices associated with the mediation);
3. In an active complaint, immediately notify the assigned Administrative Law Judge (ALJ) or state complaints officer (SCO) of the mediation outcome and all unresolved complaint allegations to ensure compliance with complaint timelines;
4. Distribute to each party the CDE Mediation Evaluation Form or similar evaluation.

B. Due Process Hearing and Expedited Due Process Hearing Services.

The OAC shall provide due process hearing and expedited due process hearing services for disputes involving any matter under the IDEA, 20 U.S.C. §1400 *et seq.*, and its implementing regulations at 34 C.F.R. Part 300 and consistent with 34 C.F.R. §300.507 through §300.515, §300.518 and §300.530 through §300.536, and the Exceptional Children's Educational Act (ECEA), 1 CCR 301-8, 2220-R- 6.02(7.5) and 6.02(10), and in accordance with the following:

1. Administrative Law Judges

OAC due process hearings and expedited due process hearings are conducted by qualified and impartial ALJs consistent with the requirements of 34 C.F.R. §300.511(c).

- a. Annually, or in the event of an addition or removal, the OAC will update CDE with a current list of Administrative Law Judges conducting IDEA due process and expedited due process hearings, including their qualifications and training to conduct hearings and their specific training in legal issues under IDEA/ECEA.
 - b. CDE reserves the right to have any ALJ, including any ALJ with whom OAC contracts, removed from the list of ALJs authorized to conduct IDEA due process hearings or expedited due process hearings.
2. Mediation in Conjunction with an Active Due Process or Expedited Due Process Complaint
 - a. If, consistent with the timelines set forth in 34 C.F.R. §300.507 through 300.515 or 300.530 through 300.534, the parties notify the assigned ALJ that they agree to and request mediation, OAC shall immediately notify CDE of the request for processing, tracking and case file preparation.
 - b. Alternatively, if the parties to a hearing agree to and request mediation through CDE, CDE shall ensure that OAC is immediately notified in order to have a mediator assigned and the ALJ notified.
3. Hearing Timelines

OAC shall ensure that all due process hearings are concluded and written decisions issued within the timelines specified in 34 C.F.R. §300.507 through 300.515, unless:

 - a. A shorter period of time is required because the complaint requires an expedited due process hearing involving student discipline matters under 34 C.F.R. §300.530 through §300.534; or
 - b. Consistent with 34 C.F.R. §300.515(c), during the 45 day time period after expiration of the 30 day resolution period, the ALJ grants a specific extension of time at the request of either party.
4. Location of Hearings

OAC shall ensure that all hearings are conducted at a time and place that is reasonably convenient to the parents and child involved. Alternatively, and as agreed to by the parties, the pre-hearing conferences and hearing may be conducted through telephone or web-conferencing.
5. Referral, Hearing Record and Case Accounting
 - a. CDE and OAC shall designate staff who shall jointly develop due process and expedited due process referral procedures.

- b. CDE will arrange for a court reporter to be present for all due process hearings. Additionally, OAC shall ensure that an auditory recording is made of every hearing.
- c. OAC shall provide CDE with a copy of all hearing orders and final decisions concurrent with issuance to the parties (i.e., include CDE in the certificate of service). Information provided by OAC to CDE is for the purpose of tracking and reporting responsibilities to the U.S. Department of Education, Office of Special Education Programs, including publication of final decisions consistent with 34 C.F.R. 300.514(c).
- d. OAC shall submit to CDE on a monthly basis, case accountings of services provided which includes time spent on file review, prehearing conferences, hearing preparation, procedural hearings, procedural decision writing, merit hearings, and decision writing.

6. Hearing Closeout

OAC shall ensure that, at the conclusion of any hearing:

- a. The assigned ALJ distributes a CDE ALJ Evaluation form or similar evaluation to the parties for their completion.
- b. If any party requests an electronic, audio verbatim record of the hearing, OAC shall provide the party with a copy of the audio recording.
- c. If, any party requests a written, verbatim record of the hearing, CDE shall provide the party with a copy of the written transcript, or upon request, an electronic copy of the written transcript.

7. File maintenance

- a. The OAC shall maintain complete and comprehensive files for a period of one year from the date of the decision for each due process hearing, including pleadings, orders, exhibits, and any other documents or records (including electronic recordings) comprising the case file.
- b. In the event that either party to a due process hearing brings a civil action in state or federal court to challenge the findings or decision in a due process case, the OAC shall be considered the custodian of the case file in question and upon request or order of the court, shall certify and produce a copy of the case file to the court.
- c. Upon completion of the one year period, OAC shall deliver to CDE the entire hearing record.

C. Translators and Interpreters

1. CDE will notify OAC if, in conjunction with a mediation or hearing, a parent requires the services of an interpreter or a translator. CDE shall be responsible for providing and paying for these services.
2. The OAC and CDE shall designate staff who will jointly coordinate the date and time of the mediation or hearing to facilitate the attendance of the interpreters and/or the translation of all hearing or mediation documents.

D. Confidentiality

1. Documentation provided to OAC is protected by the confidentiality provisions of the IDEA at 34 C.F.R. §300.610 - §300.625 and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g and its implementing regulations at 34 C.F.R. Part 99.
2. OAC will comply with all OIS policies and procedures which OIS has promulgated pursuant to C.R.S. Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5 and posted at <http://oit.state.co.us/ois>, and ensure compliance with the standards and guidelines published therein. OAC acknowledges that CDE has additional requirements for the protection and security of student personally identifiable information. OAC will work with CDE during the term of this MOU to put in place any additional data privacy, data governance or data security controls are necessary for the protection of student personally identifiable information. An evaluation of the progress of this work will be conducted by CDE within 120 days of the signing of this MOU. Once that work is completed, OAC and CDE will sign a Data Sharing Agreement for the protection of student personally identifiable information.
3. OAC assures CDE that material information is not shared or communicated between the mediator and the ALJ assigned to the due process complaint with the same parties, nor will an ALJ conduct a due process hearing who has previously conducted a mediation with the same parties (as per OAC's standard procedures);

E. Mediator and ALJ Annual Training Requirements

1. The OAC shall require its mediators and ALJs assigned to provide services under this Agreement, including contract mediators and ALJs, to attend a minimum of six hours of annual training provided by CDE at no cost which may include:
 - a. Six hours of training; and/or
 - b. CDE's Annual Special Education Legal Conference.
2. In the event the IDEA is reauthorized during the term of this Agreement, the minimum amount of mandatory annual training hours may be increased to provide training on changes to the IDEA.

F. **Goods and Services**

OAC shall procure Goods and Services necessary to complete the work.

6. **RECORDS**

Each Party shall maintain, and allow inspection and monitoring by the other Party, a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the work or the delivery of services or goods hereunder.

7. **COMPLIANCE WITH LAW**

The Parties shall comply with all federal and state laws.

8. **NOTICE AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

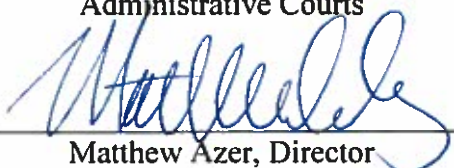
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Division Director and Chief Judge,
Office of Administrative Courts,
Department of Personnel and
Administration
1525 Sherman Street
4th Floor
Denver, CO 80203

This MOU shall become effective upon the date of last signature below, and such date shall be the "effective date" of this MOU.

**DEPARTMENT OF PERSONNEL AND
ADMINISTRATION**

Matthew Azer, Director, Office of
Administrative Courts

By: 
Matthew Azer, Director

Date: 6/28/2016

DEPARTMENT OF EDUCATION
Katy Anthes, Ph.D., Interim Commissioner

By: 
Katy Anthes, Ph.D., Interim Commissioner

Date: 7/7/16