

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-115
HOUSE BILL 1098

AN ACT TO AMEND THE PROCEDURE FOR MEDIATION OF SPECIAL
EDUCATION DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116(b) reads as rewritten:

~~"(b) Mediation. – Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.~~

It is the policy of this State to encourage local educational agencies and parents, guardians, surrogate parents, custodians, and eligible students to seek informal resolution of disputes or disagreements regarding the identification of children with special needs and the provision of special education and related services before filing a request for a formal administrative review of the matter. To that end, the following provisions apply to the mediation of these disputes:

- (1) Purpose. – The purpose of mediation is to clarify the concerns of the parents and to resolve disputes.
- (2) Definitions. – As used in this subsection, the following terms have the following meanings:
 - a. 'Dispute' means a disagreement between the parties that is subject to review under subsection (c) of this section.
 - b. 'Mediation' means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
 - c. 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a dispute.
 - d. 'Parents' means parents, guardians, surrogate parents, custodians, and eligible students.
 - e. 'Parties' means the local educational agency and the parents.

- (3) Nonadversarial. – The mediation shall be informal and nonadversarial as provided in G.S. 150B-22.
- (4) Rules of procedure. – The mediator is encouraged to follow applicable procedures provided in G.S. 7A-38.1, G.S. 7A-38.2, and applicable rules adopted by the Supreme Court under G.S. 7A-38.1. The mediator may establish other procedures to facilitate an informal resolution of the dispute. The mediator shall not render a decision or judgment as to the merits of the dispute.
- (5) Request for mediation. – Before a request for formal administrative review is filed, mediation shall commence upon the request of either party, so long as the other party consents.
- (6) Selection of mediator. – The parties shall agree to the selection of the mediator. The Exceptional Children Division of the Department of Public Instruction shall maintain a list of mediators who are certified or trained in resolving disputes under this subsection.
- (7) Notice of right to mediation. – The local educational agency shall notify parents of their right to request mediation under this subsection.
- (8) Time periods tolled. – Notwithstanding G.S. 150B-23, time periods related to the filing of a formal administrative review or the taking of any other action with respect to the dispute, including any applicable statutes of limitations, are tolled upon the filing of a request for mediation under this subsection until the mediation is completed or the mediator declares an impasse.
- (9) Good cause for continuance. – A good faith effort by both parties to mediate the dispute is presumed to constitute good cause for a continuance so long as the administrative law judge does not find that the time delay for mediation would likely result in irreparable harm to one of the parties or to the child.
- (10) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediation shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.
- (11) Mediator's fees. – If mediation is requested before a request for formal administrative review is filed, the local educational agency shall pay the mediator's fees for one mediation session. If resolution is not reached in that session, the parties must agree to continue the mediation. The local educational agency shall pay any mediator fees for subsequent mediation sessions unless the parties agree otherwise.
- (12) Mediated settlement conference after a request for administrative review. – In addition to mediation as provided by this subsection, the

parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1.

- (13) Promotion of other settlement procedures. – The parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal administrative review is filed, to the extent permitted under State and federal law."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:34 p.m. this 29th day of May, 1997