



Special Education
Alternative Dispute Resolution (ADR)
FISCAL YEAR 2012 Report

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INTRODUCTION

HISTORY OF SPECIAL EDUCATION DISPUTE RESOLUTION

Minnesota initiated mediation as a dispute resolution option in special education in 1992, five years before the Individuals with Disabilities Education Act (IDEA) required it. While some states offered mediation only as an alternative to a due process hearing, Minnesota offered the process at any time there was a dispute. In addition, Minnesota began offering the option of a neutral facilitator for education planning meetings for the Individual Education Plan (IEP), the Individual Family Service Plan (IFSP) and the Individual Interagency Intervention Plan (IIIP) in 2001. These are referred to as “facilitated meetings” in this report. The documents resulting from these meetings are referred to as “special education plans.” Both mediation and the facilitated meeting process are alternative dispute resolution (ADR) options for conflict resolution and have proven to be effective in resolving a variety of issues.

Since the program’s inception twenty years ago, parties resolved some or all of their issues in 87 percent of the mediations. Facilitators promoted effective communication and assisted teams in developing education plans in 93 percent of the meetings facilitated since 2001.

PURPOSE OF REPORT

The purpose of this report is to inform stakeholders of FY12 data and historical data collected from program evaluation; to review the use of and response to the ADR options over the last year; to compare parent school relationships before, during, and after an ADR process; and to make recommendations for improvements so that Minnesota’s alternative dispute resolution services continue to be effective.

PROCEDURE FOR EVALUATION

The Minnesota Department of Education Division of Compliance and Monitoring offers third-party assistance to school districts and parents for resolving conflicts about a student’s special education services. Twelve independent contractors, located around the state, provide the services. These contractors complete an evaluation at the close of a mediation or facilitation session that identifies the issues raised, their perception of what led to the request for an ADR process, the results and what may have contributed to the outcome. In addition, at the close of the session, they explain the evaluation process to participants.

Just after a mediation or facilitated meeting, participants have the opportunity to answer an online survey about the process, their general satisfaction, the skills of the mediator/facilitator, what they liked and did not like about their experience, the impact on the parent/school relationship, and how the Minnesota Department of Education (MDE) can improve ADR Services.

EXECUTIVE SUMMARY

Overall, usage of the Minnesota Department of Education's (MDE) special education Alternative Dispute Resolution (ADR) services of mediation and facilitated education planning meetings significantly decreased in FY12. From the perspective of the mediators and facilitators, when services were utilized, the primary reason was a lack of trust between the parties. Over 350 participants in these dispute resolution processes focused on accommodations/modifications, present levels and goals of a student's education plan.

The parties in mediation and the education planning teams achieve high rates of agreement in both mediation and neutral facilitation of education planning meetings due to the participants' desire to reach agreement and the opportunity to clarify issues and facts.

Evaluation of ADR services is a key component for improving the system. The return rate for evaluations after each process is 80 percent. The data reveal program strengths and areas for improvement, which include the following:

Strengths:

- Both parents and districts are comfortable requesting an ADR process.
- Forty percent of the requests that do not result in a meeting settle their disagreements, often with the assistance of MDE staff. Other requests may not be appropriate for the process or may result in parties refusing the option.
- There is a good chance (86-88 percent) that using an ADR process will result in an agreement on one or more issues.
- Every participant who completed a mediation evaluation believed their mediator was impartial.
- Facilitated meeting evaluations ask participants for their state of being before and after the meeting. Data shows the meeting has a positive impact on relationships and well-being. Most feel more supported, empowered and grateful after the meeting. Also, 70 percent or more feel less hurt and tense after the meeting.
- Most participants who completed an evaluation (92-98 percent) say they would use their process again and would recommend it to others.

Areas for Improvement:

- To increase the use of ADR options by increased marketing of ADR benefits
- To increase clarity of education planning meeting documents and mediated agreements by recommending use of a laptop, portable printer and LCD projector in the meeting room
- To design and provide advanced training for IEP managers to address trust, communication and keeping focus in education planning meetings

This report explains data charts that detail the information collected from participant and ADR practitioner evaluations. In addition, it compares mediation and facilitated meetings data in three

categories: requests, sessions, and outcomes. The conclusion and recommendations are found at the end of the report.

CASE STATISTICS¹

DATA PERTAINING TO REQUESTS FOR ADR OPTIONS

In FY12, parents and districts requested 73 mediations or facilitated meetings from the Division of Compliance and Monitoring to resolve conflicts in special education. This is a significant decrease from 114 cases in FY11.² As detailed in Appendix 4, mediation was requested most frequently for students with Other Health Disabilities (OHD), which includes Attention Deficit Hyperactive Disorder and many other diagnoses. In contrast, as detailed in Appendix 5, facilitated meetings were requested most often for students with autism.

Number of Parties Requesting ADR Processes and Cases Held

Parents in FY12 requested ADR services twice as often as school districts. Mediators identified one main reason for parties' requests for mediation: lack of trust between the parties. While the need for the assistance of a neutral third party to keep the meeting focused was the top motive for meeting facilitation requests.³

Not every request results in a scheduled session. Overall, 61 percent of the ADR requests resulted in a session held. Sometimes the request is not appropriate for the program. For example, one party may refuse to participate in the voluntary process, change his/her mind or withdraw the request. The most frequent reason for not scheduling a mediation session was that 41 percent of those withdrawing their request settled their disagreements.

Demographic Overview

The majority of families (64 percent) who requested ADR processes in FY12 live in the Twin Cities metropolitan area⁴ and its suburbs (Table 1A) where 53 percent of the students with special education plans reside. Most families (84 percent) requesting ADR processes are White. Families of color (16 percent) request the mediation process more frequently than the facilitation of education planning meetings (Table 1B).

While 47 percent of students with special education plans reside in Greater Minnesota⁵, only 36 percent of ADR requests come from that part of Minnesota.

¹ See Appendix 1 for more details.

² See Appendix 9 for five year historical data of requests for ADR.

³ See Appendices 2 (mediation) and 3 (facilitation) for more details.

⁴ Metropolitan area defined by area codes 612, 763, 952 and 651.

⁵ MARSS data.

Table 1A - Location	Total Requests	Metropolitan Area	Greater Minnesota
Mediation requests	47	31	16
Facilitated meeting requests	28	17	11
Combined	75	48	27

Table 1B - Race / Ethnicity	Total Requests	White Families	Families of Color
Mediation requests	47	37	10
Facilitated meeting requests	28	26	2
Combined	75	63	12

CASE AND SESSION DATA

Ninety percent of mediations and facilitated meetings took place within three weeks of MDE receiving a request from one party (Table 2A). While scheduling began within two to three days of receiving the signed requests from both parties, determining attendees availability, location and other logistics account for the length of time. Parties need to clear a full day for mediation and teams need to reserve a minimum of three hours for a facilitated meeting. Over three hundred people (350) participated in the processes; an average of six participants in each mediation and nearly twice as many participants attended facilitated meetings.

Session Participants

Table 2A	Mediation	Facilitated Meetings
Number of Days From First Signature on Request to First Session	26 calendar days (90% of cases held within 21 calendar days)	19 calendar days (90 % of cases held within 16 calendar days)
Total Participants	138 participants	225 participants
Average Participants	6 participants	11 participants

Both processes may require more than one session. While mediations tended to take more time to complete, the length of facilitated meetings were significantly shorter than mediation sessions (Table 2B).

Session Length

Table 2B	Mediation	Facilitated Meetings
Total Sessions	29 sessions for 25 cases	24 sessions for 21 cases
Average Length of Case	7.5 hours	4.4 hours
Average Length of Session	6.5 hours	3.9 hours
Average Number of Sessions/Case	1.2 session	1.1 sessions

Table 2C indicates that discussions about accommodations and modifications were the most frequent issues addressed in mediation and facilitated meetings. In the latter, education plan development was also a focus.

Most Frequent Issues Addressed in over half of ADR Processes*

Table 2C	Mediation ⁶	Facilitated Meetings ⁷
General Issues	56% Implementation 56% Progress reporting 56% Identification/evaluation	67% Implementation 52% Identification/evaluation
Process/Procedure Issues	52% Education Plan Development	86% Education Plan Development
Appropriateness of IEP: Services and Content	68% Goals and Objectives 64% Service Time 60% Placement/LRE 60% Present Levels	81% Goals and Objectives 81% Present Levels
Adaptations/Related Services	84% Accommodations/ Modifications	86% Accommodations/ Modifications

*Each case may have more than one factor indicated, so the total percentage will be greater than 100 percent.

⁶ See Appendix 6 for more details.

⁷ See Appendix 7 for more details.

OUTCOME DATA

Results

Table 3A	Mediation	Facilitated Meetings
Results Agreements Reached Agreement Rate	22/25 Agreements Reached 88% Agreement Rate	18/21 Agreements Reached 86% Agreement Rate

Both processes have high agreement rates. An agreement in facilitated meetings is defined as the team completing the entire education plan and reaching a tentative agreement on the document. It is tentative because, according to state law, parents are allowed 14 calendar days to review the draft of the plan.

The agreement rate for mediation falls within the last target range set in Minnesota's State Performance Plan of 79 to 89 percent.

Reasons for Agreement/Non-Agreement

Table 3B	Mediation	Facilitated Meetings
*Most Frequent Reasons for Agreement in 22 Mediations Cases and 21 Facilitation Cases	60% Desire to reach agreement 56% Issues or facts clarified	71% Forum for discussion provided 71% Issues or facts clarified
Reasons for Non-Agreement in 3 Mediation Cases and 3 Meeting Facilitations	1 Lack of trust 1 Lack of acceptable options 1 Neither party would negotiate 1 Emotions too high	2 Different understanding of student's needs 1 Lack of acceptable options 1 Emotions too high

*Each case indicates more than one factor so percentages will be greater than 100 percent.

Desire to reach agreement and having a forum for discussion are two reasons for reaching agreement in ADR processes. In addition, one reason was identical between the two ADR processes: Issues or facts clarified. Two reasons for non-agreement were the same in both processes: lack of acceptable options and the emotions being too high.

Participant Satisfaction

Besides the mediator and facilitator feedback, participants complete an online evaluation after their session. The ADR practitioners give out a paper copy of the survey if a participant prefers it. If at least one person submits an evaluation for a case, it is used in calculating the return rate. In FY12, the return rate for both ADR processes was 80 percent.

These participant evaluations reveal their satisfaction rate for the processes. The overall satisfaction

rate for mediation increased from 72 percent in FY11 to 85 in FY12 and for facilitated meetings the rate dropped slightly from 77 percent to 74 percent.⁸ Of the participants who completed evaluations nearly all (95-98percent) said they would recommend the process they used to others and 92 to 95 percent would participate in the same process again themselves.

Another measure of satisfaction is the participants' outlook before and after a facilitated meeting. There is at least a 50 percent increase in parties' positive feelings of being grateful, excited, empowered, supported, calm and respected. Over half of the participants are feeling less nervous, tense, hurt, unsure and overwhelmed after the meeting.

Participant Likes and Dislikes about their ADR Experience

Table 3C	Mediation (Most frequent responses)	Facilitated Meetings (Most frequent responses)
Dislikes	<ul style="list-style-type: none"> • No Computer or Printer in the Room (41%) • Did Not Feel Heard and Understood By Other Party (21%) 	<ul style="list-style-type: none"> • Facilitator did not keep meeting on schedule (21%) • Lack of respect among team members (19%) • Meeting was too short (19%)
Likes	<ul style="list-style-type: none"> • Mediator Treated All Parties with Respect (77%) • Made Progress towards Resolution (69%) • Able To Give Input (62%) 	<ul style="list-style-type: none"> • Facilitator kept meeting on schedule (73%) • Facilitator encouraged team to make decisions (54%) • Experienced an increase in respect among team members (48%) • Cooperation increased among team members (48%) • Facilitator was impartial (46%)

Participants select answers to report their likes and dislikes about the process they used. Participant dislikes about the processes included logistics and relationship issues. Similarly, participants appreciated the logistics of time management and the progress toward resolution.

Participant Recommendations

The strongest recommendation was to encourage schools to make and view any changes to the IEP during the facilitated meeting or mediation. (This requires the use of a laptop computer, portable printer and LCD projector). Another recommendation was to allow sufficient time for parents to review the

⁸ See Appendix 8 for historical data on satisfaction rates.

completed education plan during the meeting. Minor revisions could be made at that time and may have resulted in a faster agreements.

CONCLUSIONS

This ADR Services annual report compared mediation and facilitated meetings data in three categories: requests, sessions, and outcomes. Conclusions may be drawn by reviewing the data in each category.

Requests and Use of ADR Processes

In general, most education planning teams across Minnesota manage conflict without needing the assistance of a third party. Those that request assistance use mediation more often than facilitated meetings. This may be due to the mediation process being more effective in dealing with damaged relationships in adversarial conflicts.

Even though parents request ADR processes more frequently than educators and ADR is used more frequently in the metropolitan area than Greater Minnesota, both parents and district staff are comfortable requesting an ADR process and are encouraged to do so on the MDE website and by MDE's Compliance and Monitoring staff. Parents and district staff in the metropolitan area may be more willing to use the resources available to resolve conflicts because they believe there are more options available to meet the needs of the student.

Case and Session Data

If a session is held as a result of an ADR request, data regarding the reasons for those ADR requests indicate non-substantive issues. Different from the previous year's substantive issue, the main reason for fiscal year 2012 requests was the lack of trust, the difficulty of keeping the meeting focused and managing the communication. When trust is lost and there is adversarial conflict in an education planning meeting, it may be that adequate time was not allowed to address it thoroughly. Parties may begin questioning motives of other team members or making unfounded assumptions which will tend to escalate conflict.

Data reveal that ADR processes take an average of two and a half to three weeks to schedule and then meet. Parties need time to agree on a process, to schedule it, to decide who will participate, and time to clear up miscommunication and misunderstandings about each team members' concerns. Since development of the education plan, especially addressing modifications and accommodations, are the team's greatest concerns, it may mean that the time taken to improve communication about these issues before the session is time well spent.

Outcomes

Skilled mediators / facilitators rebuild relationships, reduce tension and assist parties in resolving issues. The possibility of positive outcomes is enhanced by the parties desire to reach agreement, willingness to take the time necessary to sort out issues, and to participate fully in an ADR process. Data reveals agreements on mediation issues and the IEP, improved communication, better relationships, reduced tension, resolution of issues, or feelings of being empowered, calm and respected.

Overall, customers are mostly satisfied with efforts of ADR staff to meet their needs.

RECOMMENDATIONS FOR CONTINUOUS IMPROVEMENT IN MDE'S ADR SERVICES

Based on the conclusions from the data reported in each of the categories, the following recommendations may increase the use of ADR processes and improve the education for children with special needs:

Increase **Requests and Use of ADR Processes** through marketing efforts that stress the availability and benefits of each process.

Use **Case and Session Data** which notes the reasons for requests being issues of trust, communication and facilitation to design advanced training for IEP managers.

Improve **Outcomes** by requesting districts to provide a laptop, printer and LCD so the education plan and/or mediated agreement is clearly written from all perspectives, and shared at the close of the meeting.

Appendix 1 - Case Statistic Comparison FY12

		Facilitated IEPs	Mediations
Cases			
(1 Part C mediation)	Number of Requests	28	47
	Cases: Closed	28	47
	Cases: Closed with Sessions Held	21	25
Results for Closed Cases with Sessions			
	Agreements Reached (full or partial)	18	22
	Agreement Rate	86%	88%
Total Number of Sessions Held for Closed Cases *			
	Sessions	24	29
Days Open to 1st Session for Closed Cases			
	Average Calendar Days	19	26
	90% Held within x Calendar Days	16	21
Average Length of Case for Closed Cases			
	Average Number of Hours	4.4	7.5
Average Length of Session for Closed Cases *			
	Average Number of Hours	3.9	6.5
Initiating Party **			
	% Adult Student	0	0
	% Parent	68%	57%
	% School Personnel	32%	43%
	% Other	0	0
Withdrawals **			
	Number of Withdrawals	7	22
Reason for Withdrawals **			
	Refused by parent	1	3
	Refused by school	0	2
	Settled	3	9
	Withdrawn by parent	1	2
	Withdrawn by school	1	2
	Scheduled but not held	0	0
	Closed/party not returning calls	0	0
	Not appropriate for program	1	0

* Excludes data from cases with a "No Session" decision

** Includes data from open cases.

Appendix 2 - Mediators' Views of Factors Leading to Dispute FY12

Factors	
Disagreements on student's needs	14
Lack of trust between the parties	20
Neutral third party needed to manage communication between the parties	15
Adequacy of services	12
History of intense emotions between the parties	13
Current placement concerns	10
Neutral third party needed to help parties focus	9
Parties not considering each other's viewpoints	3
Parties not listening to each other	2
Provision of school policies	4
Personality conflicts	5
Issues were extremely complex	3
Funding concerns	3
Staff availability problems	0
Interagency disagreements	0
Staff licensure problems	0
Total Cases:	25

*More than one factor is indicated for each case so the number of factors will be greater than the total number of cases

Appendix 3 - Facilitators' Views of Factors Leading to Dispute FY12

Factors	
Neutral third party needed to manage communication among team members	11
Lack of trust among team members	13
Neutral third party needed to keep meeting focused	15
Disagreements on student's needs	13
History of intense emotions among team members	8
Adequacy of services	12
Parties not listening to each other	1
Personality conflicts	3
Team members not considering others' viewpoints	2
Issues were extremely complex	5
Current placement	6
Provision of school policies	0
Other	2
Interagency disagreements	0
Funding concerns	0
Staff availability problems	1
Staff licensure problems	0
Total Cases:	21

Appendix 4 - Student Classifications in FY12 Mediation Requests

Classifications	Mediation
Emotional or Behavioral Disorders	5
Autism	6
Other Health Disabilities	8
Developmental Cognitive Disabilities	4
Severely Multiply Impaired	3
Specific Learning Disabilities	4
Speech/Language Impairments	1
Developmental Delay	2
Physically Impaired	1
Deaf and Hard of Hearing	1
Deaf-Blind	2
Traumatic Brain Injury Disabled	1
Visually Impaired	1
No IEP/IFSP/IIP, non-disabled student	8
Total number of requests for Mediation	47

Appendix 5 - Student Classifications in Facilitated Meeting Cases FY12

Classifications	Facilitated Meetings
Autism Spectrum Disorder	10
Other Health Disabilities	2
Specific Learning Disabilities	1
Emotional or Behavioral Disorders	2
Developmental Delay	2
Developmental Cognitive Disabilities	2
Severely Multiply Impaired	1
Speech and Language Impaired	0
Deaf and Hard of Hearing	1
Physically Impaired	2
No IEP/IFSP/IIP, non- disabled student	3
Deaf - Blind	1
Traumatic Brain Injury Disabled	1
Visually Impaired	0
Total number of requests for facilitated meetings	28

Appendix 6 - Mediation Issues FY12
Each Topics' Frequency of Discussion

GENERAL ISSUES

Implementation of IEP	14
Progress reporting	14
Identification, evaluation, reevaluation	14
Discipline/behavior intervention	10
Transition	10
Independent education evaluation	6
Cost to parents/parent reimbursement	3
General education teacher	2
Cost to parents/parent reimbursement	3
Transfer of parental rights	0
Other	7

PROCESS/PROCEDURE ISSUES

Education plan development	13
Team meetings/participation	7
Notice of proposed special education service/prior written notice	4
Procedural safeguards notice	4
Data privacy/records access	3
Notice of team meeting	1
Hearing system	1
Other	6

**APPROPRIATENESS OF IEP:
SERVICES AND CONTENT ISSUES**

Goals and objective	17
Service time	16
Placement/least restrictive environment	15
Present level of education performance	15
Conducive learning environment	12
Extended school year (ESY)	8
Change of placement (graduation, exiting, termination of special education services)	7
Other	8

**ADAPTATIONS/RELATED
SERVICES ISSUES**

Accommodations/ modifications	21
Paraprofessionals	14
Service providers	14
Assistive technology	11
OT/PT/Other therapy	8
Transportation	8
Staffing/licensing	5
Nursing/mental health services	5
Other	5

OTHER ISSUES

(Noted in two or more cases)

Communication	2
Safety	3
Shortened school day	2

More than one factor is indicated for each case, so the number of factors will be greater than the total number of cases.

Appendix 7 - Facilitated Meeting Issues FY12
Each Topics' Frequency of Discussion

GENERAL ISSUES

Implementation of IEP	14
Identification, evaluation, reevaluation	11
Transition	8
Progress reporting	5
Discipline /behavior intervention	5
General education teacher	3
Independent education evaluation	3
Cost to parents / parent reimbursement	1
FAPE	1
Other	2

PROCESS/PROCEDURE ISSUES

Education plan development	18
Data privacy/records access	2
Team meetings/participation	2
Notice of proposed special education service/prior written notice	1
Hearing system	0
Notice of team meeting	0
Other	1

**APPROPRIATENESS OF IEP:
SERVICES AND CONTENT ISSUES**

Goals and objectives	17
Present level of education performance	17
Service time	11
Placement/least restrictive environment	9
Conducive learning environment	4
Extended school year (ESY)	3
Change of placement (graduation, exiting, termination of special education services)	1
Other	3

**ADAPTATIONS /RELATED
SERVICES ISSUES**

Accommodations/modifications	18
Paraprofessionals	9
Assistive technology	7
Service providers	6
OT/PT other therapy	4
Transportation	3
Staffing /licensing	3
Nursing/mental health services	0
Other	0

**OTHER ISSUES
(Noted in two or more cases)**

Issues in two or more cases	0
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More than one factor is indicated for each case, so the number of factors will be greater than the total number of cases.

Appendix 8 - Satisfaction Rates FY08-FY12

SATISFACTION RATES	2008	2009	2010	2011	2012
Overall, how satisfied were you with the process? (answered "completely" or "mostly")					
Mediation	70%	75%	82%	72%	85%
Facilitated meetings	71%	71%	71%	77%	74%
Would you participate in this process again? (answered "yes")					
Mediation	100%	97%	97%	96%	95%
Facilitated meetings	95%	100%	100%	98%	98%
Would you recommend this process to others? (answered "yes")					
Mediation	95%	94%	94%	98%	95%
Facilitated meetings	88%	94%	94%	98%	92%

Appendix 9 - Five-Year Comparison of Requests and Agreements

MEDIATIONS	FY08	FY09	FY10	FY11	FY12
Requested	66	73	76	73	47
Request Withdrawn	20	26	29	27	22
Held	46	47	47	46	25
Agreements Reached	41	42	43	42	22

FACILITATIONS	FY08	FY09	FY10	FY11	FY12
Requested	43	27	31	41	28
Request Withdrawn	9	9	5	8	7
Held	34	18	26	33	21
Agreements Reached	31	18	25	30	18

Appendix 10 - Facilitated Meeting Participants' Reactions FY07-FY12

Reactions	Before	After	Percentage Change After Meeting
Respected	8	14	71%
Excited	2	5	350%
Hopeful	18	22	35%
Calm	8	9	56%
Grateful	0	6	1450%
Involved	8	10	23%
Supported	5	15	109%
Part of Team	10	14	27%
Empowered	2	4	183%
Frustrated	13	3	-45%
Hurt	5	1	-67%
Unsure	8	8	-53%
Nervous	12	0	-88%
Tense	9	1	-80%
Angry	5	1	-37%
Powerless	5	0	-44%
Overwhelmed	7	4	-50%