

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1098

Short Title: Special Education Mediation.

(Public)

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Sponsors: Representatives Preston; Arnold, Grady, Russell, Sherrill, Shubert, Morris, and Smith.

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Referred to: Education.

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April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE PROCEDURE FOR MEDIATION OF SPECIAL  
2 EDUCATION DISPUTES BETWEEN LOCAL EDUCATION AGENCIES AND  
3 PARENTS.  
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5 The General Assembly of North Carolina enacts:

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

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

15 It is the policy of this State to encourage local education agencies and parents,  
16 guardians, or surrogate parents to seek informal resolution of disputes or disagreements  
17 regarding the identification of children with special needs and the provision of special  
18 education and related services before filing a request for a formal administrative review

1 of the matter. To that end, the following provisions apply to the mediation of these  
2 disputes:

- 3 (1) Purpose. – The purpose of mediation is to clarify the concerns of the  
4 parents and to resolve disputes.
- 5 (2) Definitions. – As used in this subsection, the following terms have the  
6 following meanings:
- 7 a. 'Dispute' means a disagreement between the parties that is  
8 subject to review under subsection (c) of this section.
- 9 b. 'Mediation' means an informal process conducted by a mediator  
10 with the objective of helping parties voluntarily settle their  
11 dispute.
- 12 c. 'Mediator' means a neutral person who acts to encourage and  
13 facilitate a resolution of a dispute.
- 14 d. 'Parents' means parents, guardians, or surrogate parents.
- 15 e. 'Parties' means the local education agency and the parents.
- 16 (3) Nonadversarial. – The mediation shall be informal and nonadversarial  
17 as provided in G.S. 150B-22.
- 18 (4) Rules of procedure. – The mediator is encouraged to follow applicable  
19 procedures provided in G.S. 7A-38.1, G.S. 7A-38.2, and applicable  
20 rules adopted by the Supreme Court under G.S. 7A-38.1. The mediator  
21 may establish other procedures to facilitate an informal resolution of the  
22 dispute. The mediator shall not render a decision or judgment as to the  
23 merits of the dispute.
- 24 (5) Request for mediation. – Before a request for formal administrative  
25 review is filed, mediation shall commence upon the request of the  
26 parent or the local education agency with the consent of the parent.  
27 After a request for formal administrative review is filed, mediation shall  
28 commence at any time upon the request of either the local education  
29 agency or the parent so long as the other party consents.
- 30 (6) Selection of mediator. – The parties shall agree to the selection of the  
31 mediator. The Exceptional Children Division of the Department of  
32 Public Instruction shall maintain a list of mediators who are certified or  
33 trained in resolving disputes under this subsection.
- 34 (7) Notice of right to mediation. – The local education agency shall notify  
35 parents of their right to request mediation under this subsection.
- 36 (8) Time periods tolled. – Notwithstanding G.S. 150B-23, time periods  
37 related to the filing of a formal administrative review or the taking of  
38 any other action with respect to the dispute, including any applicable  
39 statutes of limitations, are tolled upon the filing of a request for  
40 mediation under this subsection until the mediation is completed or the  
41 mediator declares an impasse.
- 42 (9) Good cause for continuance. – A good faith effort by both parties to  
43 mediate the dispute is presumed to constitute good cause for a

1                    continuance so long as the administrative law judge does not find that  
2                    the time delay for mediation would likely result in irreparable harm to  
3                    one of the parties.

4                    (10) Inadmissibility of negotiations. – Evidence of statements made and  
5                    conduct occurring in a mediation shall not be subject to discovery and  
6                    shall be inadmissible in any proceeding in the action or other actions on  
7                    the same claim. However, no evidence otherwise discoverable shall be  
8                    inadmissible merely because it is presented or discussed in a mediation.  
9                    Mediators shall not be compelled in any civil proceeding to testify or  
10                   produce evidence concerning statements made and conduct occurring in  
11                   a mediation.

12                   (11) Mediator's fees. – Unless the parties agree otherwise, a mediator's fees  
13                   shall be paid as follows:

14                   a.        Before a request for formal administrative review is filed, the  
15                   local education agency shall pay the mediator's fees.

16                   b.        After a request for formal administrative review, the parties shall  
17                   pay the mediator's fees in equal shares.

18                   (12) Mediated settlement conference after a request for administrative  
19                   review. – In addition to mediation as provided by this subsection, the  
20                   parties may participate in a mediated settlement conference as provided  
21                   by G.S. 150B-23.1.

22                   (13) Promotion of other settlement procedures. – Nothing in this subsection  
23                   is intended to preclude the use of other dispute resolution methods to  
24                   which the parties agree and to the extent permitted under State and  
25                   federal law."

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