

EXERCISE – ETHICS

IDEA VETERAN SPECIAL EDUCATION MEDIATOR TRAINING
NEW YORK STATE EDUCATION DEPARTMENT

VIRTUAL PROGRAM

WEDNESDAY, SEPTEMBER 15, 2021
THURSDAY, SEPTEMBER 30, 2021 (REPEAT PROGRAM)

DEUSDEDI MERCED, ESQ.

SPECIAL EDUCATION SOLUTIONS, LLC
(203) 557-6050
DMERCED@SPEDSOLUTIONS.COM
WWW.SPEDSOLUTIONS.COM

Assume you are the mediator in a pending special education mediation. From an ethical standpoint, what would you do, if anything, if the following situations occur:

1. The parties have tentatively reached an agreement but the agreement includes a provision that troubles you because you believe it may violate IDEA, public policy and/or fails to provide the child FAPE. Assume the provision provides:
 - a. The parent waives all claims, known or unknown, under IDEA and Section 504 for the 2021-2022 school year.
 - b. Amendments to the child's IEP but they do not seem to be in the child's best interests.
 - c. A set of programs and services for the child but you have some serious doubts it provides the child FAPE.
2. You call the parent for your pre-mediation call and the parent quickly advises you s/he has an attorney.
3. The parent in caucus tells you she does not trust or want the aide the school district has assigned to her child because the child has told her the aide has hit and slapped her (the child) very hard on numerous occasions causing red marks and bruising. The parent admits that she has not observe any red marks and bruising on her child.
4. The student is 18 and has IDEA eligibility as LD. The student's mother is also a participant. During the pre-mediation call both participated and it went well. But, at the mediation, the mother has gotten agitated at her son for not being more assertive in what she wanted for him during joint sessions with the school district. In caucuses, she has pressured and intimidated her son to the point that he was clearly

embarrassed and very uncomfortable. It is fairly clear what he wants for himself is not what she wants for him.

5. At the outset of the pre-mediation call, you decide you should advise the parent you have represented school districts in the past (the last time being 5 years ago) but never the school district which is party to this mediation. The parent responds, “Do you really think you can be fair if you represented school districts in the past? I’m not so sure.”
6. In caucus, the school district is discussing whether it should provide the child with three 30-minute sessions of PT per week, which the parent believes the child needs based on an IEE, or one 30-minute session. A big part of the discussion is that, based on the school district’s evaluations and the IEE, there is no doubt the child really needs the three sessions but the school district doubts it has enough therapists on staff to be able to provide three sessions or can obtain additional therapists. The special education director finally says it cannot provide three sessions and it must stick with just one session. You try to explore other possible avenues for the school district to increase the therapist time at the child’s school but to no avail.
7. The school district says in joint session that it does not need to provide the child with speech and language therapy because the child is eligible under the ASD category, not the speech and language category. The parent then in caucus asks you whether what the school district said is true under IDEA. What if the school district is providing the child with an AT device for doing homework and acknowledges the parent will have to help the child to use it but refuses to help the parent understand how to use the device to help the child. In caucus, the parent asks whether, under IDEA, the school district can help her understand how to use the device.
8. The mediation session has been a long one. And, despite your best efforts, the parties are exasperated with each other and getting very emotional. The parent has broken out in tears several times and left the room both in joint sessions and caucus. Finally, the parties reach a tentative agreement but, while you were writing it up, the parent has been mulling over whether she should sign it or not. She is asked to read it to make sure it accurately states the agreement and she again breaks out in tears.
9. The parent has a non-attorney advocate who, it has become apparent as the mediation has proceeded, is clearly pushing her organization’s “agenda” regarding a particular methodology which is a disputed issue. The parent has indicated she is satisfied with the school district’s proposal offering an alternative methodology but the advocate is overbearing, pressuring the parent not to agree.
10. The parent has a non-attorney advocate and an attorney who during the mediation constantly argue about what the parent should do and give her conflicting advice. The parent is clearly upset with them and is totally frustrated.
11. During a break in the mediation, the parent goes to the bathroom and stays a while. She returns to a joint session and asks you for a caucus which you agree to do. In the

caucus, she tells you that in the bathroom, which is next to the staff lunch/copy room, she could hear through the air duct, the school district staff who were talking loudly. She is very upset because she heard them say she (the parent) was a real “pain in the *tuchus*” and no way were they going to give her kid what she was seeking.

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