



ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

VOLUME 16, ISSUE 1

WINTER 2016

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IMPORTANT NEWS

Edward P. Silva is the new Chairperson of the ADRC, succeeding Howard Vogel, who has been the Chairperson for the last two years. Mr. Silva previously served on the ADRC from 2007-2014 and was reappointed in 2015. He was appointed to a two year term as Chairperson by Order of the



Tennessee Supreme Court. His appointment runs from January 10, 2016 - January 9, 2018. Mr. Silva is an attorney and Rule 31 Listed General Civil Mediator in Franklin.

Welcome New ADR Commission Members!

- Larry Bridgesmith – Nashville, attorney and Rule 31 listed general civil mediator
- Frank Cantrell - Memphis, attorney and inactive Rule 31 listed general civil and family mediator
- Leslie Gattas Coleman- Memphis, attorney
- William A. Young – Knoxville, attorney and Rule 31 listed general civil mediator

These members were appointed by the Tennessee Supreme Court for a three-year term beginning January 10, 2016.

The Value of Mediation in Special Education Disputes

By: Joe Jarret

The Law:

It's been said that you just can't fight city hall. It is a result of this misnomer that many parents of special needs children are reluctant to confront their child's school when disputes arise over their child's education needs. A review of the legislative history leading up to the enactment of §300.506 of the United States Code ("the Code") entitled "Mediation" revealed that the motivation behind its passage was, in part, to encourage parents to avail themselves of the mediation process. The Code requires boards of education/school districts to ensure that procedures are established and implemented to allow disputing parties to resolve their disputes through a mediation process, at no cost to the parents/guardians of the special needs child. The Code likewise requires that the mediation process be voluntary on the part of all parties, and conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Further, states must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. As is the case with any other mediation in Tennessee, discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court. Finally, each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution.

The Process:

The Individuals with Disabilities Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA, U.S. Department of Education regulations and Tennessee law and regulations. The Tennessee Department of Education encourages alternative dispute resolution when conflicts between parents and schools arise, and as such, recommends that parents/guardians consider taking the following steps before filing an Administrative Complaint:

- Contact the teacher or service provider and discuss the concerns.
- Notify the principal and request his/her assistance.
- Request an IEP team meeting.
- Contact the Special Education Director/Supervisor of the school system. Make him/her aware of the concerns and provide the results of any contact with the teacher, principal, etc.
- Call the Tennessee Department of Education Office of General Counsel and ask to speak with the IDEA Complaint Investigator assigned to the school system.

In terms of mediation, the Tennessee Department of Education, Division of Special Education provides parents with a Special Education Mediation Request Form to facilitate the mediation process.

Special Education Mediation Challenges:

Special education mediation is unique in that, unlike personal injury or other disputes, parents and their children, in most special education disputes, must look at continuing their relationship with a school or school district. As noted by mediator James R. Mortenson, for many parents, the prospect of resorting to litigation with their child's school, i.e. a due process hearing (during which the parties present written evidence about the disputed issue and have witnesses testify before a hearing officer), is often viewed as potentially harmful of that relationship. For parents, there may be no relationship more important than that between their family and the school they entrust to educate their child. Mr. Mortenson also notes that:

Through mediation, communication can be reestablished. Both sides have the opportunity to talk about their positions and interests and hear the other's side. This goes a long way to healing and rebuilding that important relationship. Even when a party is successful in litigation, they have been emotionally drained. The parties can walk away from a successful mediation with a feeling of accomplishment instead of feeling worn out. Though they may compromise certain positions, the parties can explore ways to satisfactorily fulfill their interests. Mediation can even include positive brainstorming in which the parties change roles to come up with creative solutions. If a parent is able and willing they can, without fear of showing weakness or acknowledging the district's position which could somehow be used against them in litigation, put themselves in the shoes of a decision maker. They may be able to add a perspective to the situation, as the district sees it, that the district did not realize or acknowledge before. The same is true for district staff. They may put themselves in the role of a parent and offer an additional perspective which may lead to a mutually satisfying solution. This is just one example of how the mediation process can work in both rectifying the dispute and rebuilding the trust and communication that are so critical in a family/school relationship.¹

Summary:

The education of a child with a disability should never suffer due to a parent's reluctance or unwillingness to confront a school on accommodations or modifications. By availing themselves of the mediation process, parents can go a long way in insuring that their child's needs are met while maintaining a positive relationship with the teachers responsible for insuring their education.

About the Author: Joe Jarret is a Rule 31 Listed General Civil Mediator, a Federal Mediator, and an Attorney who lectures full-time for the University of Tennessee, Graduate School of Public Policy and Administration. A former active duty United States Army Combat Arms Officer and Air Force Special Agent with service overseas, Joe is an award-winning writer who has published over 85 articles in various professional journals. He is a past-president of the Tennessee Valley Mediation Association, has served as a board member for the Tennessee Association of Professional Mediators (TAPM), and is a member of the Tennessee Bar Association, and the ADR Section of the Knoxville Bar Association. He holds the juris doctorate degree, the masters in public administration degree, and a bachelors degree and is pursuing the Ph.D. in educational leadership. He can be reached at: jgilaw1@gmail.com

¹ See Mortenson, James R. The International Dyslexia Association's quarterly newsletter.

~ Roll Call ~

Congratulations to the following Newly Listed Rule 31 Mediators!
These mediators were approved for listing at the ADRC Quarterly Meeting on January 26, 2016.

Ms. Stacey M. Angello, General Civil
Ms. Barbara F. Arrants, General Civil
Hon. Joseph M. Ayers, Family/DV
Ms. Kathleen A. Ball, Family
Ms. Lisa P. Binder, Family
Mr. Bradford T. Boston, General Civil
Mr. Orlando Brassel, General Civil
Mr. David B. Brogdon, General Civil
Mr. Neil A. Brunetz, General Civil
Mrs. Wynne D. Caffey-Knight, General Civil
Mr. Adrian O. Cartledge, General Civil/Family,
Ms. E. Andrea Chase, Family
Mr. Adam N. Cohen, General Civil/Family
Mr. Aaron J. Conklin, Family
Mr. Thomas E. Cook, Jr., General Civil
Ms. Amber L. Corn, General Civil
Mr. Christopher C. Cowart, Family
Mr. Thomas J. Dancison, Jr., General Civil
Mr. Ronald B. Deal, Jr., Family
Ms. Debra B. Estevens, Family
Mr. Lowe Finney, General Civil/Family
Ms. Kaye M. Ford, Family
Ms. Rebecca M. Frady, General
Civil/Family/DV
Mr. David W. Garrett, Family
Mr. Lawrence F. Giordano, General Civil
Mr. Sherif Guindi, Family/DV
Ms. Kristie L. Haack, General Civil/Family/DV
Mr. James S. Hale, Family
Mr. Joseph C. Hall, Sr., Family
Ms. Lisa J. Hall, Family
Mrs. Harriet M. Halmon, General Civil
Ms. Crystalena F. Haney, Family
Dr. John R. Hardwig, Family
Ms. Bailey M. Harned, General Civil
Mr. Cebret L. Harrell, Jr., General Civil
Mr. Robert W. Hawley, Family
Ms. Sonya S. Helm, Family

Ms. Pamela L. Hicks, General Civil
Mrs. Krista Holder-Williams, Family
Mr. Timothy A. Housholder, General Civil/Family
Dr. Michelle L. Hurley, Family
Mr. Jeffrey R. Kohl, General Civil
Mr. Joseph M. Koury, General Civil
Mr. Scott A. Lacy, General Civil/Family
Ms. Terri M. Lankford, General Civil
Mr. Jay W. Mader, General Civil
Mr. E. Jerome Melson, General Civil
Mr. Larry H. Montgomery, General Civil
Mr. William H. Morris, Family
Mr. John M. Neal, General Civil
Ms. Sarah E. Oschack-Tarter, Family
Ms. Alicia M. Page, Family
Mr. N. Houston Parks, General Civil
Ms. Lynn C. Peterson, General Civil
Ms. A. Michelle Poss, General Civil
Ms. Allison M. Rehn, General Civil
Hon. James Y. Ross, Sr., Family
Dr. Michael W. Sanders, Family
Mr. Richard S. Sevier, General Civil
Ms. Stephanie A. Sherwood, Family
Mrs. Rachelle N. Shults, Family
Mr. Cort Sikes, Family
Ms. Kimberly B. Schuerman Smith, General Civil
Ms. Judith E. Soffiantino, Family
Mrs. Autumn N. Starks, General Civil
Ms. Sharon K. Stringer, General Civil
Mr. J. Neil Thompson, Family
Mr. Jacob T. Thorington, Family
Mr. Chadwick B. Tindell, General Civil
Mrs. Deborah L. Tomlin, General Civil/Family/DV
Mr. Willie L. Tomlin, General Civil/Family/DV
Dr. Sean C. Walker, General Civil
Ms. Sonya S. Walton, General Civil
Mr. William S. Walton, General Civil

UPCOMING ADRC APPROVED CONTINUING MEDIATION EDUCATION (CME) OPPORTUNITIES

- February 16, 2016How Co-Parenting Classes Impact Mediation
For more information, email: rbrown2456@aol.com
- February 11, March 10, April 14, May 12, June 9, 2016.....Divorce and Retirement
For more information, email: rosemary@rosemaryfrank.com
- February 18, March 17, April 21, May 19, June 16, 2016.....Tax Issues in Divorce
For more information, email: rosemary@rosemaryfrank.com
- February 20, 2016Mediating with Juvenile Offenders: Ethics, Practice and the Law
For more information, email: info@nashvilleconflict.org
- March 3, April 7, May 5, June 2, 2016.....Avoid Financial Pitfalls in Divorce Cases
For more information, email: rosemary@rosemaryfrank.com
- March 7, 2016.....How Mediation Has Changed my Practice (and Me!)
For more information, email: tsharpe@knoxbar.org
- April 4, 2016..... Pros & Cons of Mediation/Arbitration: Tips for drafting better agreements
For more information, email: tsharpe@knoxbar.org
- April 7, 2016.....Domestic Seminar-Nashville
For more information, email: tgrisham@tnaj.org
- April 21, 2016.....Domestic Seminar-Jackson
For more information, email: tgrisham@tnaj.org
- April 28, 2016.....Domestic Seminar-Knoxville
For more information, email: tgrisham@tnaj.org

For approved internet training courses and more information on the courses above, go to:
<http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediation-education>

Important ADRC Dates

- March 1, 2016**.....Rule 31 Mediator Applications Deadline for ADRC review on April 26, 2016
- April 26, 2016**.....ADR Commission Meeting, Administrative Office of the Courts, Nashville

We Would Like to Hear From You!

In an effort to encourage education and communication between and for Rule 31 listed mediators, the ADRC accepts proposed article submissions from Rule 31 listed mediators and others in the *ADR News*. All submissions may or may not be published and are subject to editing according to the Program Manager's discretion. If you are interested in submitting an article for possible publication in the *ADR News*, please contact Claudia Lewis, AOC Programs Manager, at Claudia.Lewis@tncourts.gov.