

# **Ensuring Competence and Quality Standards of Practice for Truancy Mediation**

## **Background**

The Ohio Commission on Dispute Resolution and Conflict Management administers the Truancy Prevention Through Mediation Program, a statewide effort in cooperation with The Ohio Supreme Court's Office of Dispute Resolution, school districts and local courts, which is designed to address attendance concerns in public schools. The program has been used in grades K - 12, but the primary focus is on grades K - 8.

The program focuses on assisting all parties to facilitate the development of an educational team whose goal is the enhanced likelihood of educational success. While the outcome may be a return to regular attendance at the school, that is just one option. The key is the difference between "How can we get the student to start coming to school on time every day?" and "What barriers to educational success exist at the present, and how, in the student's best interest, can those barriers be eliminated or overcome?"

## **Standards of Practice**

The following standards of practice are consistent with the fundamental values of mediation and are provided to assist mediators and program coordinators in maintaining a focus on these values. These standards are not intended to unduly restrict the practice of mediation, but rather to help ensure competence and quality in the practice of truancy mediation. The Commission and the Supreme Court expect mediators to follow these standards, allowing for flexibility in both mediator style and process.

### **VOLUNTARY PROCESS**

*A truancy mediator shall respect and encourage mediation as a voluntary process. If it appears or is known that a party has been ordered, coerced, or subjected to threats to reach an agreement a mediator shall withdraw from the process.*

Clarity around this issue is critical. Depending on the county, attendance at mediation of a child's truancy may not be voluntary. In such cases the threat of a court referral for refusing to attend is real. What is voluntary, and must remain so, is what may be agreed to at the table. The model of the Truancy Prevention Through Mediation Program is that the mediation process is voluntary and any agreement is one that all parties feel is fair, equitable, and reasonable, and is reached without pressure to do so.

### **SELF-DETERMINATION**

*A truancy mediator shall respect and encourage self-determination.*

- Self-determination means that the parties to the dispute voluntarily design their own resolution, if a resolution can be found. The mediator guides the parties through a process to help the parties develop their own agreement. The mediator may provide information about the process, raise issues, and help to explore options, but the mediator does not make decisions for any party in the mediation.

- The mediator is not present as a representative of the court, nor the schools; the mediator is there to explain the process, raise or explore pertinent issues that may have been missed or not fully explored, help parties offer and consider options, and facilitate the parties in designing their own solutions. It is incumbent upon the mediator to defend the process of mediation, which requires that the parties reach a voluntary, self-designed solution to the concerns presented, without pressure, coercion, or threats of fines or jail.
- Because mediation is voluntary, any party, [**including the mediator**] may withdraw from mediation at any time, and the presence or absence of other persons [attorneys, social workers, counselors] at a truancy mediation depends on the agreement of the parties and the mediator *although the parties have the right to have someone with them at the mediation.*
- Mediators should not offer legal, financial, medical, or other forms of advice, but should encourage each party to make as fully informed a choice as possible when deciding on a particular agreement. *The mediator should, as appropriate, make the parties aware of the value of consulting with professionals [attorneys, social workers, counselors] not at the mediation table, to help the parties make informed choices and decisions.* Under the UMA, a party may request that a support person accompany him or her to the mediation (but the party is not required to bring someone with them).
- The mediator should encourage the participants to explore the range of options available for facilitating the student’s educational success. Information should be shared about community resources and programs that can help the family and student reduce or remove barriers.
- However, the nature of problems disclosed may call for reaching out to, and discussing matters with, persons not at the mediation table such as social workers, health care workers, and after-school tutors. The mediator will not make those connections, but the other parties can.
- The invitation to mediate should come from the school, not from the court or a social service agency. And it should be an invitation: “I’m sure you hope, as we do, that Susie will have every opportunity to learn and add new skills. Unfortunately, the days she has missed make it harder for her to learn. Please join us on April 26 at 2:00 p.m. so we can discuss this together and make plans to help Susie achieve.”
- If a mediator believes that a party cannot fairly present his or her perspective or is unable to participate in the search for an equitable, self-determined solution due to a physical or mental incapacity, including the influence of drugs or alcohol, the mediator must withdraw.

**CONFIDENTIALITY and PRIVILEGE**

*A truancy mediator shall maintain the confidentiality of information acquired in the mediation process as required by Ohio law (Ohio Revised Code Section 2710.07 & 2710.03).*

- It is very important to the mediation process that the session be confidential. In Ohio, the UMA or Uniformed Mediation Act (ORC 2710.07) protects the confidentiality of the mediation session "...to the extent that is agreed upon by all parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code." However, there is a big difference between privilege and confidentiality.

Privilege means that you are protected from testifying in a court or legal proceeding after a mediation takes place [with some exceptions]. In other words, privilege is a legal term that refers to what happens after a mediation session. [2710.03]

Confidentiality is decided on before the mediation takes place and to what extent the communication is confidential is up to the parties. This must be in writing ***to be able to prove what the agreement was as to confidentiality.*** [Agreement to Mediate]. [2710.07]

- The mediator must maintain confidentiality, (which includes destroying notes made during the session), unless required by law ***to report suspected child or elder abuse or neglect, threats of harm or violence, knowledge of crimes or certain forms of misconduct to proper authorities.*** Prior to mediation, the mediator should inform the parties of the limitations of confidentiality ***and help them determine what they want that to mean.***

- The mediator may report, if required, whether parties appeared at a scheduled mediation, and whether a full, partial, or no agreement was reached, but no details of that agreement. [2710.06]

- Caucuses, though rare in truancy mediation, may be an appropriate part of resolving a particular conflict. The purpose and confidentiality restrictions governing such caucuses must be clearly explained to all mediation participants.

- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

## **IMPARTIALITY**

***A truancy mediator shall mediate in an impartial manner.***

- Impartiality means not favoring one party over another, treating all parties in an equitable and fair manner, and avoiding conduct that could give the appearance of partiality towards one of the parties. Impartiality also requires that a mediator not have preconceived opinions regarding the parties' situation.
- "Before accepting a mediation, the mediator shall make a reasonable inquiry as to facts a reasonable individual would consider likely to affect the impartiality of the mediator

and an existing or past relationship with a mediation party or foreseeable participant in the mediation and disclose any know fact as soon as practicable; and if anything is learned after the mediation has been accepted, the mediators shall disclose it as soon as practicable.” [2710.08]

- If any conflicts of interest are identified, it is up to the parties if they want to continue to mediate. This goes to self-determination by the parties. [2710.08]
- Treating all parties alike is a critical skill for a mediator to bring to the table. In a truancy mediation, especially one where the student is present, the mediator should realize that he or she carries an aura of authority. The parties to the mediation might be much younger [parent or student], not dressed as formally, lacking in comparable English skills. As a result, the parent, guardian, or student might perceive the mediator as a professional similar to, and therefore aligned with, teachers, principals, correction officers. In recognition of this, the mediator must use similar posture, speaking style, and tone of voice with all parties. Any appearance of favoritism or partiality must be avoided.
- The mediator may have preconceived opinions about parents who fail to get their children to school on time every day. Such preconceptions have to be left outside the door of the mediation room: the mediator *must* not let those opinions affect words, gestures, facial expressions, or the direction in which the conversation is guided. Long-held values or beliefs may be quite subtle. Mediators must be aware of and guard against responding to parties in a manner which reflects impressions based on the parties’ personal characteristics, background or mannerisms during the mediation.
- It may take concentration and self-awareness for a truancy mediator to perform in an impartial manner. However it is essential that such impartiality be obtained and maintained; as stated above, the mediator does not represent an entity. Neutral as a pane of glass is one description, and if the mediator cannot do so in a particular mediation then he or she is obligated to withdraw.

## COMPETENCE

- *A truancy mediator shall be qualified by education, experience, and training to undertake the mediation.*
- Because there are different styles and approaches to mediation, it is difficult to define the exact point at which one becomes well qualified, or even adequately qualified, in truancy mediation. Certainly a specific range of skill, knowledge, and ability must be reached, but that range is not easy to define.
- For a truancy mediator to obtain competence therefore requires pursuing knowledge in the classroom and at the mediation table. Part of this pursuit of knowledge should cover the impact of culture and belief systems on parenting philosophy and the perceived value of education in various communities.

- Training in basic mediation and truancy mediation is a necessary foundation, but becoming a successful truancy mediator requires experience. It is often advantageous for that experience to come in a co-mediation setting or for the mediator to be observed by another who can afterward offer comments and guidance.
- Truancy mediators have a responsibility to work with their program coordinators to obtain the necessary skills and substantive training and to upgrade those skills and training on an on-going basis by being observed and by participating in co-mediations and in training programs.
- An individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute, if requested. [2710.08]

### **EXPLAINING THE MEDIATION PROCESS**

*A truancy mediator shall define mediation, describe the mediation process to all parties present, and explain the role of the mediator.*

- A mediator should begin a session with introductions. All persons present at the table should have an opportunity to introduce themselves and to indicate what their roles are the mediation. If persons outside the educational system, such as a social worker employed by the county, are present, it is appropriate to ask the parent's or guardian's permission for that person to participate.
- Following the introductions a mediator should define what mediation is and is not. Mediation is a process in which a neutral facilitates communication between the parties, and without deciding the issues or imposing a solution on the parties, enables them to understand and resolve their own dispute. Mediation is not a legal hearing. A truancy mediator shall explain the mediation process and the role of the mediator to all participants and their representatives to enable them to make an informed decision whether to use or continue the process.
- A mediator should explain and get a signed agreement to mediate before continuing with the mediation session.

### **CONFLICTS OF INTEREST**

*A mediator shall disclose all circumstances that may raise a question as to the mediator's ability to conduct a neutral and balanced process, either before the mediation or after the mediation has started*

- A truancy mediator shall disclose any present or prior relationship, personal or professional between the mediator and any party or their representative that may affect or give the appearance of affecting the mediator's ability to remain neutral and conduct a balanced process. If during a mediation, a conflict of interest issue arises, the mediator shall disclose it as soon as practicable. As an example, a mediator might have had a negative experience with an older sibling of the truant student, and that experience could shape the attitude of the mediator towards the student and the student's family. If there is

such bias on the part of the mediator that must be disclosed. The family should be given an opportunity to withdraw, and should the family choose to go forward with the mediation the mediator should carefully consider whether they will be able to maintain impartiality.

- If any conflicts of interest are identified, it is up to the parties if they want to continue to mediate. This goes to self-determination by the parties.
- Any party may withdraw from a mediation at any time.
- Mediators must never permit their behavior in the mediation process to be guided by a desire for a high settlement rate, or by pressure to resolve truanancies in a particular manner by the courts or schools.
- A mediator should not perform a mediation when concentration is difficult due to his or her physical or emotional distractions.

### **POWER BALANCE**

*A truancy mediator shall conduct the mediation in a manner most likely to balance the strengths of the presentation of each party's perspective and suggested solutions.*

- Parties to a mediation of a student's attendance problems may have quite different levels of education or income. In addition, some parties may have a much stronger command of the English language. These and other factors can cause one person to feel inferior and weak, another to feel superior and strong. On top of this, the school personnel, as well as any court staff participating, carry with them the implied strength of the large systems that employ them. Against this array the individual parent or guardian may feel at a great disadvantage, regardless of educational background or verbal skills.
- It is important for the mediator to be aware of the possibilities for such imbalances, and to speak in a neutral and respectful manner to all participants, using the same language styling and delivery. Checking back with someone who may have difficulty grasping all the information as it is presented is not only appropriate but mandatory, but it must be done in a way that avoids any hint of condescension or impatience. A truancy mediator should strive to create an atmosphere where the concerns and perspectives of all parties are listened to and understood.
- Many mediators take care to state in their opening remarks that the goal of all assembled is to help the student have a full educational opportunity. That kind of an inclusive statement makes the parents and others part of an educational team with a shared goal, and that sharing in turn helps lessen concerns about the power of the various participants.

### **References: •**

- Model Standards of Practice for Family and Divorce Mediation, Aug., 2000
- ABA, AAA, SPIDR Model Standards of Conduct for Mediators, 1995

- Oregon Mediation Association, Core Standards of Mediation Practice, Sept., 2000
- Standards of Ethics and Professional Responsibility for Certified Mediators, Judicial Council of Virginia, Oct., 2000

### **Summary of Ohio Revised Code Section 2710.07 & 2710.03**

**The key point in understanding the UMA is to distinguish confidentiality between privilege. When is a Mediation Communication Confidential and when is it Privileged?**

October 29, 2005 section 2710 of the Ohio Revised Code becomes effective.

Privilege is a legal term that comes into play after a mediation has taken place and during a court proceeding. This means that you have protection against testifying in court about a mediation communication. [There are exceptions, however to this and ORV has the exceptions under ORC 149.43, 2710.02, 2710.03, 2710.04, 2710.05.]

Confidentiality is decided before the mediation begins and must be evidenced by a signed agreement to mediate to be able to prove what *was contained in that* agreement. [ORC 2710.07 ] “...Mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code.”