

AGREEMENT TO MEDIATE
Virginia Special Education Mediation System

The parties, identified below, agree to mediate certain issues and to employ the assistance of Art Stewart, a mediator from the Virginia Special Education Mediation Service, upon the terms set forth herein:

1. Mediation

Mediation is a voluntary, cooperative process in which the parties work toward resolving their issues in a private setting with the assistance of an impartial mediator. Mediators do not make decisions for the parties and do not give legal, financial or personal advice.

2. The Mediation Process

The process will include an opportunity for all parties to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if the parties desire, the development of a Memorandum of Understanding or Memorandum of Agreement. In the event that a written agreement is developed by the parties, as they execute it jointly, by their signatures, it becomes legally binding until they voluntarily agree to amend it in whole or in part in writing. Mediation is an informal process, which may involve taking breaks, meeting separately with the parties, and/or dealing with situations which develop during the course of the session.

3. Participation

The parties agree to participate in good faith and to provide substantial full disclosure of all relevant information necessary to reach agreement. Each party has the right to terminate mediation at any time and for any reason.

4. Confidentiality

All communications made during the mediation process which are related to the dispute, and all materials in the case file of the mediator are confidential. Mediation sessions may not be audio or video recorded, nor may any transcript be made. At the conclusion of the mediation session, the mediator must collect all notes taken during the mediation session and destroy them. In addition, any communication made in connections with the dispute resolution proceeding which relates to the controversy, including screening, intake, and scheduling the mediation is confidential. Neither party shall call the mediator as a witness in any judicial or administrative proceeding and no confidential material shall be disclosed in any such proceeding. The mediator may need to discuss the case with the Virginia Department of Education Mediation Services Program staff for case consultation.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive confidentiality, (ii) in a subsequent

action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the dispute resolution proceeding, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against a neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in Section 8.01 – 576.12 in a proceeding to vacate a mediated agreement or (ix) as provided by law or rule. Mediators are mandated reporters of suspected child abuse/neglect.

All parties to the mediation understand and agree that the discussion is confidential and that any agreement that is reached will be limited in its distribution in the same way that an IEP is.

5. Role of the Mediator

The mediator's role is to enable the parties to analyze their current situation, consider all their options, and develop their own solutions. The mediator is not a therapist, attorney for either party, and will not act in these capacities. The parties may need to consult with outside experts. An essential role of the mediator is to facilitate discussion and problem-solving between the parties and to assist them in their communication skills. The mediator will not advocate for either party; however he will operate in the best interest of the child who is involved.

By their signatures below, the following people indicate their request that **Art Stewart** mediate outstanding matters concerning issues related to [REDACTED]'s education with Fairfax County Public Schools and further record their attendance at a mediation conference in Fairfax, VA on July 26, 2016. *The parties acknowledge they understand the provisions of this agreement and enter into it voluntarily.*

| Signed: NAME | RESPONSIBILITY/RELATIONSHIP |
|--------------------------|---|
| <u>Donald Schaefer</u> | <u>Coordinator, Due Process & Eligibility</u> |
| <u>John D. Massey</u> | <u>Procedural Support Liaison, South County</u> |
| <u>Marsha Manning</u> | <u>Principal, South County Middle School</u> |
| <u>Stephanie Raleigh</u> | <u>Office, Special Education Instruction</u> |
| <u>Marsha Goldberg</u> | <u>Mediation observer</u> |
| <u>Ally Deitz</u> | <u>Mediator</u> |