**[PROPOSED] 34 CFR §300.521   Arbitration.**

(a) *General.*

(1) Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through an arbitration process.

(2) Each public agency must ensure that parental participation in an arbitration process is fully informed, voluntary and explicit.

(3) The arbitration process shall not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act

(4) Neither party shall have the right to appeal an arbitration decision.

*(b) Voluntary and knowledgeable participation by parents.*

(1) To assure that parental consent to arbitration is voluntary and knowledgeable, each public agency must ensure that, prior to consenting to any arbitration, parents shall have the opportunity to consult, for a minimum of three hours and at no cost to them, with a person knowledgeable about and independent of the arbitration process.

(2) In addition to notice and discussion of the conduct, scope and authority of the arbitration panel, the consultation should include all of the following:

(A) that no attorneys, whether as counsel or participant, can be present in the arbitration proceeding unless the parent is represented by counsel explicitly or consents to presence of education agency counsel;

(B) that rules for conduct of the proceeding may be set at the complete discretion of the arbitration panel;

(C) that the arbitration panel has complete discretion to determine the nature and scope of the evidence (witnesses and documents) it will seek or hear;

(D) that the record of the proceeding will be confidential and that substantive challenges to the decision can be heard only by the arbitration panel, itself;

(E) that both parties consent to implement and abide by the decision of the arbitration panel, within any specified timelines or within five school days from issuance of the arbitration decision.

*(c) Composition and qualifications of arbitration panel.*

(1) Each State shall maintain a list of individuals who knowledgeable in Federal and state statutes and regulations concerning the provision of special education and have received professional training about the practices and ethics of arbitration. Arbitrators for a specific panel shall be selected on a random, rotational, or other impartial basis.

(2) Each arbitration panel shall consist of three members as follows:

(A) a person with expertise in the child’s primary disability;

(B) a special educator with experience in administering or providing educational programs to children identified with the child’s primary disability; and

(C) an attorney familiar with the state’s special education laws and dispute resolution procedures.

(3) No panel member shall have been previously employed in any capacity by the local education involved in the dispute.

(4) Each panel member shall have equal authority and weight in the conduct of the arbitration proceeding, the issues in dispute, the types of information to be gathered for the record, and the witnesses to be called and in the final voting decision; however, responsibility for management of the arbitration proceeding shall rest with the attorney-member, who shall assure that relevant and sufficient evidence is gathered to support a decision and that the decision includes specific direction for implementation.

(d) *Procedural requirements.* Any arbitration proceeding must meet the following procedural requirements:

(1) No attorney in any capacity shall be present during the arbitration proceeding unless the parents either (A) are themselves represented by counsel, or (B) consent to the participation of an attorney representing the education agency; provided, however, that parents may be accompanied by a support person of their choice who is neither an attorney nor a non-attorney (lay) advocate.

(2) Each arbitration session must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(3) The arbitration panel shall have complete discretion to prescribe the formality of and procedures for the arbitration proceeding, including but not limited to:

(A) authority to issue subpoenas;

(B) identifying issues for decision, including issues beyond those specified by the parties;

(C) adhering to formal rules of evidence;

(D) ordering pre- and post-hearing consultations;

(E) specifying the types and volume of evidence to be presented;

(F) limiting the time(s) for presentation of evidence.

(e) *Scope of record and enforceability of arbitration decision*.

(1) The arbitration panel has the authority and an affirmative obligation to develop the record and is authorized to undertake any steps necessary to do so.

(2) The arbitration panel shall have the authority to consider and decide issues beyond those specifically stated by the parties in the request for arbitration when, in the opinion of the panel, consideration and determination of those issues is necessary to assure a free appropriate public education for the child.