Online US *Agreement to Mediate* forms: exploring discursive and generic features

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This paper investigates discourse features in the professional genre constructed in US *Agreement to Mediate* forms appearing on the CADRE website. These forms are currently used in US states to settle disputes between schools and parents of children with disabilities. Drawing on qualitative and quantitative analysis, this study identifies similarities and differences in the sample forms dealing with the same content and purpose by considering the language use in the genre. Findings suggest that there are similarities as well as slight differences in the discourse practices under scrutiny. The latter reflect how genre producers exploit agreement forms in line with individual responses to rhetorical actions in the conventionalized setting. It is thus argued that *Agreement to Mediate* forms provide an unstable notion of generic integrity in “the world of reality” (Bhatia 2004: 18).

1. Introduction

Alternative dispute resolution processes (ADRs) have been widespread in many areas of law for years and have attracted interdisciplinary interest among linguists and legal scholars. Among scholars of linguistics, major studies of ADRs, notably arbitration, appearing in collected volumes (Bhatia, Candlin, Gotti 2003; Bhatia, Candlin, Engberg 2008), have provided valuable insights and perspectives on the legal language of arbitration by focusing on the generic and discourse patterns used in different texts in national and international contexts. The differences in the legal cultures and systems examined have revealed important linguistic issues in terms of professional discourse and communication practices behind the adjudicative process of arbitration, the most widely used extrajudicial form of alternative dispute resolution.

However, mediation, as a consensual process, provides a valuable alternative form of dispute resolution. As the most traditional ADR option used in a variety of legal areas, such as employment and divorce, mediation is an informal, confidential, and voluntary process in which disputing parties may find a mutually agreeable solution with the help of a neutral mediator, who is not a decision-maker like a judge or arbitrator in adjudicative processes (litigation or arbitration). This rationale for mediation has caught on in the area of special education in some US states, where it is enshrined in federal law in the Individuals with Disabilities Educational Act (IDEA) and encouraged by the National Center on Dispute Resolution in Special Education (CADRE). In those states mediation is available to parents and school personnel to resolve disputes involving the educational needs of students with disabilities, and either the parents or the school personnel may request mediation by completing an Agreement to Mediate form in an attempt to resolve the dispute.

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In providing a memorandum to IDEA, the Committee on Education and the Workforce of the US House of Representatives (17 February 2005) defined mediation as:

[...] an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent mediator and discuss a problem, issue, concern, or complaint in order to resolve the problem amicably without going to due process.

(p. 13)

Against this background, the analysis in this paper explores discursive features in the genre of US Agreement to Mediate forms collected by CADRE and used in different states. Specifically, the analysis focuses on the genre as shaped by the rhetorical context (Miller 1984, 1994; Berkenkotter and Huckin 1995) and the conventionalized communicative purpose (Swales 1990, 2004; Bhatia 1993, 2004). The study identifies similarities and differences in the sample forms dealing with the same content and purpose by showing the significant lexico-grammatical and discoursal features that make the genre operative by genre producers in those states. Although the similarities in the use of lexico-grammatical and rhetorical resources identify the professional genre as being conventionalized and standardized, constraints on the allowable use of such resources suggest that the genre is unstable among genre producers.

2. Materials and Method

2.1. The data: nature and purpose of the forms

The written data used in this study were taken from eight Agreement to Mediate forms collected by the National Center on Dispute Resolution in Special Education (CADRE), which is funded by the US Department of Education Office of Special Education Programs. Agreement forms—of which only a small number are published by CADRE on its website (as of 10 March 2010), where they appear under the link “State Sample Agreements to Mediate”—are operative in various US states, namely, Iowa, Kansas, Minnesota, New Hampshire, North Carolina, North Dakota, and Pennsylvania:
Online US Agreement to Mediate Forms

Personal communication (by email) with CADRE’s direction service informed this author of its mission, which is to increase the nation’s capacity to effectively resolve special education disputes by reducing the use of expensive adversarial processes. The Center’s major emphasis is on encouraging the use of mediation and other collaborative processes as strategies for resolving disagreements between parents and schools about children’s educational programs and support services. As such, CADRE supports parents, educators, administrators, attorneys and advocates to benefit from the full continuum of dispute resolution options that can prevent and resolve conflict, and ultimately lead to informed partnerships that focus on results for children and youth. CADRE members do so also by developing their own Mediation Ground Rules.

However, as a result of personal communication with CADRE members, it was possible for this author also to establish the written source of the agreement forms: they were drafted by the dispute resolution/mediation units within their respective state education agencies in those states starting early in 2000. These credentials allow the agreements to be identified as a genre in professional practice used to achieve professional objectives. Indeed, these objectives can be seen in agreement forms currently being used by family members and/or educators in those states in their process of requesting mediation as a mechanism to resolve a dispute amicably, generally under federal special education law. Prior to the requesting of a form in any state, the mediator typically informs the parties how mediation works and asks the parties to confirm their agreement to mediate by signing an Agreement to Mediate form. This procedure results in technology-based modes of communication in the genre since the parties can print the agreement form from a state website, complete it, and mail or fax it, although many states allow an individual to request mediation over the telephone as well.
In this context, the ‘professional’ nature of the genre provides for the operative term being simply ‘agreement’ rather than the more formal ‘contract’, on account of agreement forms containing no ‘contractual terms’ that would give rise to a contractual obligation, breach of which could give rise to litigation. The operative term therefore leads the forms to resemble documents briefly outlining the terms and details of agreement relevant to undertake mediation, and are based on the parties’ will to mediate, which is enabled by the external sources of CADRE’s Mediation Ground Rules and IDEA 2004 as well. Thus, although agreement forms are not truly contractual in nature, they are indeed the first stage in moving towards a legally binding mediation agreement.

The notion of stage is relevant to understand that the forms under scrutiny do not stand alone in the mediation process and procedure. As a matter of fact, they are intended to be commencement points for the oral arguments that will be brought up later by the parties, and which are to be found in the structured mediation session. This session typically begins with the mediator describing the mediation procedure and then asking the parties—the parents and the school personnel—to clarify the problem by explaining their viewpoints about the issues in the complaint. If the parties resolve their dispute through the mediation session, they enter into a written, legally binding agreement, witnessed by the mediator, which is enforceable in any state or federal court. In this way, the parties can avoid due process hearings conducted by an administrative law judge (ALJ) of the Office of Administrative Hearings (OAH) and can provide immediate assistance to the child by addressing his or her needs.

Table 1 shows the overall short textual format of agreement forms selected for examination. In general, agreement forms are kept fairly uniform across the states, as measured quantitatively by the total number of words, number of sentences, and sentence length in individual texts. Text length is in itself determined by the inherently communicative purpose of the forms, although a quantitative exception arises in the Pennsylvania form, which is the shortest one in terms of word length for reasons that will become clear below.

<table>
<thead>
<tr>
<th>US Agreements to Mediate forms: state sample forms</th>
<th>Word length (tokens)</th>
<th>Sentences</th>
<th>Number of words per sentence: minimum – maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>IOWA</td>
<td>199</td>
<td>7</td>
<td>17-31</td>
</tr>
<tr>
<td>KANSAS</td>
<td>231</td>
<td>9</td>
<td>12-38</td>
</tr>
<tr>
<td>MINNESOTA</td>
<td>304</td>
<td>13</td>
<td>11-33</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>331</td>
<td>12</td>
<td>19-37</td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>302</td>
<td>12</td>
<td>9-32</td>
</tr>
<tr>
<td>NORTH DAKOTA a</td>
<td>410</td>
<td>14</td>
<td>10-38</td>
</tr>
<tr>
<td>NORTH DAKOTA b</td>
<td>280</td>
<td>10</td>
<td>13-31</td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td>62</td>
<td>1</td>
<td>35</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,119</strong></td>
<td><strong>78</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 1. State sample Agreement to Mediate forms: text length in terms of the total number of words, number of sentences and sentence length.
2.2. Identifying the Agreement to Mediate genre by “discursive procedures”

In a context where the nature and purpose of data selection essentially define the ways in which the agreement forms are drafted by dispute resolution practitioners for the parties, the genre may be described in terms of a variety of “discursive procedures”, as claimed by Bhatia (2004). According to Bhatia, discursive procedures describe:

[...] the procedural aspects of genre construction, such as ‘who’ contributes ‘what’ to the construction and interpretation of specific generic actions; ‘participatory mechanisms’ which indicate ‘at what stage’ and ‘by which means’ does one participate in the genre construction and interpretation activities; and ‘contributing genres’ which allow one to choose the appropriate and relevant generic knowledge and information to make the genre in question possible.²

In this theoretical context, and as claimed by Bhatia, the identity of the genre also accounts for “a distinctly rich intertextual and interdiscursive patterning”.³

To illustrate such procedural aspects in the use and construction of Agreement to Mediate forms, the who and what mechanisms are immediately identified by the mediation units within the respective state education agencies in the states examined here. In these units, the members, as genre producers, are gathered into a professional “discourse community”⁴ that shares goals or purposes, using the organizational patterns of the genre to achieve these goals. However, in so far as they are responding to CADRE’s social objective of encouraging the full continuum of dispute resolution options, it is predictable that these members may also have an interest in a common set of concerns, values, goals, and practices, as defined by CADRE’s members, with whom they would therefore operate within “communities of practice”⁵ consisting of the three interrelated terms of “mutual engagement”, “joint enterprise” and “shared repertoire”.⁶ The expert community also accounts for the stage of participatory mechanisms since the content they produce in the resulting forms attempts to background and foreground, via interdiscursive links, the oral discussions between the parties and the mediator in the mediation session to follow. Finally, the label attached to means is relevant to recognize the final important participatory response by the federal special education law, known as the Individuals with Disabilities Educational Act 2004 (IDEA).⁷

Originally enacted in 1975, this statute serves as the ‘contributing genre’ by which the content of agreement forms is mostly expressed and the entire mediation process is regulated. This legislative genre therefore contributes towards intertextual patterning in the agreement forms being studied.

³ See supra note 1, p. 129.
⁶ Supra note (1998: pp. 72-73). These terms would, however, depart from the common notion of a discourse community which uses a specific genre to pursue its goals.
⁷ The following is a link to the statute that references mediation: <http://www.directionservice.org/cadre/stat_prtb2004.cfm>.
2.3. Methodological procedure

In an attempt to combine the written data with theoretical approaches to discourse and genre, the research examined the genre of agreement forms by relating them to the notions of “large scale typification of rhetorical action”\(^8\), the repertoires of “situationally appropriate responses to recurrent situations”\(^9\), or appropriateness of communicative purposes\(^10\) for the intended audience.

On these grounds, the analysis focused on the use of lexico-grammatical and discoursal resources that make the Agreement to Mediate forms either similar or different in the specific rhetorical action and communicative purpose among genre producers, in their professional goal of making such forms operative for the intended audience. While drawing on the contribution of other analytical tools as well, the qualitative and quantitative investigation provided the following significant descriptions of the genre: the organizational structure, content, and layout; personal forms; modal verbs; verb tenses; syntax; and lexis. Quantitative data were obtained via ordinary computer scanning and manually analysed for specific linguistic items.

3. Results and Discussion

3.1. Organizational structure and content

A glance at the organizational structure and content in the agreements reveals how genre producers in different states achieve their social communicative purpose of allowing the intended audience to request an Agreement to Mediate form.

The data in five of the agreement forms (i.e., Iowa, Kansas, Minnesota, New Hampshire, and North Carolina) present similarities in both content and structure, and give expression to the same purpose in conventionalized and standardized products. Headed as AGREEMENT TO MEDIATE, these forms sequentially state various principles and procedures which are stepping stones to mediation, such as “oral discussions held in the mediation session remain confidential”, as derived intertextually from IDEA 2004, concluding with the signatures of all parties involved. As such, the forms do not contain contentious matters between the parties, as would conventionally be the case with other form-styled documents in areas of civil law, such as English ‘statements of case’ in civil claims. Thus, in the case of the Kansas and Minnesota forms, reported in full as sample texts 1 and 2 in the Appendix, mediation’s fundamental principles and procedures are drafted in declarative statements that amount to enumerated ‘terms of agreement’ by which the parties, identified as the parents and school personnel, state that they understand and accept the resolution of their dispute, preparing the basis for the parties’ participation in the mediation session, where the needs and interests of

the child will be discussed under the guidance of a skilled mediator. The state forms end with the signature of the parties and the mediator as evidence of their Agreement to Mediate according to the terms of the form; the signatures, however, function as a declaration of understanding of the participatory process arrived at in the contextual circumstances.

Despite these regularities in the rhetorical situation and purpose, variation in structure and content can be observed in the two North Dakota agreement forms, which are presented as full sample texts 3 and 4 in the Appendix. Here, the convention style and format in which the application forms are drafted differs completely from the previously examined agreement forms. In particular, the ‘Mediation Issue(s) of Parents’ and ‘Mediation Issue(s) of School’ sections allow the parties to use blank spaces in which to describe the main issues of the conflict that raised the need to request mediation. In this context, the other previously examined agreement forms lack a ‘Summary of Agreement’ section with a blank space, which is found in sample 3 (one of the North Dakota forms) alone. This form is headed MEDIATION AGREEMENT as distinct from PARENT REQUEST FOR AND AGREEMENT TO MEDIATE in sample 4 of the other North Dakota form, although the function of the words PARENT REQUEST FOR is implied in other forms, where it is omitted. The distinction in the heading allows sample 3 to come across as a “hybrid” generic form incorporating both functions under the above headings, and to similarly achieve a “mix” of communicative purposes. Like the other forms examined earlier, sample 3 communicates the parties’ understanding of the dynamics and principles of the mediation process stated under a ‘Terms of Agreement’ section in the form-style framework, and drafted using second- and third-person pronouns rather than first-person pronouns, as discussed below. In addition to committing the parties to mediation, the sample form communicates the resolution that is expected to be reached by the parties following the mediation session by including a ‘Summary Agreement’ section. By intuition, this section brings into focus the mediator’s potentially passive role as a ‘scribe’ who simply records agreement points as directed by the parties following the session. Thus, we can see that sample 3 is more permeable in its ‘wider’ conventional boundaries, serving also as a written, legally binding agreement ending the mediation session. The North Dakota forms invariably end with personal names and other references that signal declarative actions of closure by all parties to the agreement, thus sharing similarity in structure with the other agreement forms selected as data.

Interestingly, however, the Pennsylvania form (sample text 5 in the Appendix), which has the same heading, MEDIATION AGREEMENT, as the North Dakota sample 3, not only provides an exception to the expert manipulation of the hybrid structure identified in the North Dakota form, but also distances itself from the purpose shared by the other forms selected. It therefore gives rise to a new rhetorical situation and purpose realized outside the specific genre of Agreement to Mediate forms. The opening statement, textualized as We, the undersigned, having participated in a mediation session on..., makes it clear that the form gives expression to a different communicative purpose by locating the mediation session as the conclusion rather than commencement point of the oral arguments for which an Agreement to Mediate form is supposed to prepare the ground. Thus, unlike the ‘broader’ North Dakota text, the Pennsylvania form reasonably stands as a final written agreement within its ‘narrower’ conventional boundaries, binding the parties through the mediator and presumably becoming enforceable in court, as under the federal law. While this binding status

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may be gleaned from an explicit performative act\textsuperscript{12} in the first-person plural followed by performative verbs occurring with ‘hereby’, the legal adverbial of performativity (\textit{We, the undersigned, ... hereby abide by and fulfill...}) in active simple present tense, the performative action of the opening statement is left for the parties to further define in a blank space and to attest to by signing the agreement.

The question now arises as to the rhetorical effectiveness of the North Dakota form in sample 3 and the Pennsylvania form for the parties in those states seeking to obtain a purposeful Agreement to Mediate form to be mailed or faxed. In a context where mediation units and CADRE’s members are assumed to be held together as communities of practice created with the goal of providing interacting parties with a domain of knowledge online, it is likely that these parties will be faced with inhomogeneous and misleading web content developed by CADRE’s members, whose practice is to incorporate all forms without distinguishing among them, on their institutional website, where the forms appear under the general heading “State Sample Agreements to Mediate”.

3.2. Printing techniques: further variation

Variation also arises from individual house styles for printing agreement forms, as measured by the use of font type and size, bold type and capital letters, as well as the referencing system.

Where referencing is concerned, Minnesota uses “Case No. _____”, Kansas uses “Reference Number” in bold, while North Carolina uses “Case # ________” and “Case Name: ________”. Although this administrative-style referencing system is omitted elsewhere in the data, most presumably for reasons of personal taste by the text producers, it adds a feature of formality to the forms while still adhering to the customary manner of presenting a document of this kind in a user-friendly, communicative environment. Unlike other forms, this system is compounded by the use of an identifiable commissioner’s name, which appears on the New Hampshire form, contributing a formal element to the document.

3.2.1. \textit{We, The parties} orientations

Despite the allowable regularities of content and structure in expert writing practices, the rhetorical situations provide different micro-level norms by which genre producers manifest the presence of the participants in agreement texts.

As Table 2 shows, the incidence of personal subject / object pronouns and possessive adjectives is proportionally higher than that of the third-person plural \textit{the parties} in subject position. The preference for personal forms realized by pronouns and adjectives\textsuperscript{13} indicates that the agreement forms have a considerable effect on the notion of the “subjectivity”\textsuperscript{14} of

\begin{footnotesize}
\begin{enumerate}
\item Austin, John (1962) \textit{How to Do Things with Words}. Cambridge: Harvard University Press.
\item Benveniste, Emile (1971) \textit{Problems in General Linguistics}. Coral Gables, FL: University of Miami Press.
\end{enumerate}
\end{footnotesize}


\begin{quote}
[...] when an individual becomes engaged in an activity, whether shared or not, it is possible for him to become caught by it, carried away by it, engrossed in it – to be, as we say, spontaneously involved in it.\footnote{Supra note 9 (1961: 35).}
\end{quote}

By positioning the speaking parties as consciously experiencing subjects of engagement in the propositions to which they give voice when requesting an Agreement to Mediate form, personal forms allow the genre to establish a strong sense of ‘belonging’ to the parties in subjective identity-forging aspects of mediation discourse, and similarly allow the language of agreement forms to become a ‘living’ instrument in such a discourse.

<table>
<thead>
<tr>
<th>IOWA</th>
<th>we:7</th>
<th>us:1</th>
<th>your:2</th>
</tr>
</thead>
<tbody>
<tr>
<td>KANSAS</td>
<td>we:3</td>
<td>us:1</td>
<td></td>
</tr>
<tr>
<td>MINNESOTA</td>
<td>I:14</td>
<td>we:4</td>
<td>us:1</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>I:25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td></td>
<td>the parties:6</td>
<td></td>
</tr>
<tr>
<td>NORTH DAKOTA s.3</td>
<td>the parties:9</td>
<td>my:1</td>
<td>you:2</td>
</tr>
<tr>
<td>NORTH DAKOTA s.4</td>
<td>I/We:8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td></td>
<td>we:1</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>I:39</td>
<td>the parties:15</td>
<td>I/We:8</td>
</tr>
</tbody>
</table>

Table 2. Distribution of personal pronouns, possessive adjectives and the parties references in the data.

Let us consider the following examples:

(1)

1. \textbf{NEW HAMPSHIRE}\n\begin{quote}
1. I understand that the mediation is VOLUNTARY, and that I have chosen mediation as an alternative to an Impartial Due Process Hearing. [\ldots]
\end{quote}

6. I agree that I will enter into mediation session(s) in good faith and that all mediation proposals will be made in good faith.


\footnote{Supra note 9 (1961: 35).}
1. We will participate in a preappeal/mediation conference conducted according to the Administrative Rules of the Iowa Department of Education, Bureau of Children, Family and Community Services with _____________ as the mediator. […]

5. We will not blame the mediator or try to obtain compensation or reimbursement from the mediator for anything connected to the preappeal process – including the mediation agreement we reach.

MINNESOTA

1. I understand we are here to find a solution to our dispute and that this is most likely to occur if I share information openly.

2. I understand that the mediator is here to help us see both sides, think about solutions, and write up an agreement. […]

6. If we reach a written agreement, I agree to follow it.

7. I understand that what we talk about in mediation is confidential. I agree I will not ask to use any meeting notes or any other papers from mediation if there is a hearing later.

In the examples above, where the exclusive first-person pronoun “I” creates a strong individual voice of the subject, the inclusive “we” pronoun naturally creates a strong solidarity and collaborative partnership among the subjects in the mediation process. Particularly in (3), where we notice the immediate shift from an individual voice to a collaborative ‘we’ construction, the semantic referent and pragmatic function of the pronominal forms provide the rhetorical framework in which a ‘resolutive coordination paradigm’, as introduced by this author in this discussion, is established interactionally ‘between the parties and the mediator’ via the spatial deictic ‘here’ (I understand we are here to find a solution …). The locative adverb forwards the proposition the parties have in their minds in a context where the mediator is relatively backgrounded on the surface of the text. In the subsequent statement in (3), however, the mediator’s role is foregrounded in the ‘mentally framed’ spatial deictic system of the proposition, which is now determined by the idea of ‘closeness’ of the mediator, as conveyed by proximal ‘here’ (functioning, however, as a kind of temporal ‘now’), and given a most prominent relation to the nominative singular ‘I’ pronoun, which takes the ‘us’ object form in the collaborative ‘we’ framework. In these contexts, the perception gained from the collaborative ‘we’ pronoun also establishes the communal identity of the parties, who have common needs and interests in having their dispute successfully resolved.

Communal identity is also achieved by the use of personal pronouns and the if-clause structure, as shown in example (3). Although this use is found in only two marginal instances in the data, it leads the individual voice of the subject in the “I” pronoun to commit, by accepting, to the content of the subordinate clause with the collaborative ‘we’ pronoun, thus allowing the ‘we’ speaking subjects to present an epistemic stance in the conditional instance.

However, as shown in Table 2 in regard to the North Dakota form (sample 4), other drafting opportunities are available to genre producers; here the combined use of I/We pronouns is preferred:

NORTH DAKOTA

I/We request mediation in the matter of _______________ (child/student’s initials) to try to reach an agreement on some or all of the issues regarding the educational services for the child/student. I/We have read and understand the written materials describing mediation services and have been fully informed that…. I/We also understand that the mediator is not providing counseling or therapy services.
At first sight, the intention of the expert producers may suggest that the use of the combined \textit{I/We} construction is joint in its effect, since it allows the party in its own distant reading space to circle the corresponding pronominal form, as is typical of an application-style document of this nature. However, this combined use is only apparent on the surface of the text and is therefore misleading, since it does not provide a shorthand method of stating exclusive \textit{I} and inclusive \textit{we} in the corresponding statements, as we have seen elsewhere, but merely expresses the exclusive nature of the referent. Exclusiveness is measured by the heading \textit{PARENT REQUEST AND AGREEMENT TO MEDIATE} (my italics), and is further reinforced by the form which, oddly, requires the signature of only one side in the controversy, identified as ‘Parent(s)’ and/or ‘Guardians’, and thus does not involve the other party. As a result, a further element of instability is allowed for by expert producers in that state.

By contrast, different opportunities arise in the North Carolina and North Dakota forms (sample 3). Here, genre producers constrain the use of personal forms for speaking subjects to changing rhetorical conventions through the lexical item \textit{the parties} used in third person (plural) subject position. Thus, we read:

\begin{enumerate}
\item \textit{NORTH CAROLINA}
\begin{enumerate}
\item The parties agree to participate voluntarily in mediation in an effort to resolve the issues to this dispute. Any agreement reached...
\item The parties agree that all matters discussed during the mediation are confidential, unless otherwise discoverable, and cannot be used....
\end{enumerate}
\end{enumerate}

\begin{enumerate}
\item \textit{NORTH DAKOTA}
\begin{enumerate}
\item Terms of Agreement: (use additional pages if necessary) \textit{The parties} understand that mediation is an agreement-reaching process in which the mediator assists the parties in reaching agreement in a collaborative and informed manner. \textit{It is understood that the mediator has no power to decide disputed issues for the parties. The parties} understand that mediation is not a substitute for independent legal advice. \textit{The parties} may secure...
\end{enumerate}
\end{enumerate}

In these instances, in which first-person subjects are not directly engaged, the illocutionary force of the statements allows the lexical item \textit{the parties} to perform the required action, by foregrounding again unambiguously the collaborative notion of mediation in a future time frame. This item has a clear effect of distancing the explicit personal tenor expressed elsewhere through \textit{I} or \textit{we} person deixis, and gives third-person statements a flavor of conventionally drafted legal agreements, possibly under the interchangeable headings of ‘Memorandum of Understanding’ or ‘Memorandum of Agreement’.

The example in (6) is illustrative of further constraints on the use of \textit{the parties} in subject position, which is avoided in place of the ‘understand’ transitive verb taking a clause as object in a short passive structure in three instances across the forms (North Carolina: 2, North Dakota: 1):

\begin{enumerate}
\item \textit{NORTH CAROLINA}
\begin{enumerate}
\item If the issues are not resolved through mediation, it is understood by \textit{the parties} that the issues may be transferred to the state complaint investigation process or to a due process hearing.
\end{enumerate}
\end{enumerate}

Unlike the example in (6), where \textit{the parties} is deleted but implicitly understood by the pragmatic context, in example (7) \textit{the parties’} commitment to and responsibility for related issues is explicit, since the clause maintains the \textit{by} phrase and, most importantly, presents
acceptance of something as an agreed fact, or otherwise presents acceptance as a condition for these agents. Unlike I or We constructions, the examples have the effect of impersonal and objective statements, where naturally “agentless actions serve to distance the writer or speaker from the texts”.¹⁸

Finally, the interpersonal use of you and your second-person pronouns completes the current stock. These pronominal items are found in the final two sections of the application form-style of the North Dakota forms (4 occ.), and less so, in this style, in the Iowa form (2 occ.), as reported in Table 2.

The rhetorical picture of these forms appears as follows:

<table>
<thead>
<tr>
<th>NORTH DAKOTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties: Each of you understands the preference for a limited number of participants at the meeting. At this time...</td>
</tr>
<tr>
<td>Parent(s)/Guardian(s)</td>
</tr>
<tr>
<td>Terms of Agreement: ....................................</td>
</tr>
<tr>
<td>Each of you should be aware that the length of the mediation is unknown. Please reserve the remainder of the day for the mediation.</td>
</tr>
<tr>
<td>The parties should understand that as mediator, my duty is to help the parents and the school district reach an agreement on the future placement and educational program for this child/student. ...</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IOWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. We will not blame the mediator or try to obtain compensation...</td>
</tr>
<tr>
<td>PLEASE SIGN YOUR NAME AND PRINT YOUR TITLE LEGIBLY</td>
</tr>
</tbody>
</table>

Viewed in Hyland’s analytical tool of interactional metadiscourse¹⁹, the use of reader pronouns you and your as “engagement markers” in the author’s terminology²⁰ signals the expectations of genre producers of allowing the designated mediator to address the parties directly and, similarly, secure cooperation from them. Unlike the speaking subjects in I and we person deixis, which present their settlement positions to the mediator, who attempts to resolve disputes by facilitating discussions in the mediation session, the you and your pronouns in the examples above are controlled by the mediator in his/her role as discourse participant. The latter now guides the parties, who become the readers of the agreement forms by focusing their attention on the principles and procedure necessary to reach an agreement that is acceptable to all participants.

¹⁹ See supra note 7.
²⁰ See supra note 7.
Reader pronouns, as used here, add informality and intimacy to the texts, serving the inherently informal character of mediation, where interaction takes place in a user-friendly environment of technology-based communication modes. Indeed, example (8) focuses on the notion of cooperation with the mediator as a ‘facilitator’. Here the possessive form *my* powerfully intrudes into the text to indicate that the discourse participant casts him/herself in a role of responsibility, which is necessary to build trust in the parties and commitment to the process of mediation. As part of this responsibility, the collaborative relationship between the speaker and the audience is reinforced by *should*, the modal of necessity\(^{21}\), by which the mediator directs the parties to undertake a certain action in *you or the parties* orientations.

### 3.4. Modal meanings

As has become increasingly clear throughout the examples given above, genre producers also allow the speaking parties to stand in relation to their propositions by the use of modal auxiliary verbs. Here the communicative functions performed by modal verbs were considered since the terms of agreement in the data are rarely marked for modality patterns.

Table 3 below shows the occurrences of central modal verbs recorded in our data, where most of the modal meanings are conveyed by *WILL*, followed in frequency by *MAY* and *CAN* down to *SHALL* and *SHOULD*. Modal meanings are enacted in the proportionally higher number of instances of the ‘*I/we*+agree/understand *that*-clause’ structure (a total of 25) as well as in the much lower proportion of ‘*I*+modal+main verb’ structure (a total of 4). In addition to first-person subjects, modal meanings occur with human/non-human subjects (singular and plural) in active and passive constructions.

<table>
<thead>
<tr>
<th>State</th>
<th>CAN:2</th>
<th>WILL:4</th>
</tr>
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<tbody>
<tr>
<td>KANSAS</td>
<td>CAN:2</td>
<td>WILL:2</td>
</tr>
<tr>
<td>MINNESOTA</td>
<td>MAY:2</td>
<td>WILL:5</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>SHOULD:1</td>
<td>MAY:6</td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>SHALL:3</td>
<td>MAY:1</td>
</tr>
<tr>
<td>NORTH DAKOTA</td>
<td>SHOULD:2</td>
<td>MAY:1</td>
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<tr>
<td>NORTH DAKOTA</td>
<td>MAY:1</td>
<td>WILL:5</td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td>TOTAL</td>
<td>SHALL:3</td>
</tr>
</tbody>
</table>

Table 3. Central modal verbs in the data: occurrences.

For a start, example (10) shows the use of the modal *WILL* occurring rarely in the agreement forms. This use is one which retains, as a marker of futurity, the meanings of firm volition, intention, or decision:

(10) **NORTH DAKOTA: sample 4**

The following is a summary of the issue(s) that *I/we will discuss* in mediation:

---

However, the majority of statements in the data allow for an interpretation of the *will* modal according to the notional values of “volition/prediction” in the (deontic) “intrinsic modality” category, and an “event modality” in which “dynamic modality” also includes the meaning of volition. Based on this assumption, and the function performed by the modal operator in the list of examples in (11), the subject’s involvement in the deontic expression of volition/intentionality to bring about the proposition expressed in the utterance becomes more explicit by means of a rational ‘promise’ voluntarily undertaken by the parties at the time of reading the *will* clauses and contemporaneously signing the Agreement to Mediate form:

(11) IOWA
1. *We will participate* in a preappeal/mediation conference conducted according to the Administrative Rules of the Iowa Department of Education, Bureau of Children, Family and Community Services with __________ as the mediator.
2. *We will not discuss* the details of this preappeal/mediation conference with anyone as required by law. [...] *We will not blame* the mediator or try to obtain compensation or reimbursement from the mediator for anything connected to the preappeal process – including the mediation agreement we reach.

The promise-bearing function expressed by the semantics of the English modal *will* is implied in the speaker’s awareness of responsibility and probity, and therefore necessity, to act in the expected manner during mediation, as is further derived from the external sources of IDEA 2004 and the Mediation Ground Rules. This function naturally accounts for the social expectations of the generic forms in duty-bound contexts of interpersonal relations between the parties and mediator. Thus, we are able to see the parties as making a commitment to each other and to the mediator in relation to specific issues, such as promising to act in line with the mediation principles and procedures being textualized in (11). As a result, the modal statements have the status of a (deontic) promise-bearing commitment imposed on the subjects.

The hypothesis for a deontic commitment reading of *will* modalized statements, as derived from semantic and pragmatic factors in future time-reference, is further reinforced by looking at Palmer’s (1990) description of the deontic (performative) verb *shall*, whereby “a speaker may actually ... make a promise or threat”, and later Palmer’s (2001) deontic “commisive modality”, signalled in English by the modal verb *shall*. The latter connotes (in the author’s argument) the speaker’s expressed commitment that the action will take place. Well aware of the absence of first-person *shall* in the current texts, we assume that *I will* and *We will*, denoting strong determination/volition, are the usual forms in contemporary American

---

24 Indeed, in older studies (Jespersen 1924: 320-321), the author suggested the notion of “promissive” will (*I will go*) among other sub-categories (such as, permissive, hortative, jussive, etc.) belonging to three types of sententially analysed ‘moods’, labelled as indicative, subjunctive and imperative.
25 Similarly, a glance at ‘Sample Mediation Ground Rules’, which appears in total eleven times on the CADRE website, shows that *We* subjects are followed by the *will* modal, such as 5. *We will listen respectfully and sincerely try to understand the other person’s needs and interests*:
26 It should be noted that the deontic promise-bearing commitment of the parties in US Agreement to Mediate forms bears similarities with the parties’ commitment to the Italian *accordi di transazione* (negotiation agreements) established by a *mediatore civile* (family mediator): Faculty law expert communication.
English, whereas the first-person shall (indicating strong volition) has a much more restricted role than in other regional varieties of English. Based on this assumption, the interchangeable use of will in the current texts is consistent with Palmer’s category of “making a promise”, or a deontic commissive use (Palmer 2001) such as shall in similar contexts. Like shall, therefore, the semantics of will here would be combined with Searle’s pragmatics of commissive speech acts of promising, as claimed by Palmer, insofar as a sincere commissive will in the present data goes beyond the grammaticalized means of expressing the speech act of promising (‘I promise + to/that clause’), and becomes the basic purpose of the speaker in person deixis (I/we), pledging a future action described in the propositional content of the utterance.

In the list of examples below, in which the different ‘I/we+agree/understand that-clause’ is used by genre producers, the terms of agreement are constructed in a commissive sense (intentionality), in addition to using the permission/prohibition types of deontic modality:

(12) We understand that the mediator will not disclose anything about this preappeal/mediation conference that in any way identifies the parties to it. We also understand that the mediator cannot be called to testify as a witness in any future hearing IOWA

We understand that: [...] The mediator will not make decisions regarding the special education program or services to be provided to the student. [...] Participation in a mediation session cannot delay or waive the parties’ right to proceed with a due process hearing. KANSAS

I understand that I may stop the mediation or the mediator may stop the mediation at any point or for any reason. NEW HAMPSHIRE

I agree that I will enter into the mediation session(s) in good faith and that all mediation proposals will be made in good faith. NEW HAMPSHIRE

I agree that I will not subpoena the mediator to testify in any court proceedings connected with the mediation session... NEW HAMPSHIRE

If an agreement is reached, I/we understand that the written and signed agreement may be shared with other individuals working with the child/student. I/we understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings pertaining to the child/student’s case. NORTH DAKOTA: sample 4

Here, deontic modality notions realized in that complement clauses are controlled by person deixis (I/We) followed by the verbs ‘agree’ (14 instances) and ‘understand’ (32 instances), the most frequently occurring verb forms in the data. In this study, the verbs ‘agree’ and ‘understand’ are interpreted as assertive speech-act verbs referring to “representative

28 In this context, Crystal (2006: 311) claims that “will/won’t is generally found for shall/shan’t” in AmE. Moreover, the extensive use of the modal ‘will’ in our AmE data would also be justified by the claim that it marks a gradual replacement of ‘shall’ in non-legal English (Gotti 2003; Leech 2003).


30 We assume that the verb ‘understand’ (= ‘I understand and accept that...’) is equivalent to the verb ‘agree’ in the current discourse.
declarations”\textsuperscript{31} performed by an agentive participant\textsuperscript{32} in the discourse at hand, where the person performing the act of ‘agreeing’ or ‘understanding’ must believe the proposition he or she is expressing (assertion) upon signing the document.

The list of examples in (12) using that complement clauses provides an opportunity for the first-person singular subject to complete his or her assertive speech acts of ‘agreeing’ or ‘understanding’ by involving him/herself in the expression of a deontic modal meaning of the commissive type (\textit{I agree that I will enter...} / \textit{I agree that I will not subpoena...}), as seen before, or in the \textit{may} permissive type of Palmer’s (2001) “event modality” (\textit{I understand that I may stop the mediation...}), which describes merely potential future actions of the parties to mediation. The modal meaning of \textit{may} suggests that the subject is permitted to carry out the action in the “dynamic modality” type because, as noted, he or she is subject to the external constraints of IDEA 2004 and the Mediation Ground Rules as the enabling sources of the proposition made.\textsuperscript{33}

Moreover, that complement clauses allow the first-person plural subject to complete their asserted acts in relation to a third subject (the mediator), upon whom deontic meanings are imposed by the external sources, that is, in the commissive type (e.g., \textit{We understand that the mediator will not disclose anything...}), the prohibition type (\textit{We also understand that the mediator cannot be called to testify...}), or the permission type of modality (\textit{I understand that [...] the mediator may stop the mediation...}). The fairly extensive use of complement clauses may be explained by the inherently collaborative framework in which the current discourse is constructed. And this framework requires genre producers to include the appropriate propositional material in a that clause following the first-person subject assertive clause. This results in the realization of the subjects’ (the parties’ and the mediator’s) cooperative involvement in the event described in the complement.

The following examples show that modal meanings are enacted in third-person human/non-human subjects (singular and plural), following the convention of writing legal or quasi-legal documents. Exceptions to this arise in only two (underlined) instances in (14), where, as a result of the application-form style of the document, the enabling source of the propositions expressed by deontic (predictive) \textit{will} and (obligative) \textit{should} derives from the designated mediator, interacting metadiscursively with the parties in their role as readers.


\textsuperscript{32} On this point, Leech’s (1983: 204) argument is about the “blurring and overlap between speech-act and non-speech-act verbs”.

\textsuperscript{33} In discussing the modal ‘may’ mainly in epistemic use, Facchinetti (2003) analyses this modal in its (future) deontic use in legal text-types. Future deontic use of the modal, as claimed by the author, “is projected to the future with regulations, requests, wishes, orders, and permissions”, p. 317.
**Online US Agreement to Mediate Forms**

(13) **AGREEMENT TO MEDIATE FORM**

1. [...] Any agreement reached *will* be reached by mutual consent. [...]  
2. [...] Confidentiality, however, *will not* extend to threats of imminent physical harm or incidents of actual violence that occur during the mediation. [...]  
4. Mediation sessions *will not* be tape-recorded or transcribed by the mediator or any of the participants. All information or materials provided to or created by the mediator, including all notes generated during the course of the mediation, *shall* be destroyed by the mediator after conclusion of the mediation. [...]  
5. If settlement is reached by all the parties, the agreement *shall* be reduced to writing and when signed *shall* be binding upon all parties to the agreement.

NORTH CAROLINA

(14) **MEDIATION AGREEMENT**

*PARTIES:

Each of you understands the preference for a limited number of participants at the meeting. At this time, the only participants who *will* be allowed into the session, without prior consent, *will* be: [...]  

Terms of Agreement

[...] The parties *may* secure such advice throughout the mediation process. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator *cannot* render individual legal advice to any party and *will not* render therapy or arbitrate within mediation. [...] Any agreement reached *will* be reduced to writing and duplicate originals given to the parents and the district. [...]  

Each of you *should* be aware that the length of the mediation is unknown.

NORTH DAKOTA: SAMPLE 3

In the realm of modal meanings, it is telling that the traditional *shall* modal, which contemporary Plain English campaigners (including those in the US) advocate avoiding in legal discourse, intrudes in only two instances of the conventionally drafted form shown in (13). Although, as yet, the data point to a much more restricted role of this modal in American English and a broader use of *will*, as noted, the formal modal clearly imparts a deontic (obligation) future meaning on statements expressed in non-human third subjects. However, a note should be made about the *shall*-modalized statement expressing a result to be expected from the parties’ resolution (*If settlement is reached by all the parties, the agreement shall be reduced to writing*). This modal is replaced by *will* in similar contexts in the North Dakota form shown in (14) (*Any agreement reached will be reduced to writing*). In this case, as in others where *will* alone is used (North Carolina: 4 times, North Dakota: 4 times), American genre producers would therefore seem to make no exception to the idea of a deontic prediction of future actions or events derived from the same external sources, insofar as the stronger deontic force conveyed by *shall* is avoided in favor of the deontic prediction conveyed by *will*. The latter is now constructed in third-person subjects (human/non-human) upon whom the “authority over [the] addressee”\(^{34}\) of the *will* modal naturally falls. The perception gained from the use of modal verbs described above is that American genre producers tend to categorize deontic predictive *will* in less formal terms than, for example, their British counterparts. This may be accounted for by their need to avoid a strong, undesired effect on the disputing parties at this stage, thus encouraging the parties to move forward in mediation.

To complete the current stock, the data show seven instances of correlative modal expressions reported in (15), in which obligatory or permissive language is used as an alternative to some central modal verbs (e.g., is required = ‘must’- is not permitted = ‘may not’):

(15)
● Any recording of a mediation session is not permitted.
● [...] but neither an advocate nor an attorney is required for mediation.
● I understand mediated agreements are not admissible in a due process hearing […]
● I understand that I am not required to mediate […]
● Parties or their representatives are not prohibited from retaining their own notes.
● The parties understand that the mediator has an obligation to work on behalf of all parties […]
● The parties should understand that as mediator, my duty is to help the parents […]

3.5. Present simple vs. Present progressive forms

In addition to the proportionally higher (25) total incidence of ‘I/we+agree/understand’ that clauses’ in modalized structures, genre producers allow first-person subjects to give voice to their statements of agreement by switching from the relatively low incidence (7) of active present simple forms in a that clause structure (e.g., We understand that the mediator is a specially trained impartial third party), used to assert a fact with respect to a realistic background (indicative mood), to a similar low incidence (5) of present progressive forms used in that structure:

(16)
KANSAS  
We the undersigned, have been fully informed of the mediation process and agree […] We understand that:

1. The mediator is a specially trained impartial third party whose role is to assist us in making mutually determined decisions regarding […]
2. The mediator is not serving as a legal representative, counselor, or therapist. […]
5. Mediation discussions are confidential.

(17)
MINNESOTA  
I understand that the mediator is not acting as a lawyer, judge, hearing officer, investigator, counselor, therapist or advocate.

(18)
NEW HAMPSHIRE  
2. I understand that by VOLUNTEERING to mediate, I am doing so because I want to have my case settled rather than appear at an Impartial Due Process Hearing on this date.

In these examples, we assume that the prototypical value of the progressive forms is to denote an activity that ‘is’ and ‘will’ be in progress. Thus, for instance, the verb phrase in (16) allows the subject to accept that “The mediator is not serving as a legal representative, counselor or therapist” in the present when reading the agreement, and will continue not to do so in the expected future during the mediation session. However, the activity in progress involves an implicit reference point in the past when the parties were privately informed of the mediation procedure by the mediator, as shown by the opening statement (We the undersigned, have been fully informed of the mediation process […]). Under these circumstances, the verb forms in the example above imply that, unless there are unforeseen obstacles to decisions currently being made by the subject when reading and signing the agreement, the activity will be inherently
Online US Agreement to Mediate Forms

completable within the expected time frame of the mediation session. In example (18), in which the progressive form “I am doing so” signals an intentional action unfolding through time, the verb phrase reinforces the subject’s intention to be actively involved in an ongoing activity, as signified by the dynamic verb. Although, at first sight, the verb phrase may result in the whole statement being awkward in the context, by virtue of the progressive form apparently adding a feature of repetition to the content already specified in the by clause presented in capital letters (“by VOLUNTEERING”), the phrase suggests a volitional expression comparable to that of the dynamic modal will (Palmer 2001) or bears on affective aspects of the whole statement. In the latter, the affective verb want is realized in a to clause frame using a first-person subject.

It follows that the use of progressive forms in the examples is intended to emphasize an ongoing durative aspect of the event by conceptualizing the dynamic quality of the activities which are spread out over time, as signified by the aspect of the verb rather than the tense.

3.6. Simplicity of syntax and lexis

We have seen that Agreement to Mediate forms are evidence of what is being agreed by the parties who are led to focus on the essential items contained in such forms. This results in the forms not being as conditioned by rigid lexical choices as conventionally drafted legal agreements, which often start with ‘Whereas this […]’ in preambles and use specialized lexis, euphemisms, and inflated language that makes the ordinary seem extraordinary.

By contrast, agreement forms tend to naturally exhibit simplicity of language in both syntax and lexis, remaining very close to the language of everyday communication. As a matter of fact, simple and compound sentence types are a prominent feature in the forms, and specialized lexis is observed only marginally when it is required by the preferences of individual genre producers. In the latter case, technical vocabulary occurs only in single instances across the documents in various parts of speech (New Hampshire: plaintiff: 1, defendant: 1, (to) subpoena: 1, Pennsylvania: hereby: 1), and the key concepts derived from the principles and procedures of mediation such as confidentiality, good faith, and due process are common features of such documents. Even when certain documents take on a conventional, formal guise, as is the case with the North Carolina form, efforts are made by the genre producers to paraphrase certain concepts in ordinary language, such as threats of imminent physical harm or incidents of actual violence instead of the conventional single concept of duress.

Despite the tendency towards simplicity, expert producers are not saved from certain conventions that are typical of drafting documents of a similar nature. This can be seen by the use of binomial structures realized in the higher frequency of “or” conjunctions (26), as compared to the lower number of “and” conjunctions (12), the coordinating function of which

35 Biber et al. (1999).
36 Prior to Palmer (2001), earlier approaches included the verb want in the category of boulomaic modality (Resher 1968: pp. 24-26; Simpson 1993: pp. 47-48), this modality, however, also being classified as a type of dynamic modality (Perkins 1983: 11) on account of the ‘disposition’ meaning conveyed by the verb.
37 According to Comrie (1976), aspect in progressive forms is concerned with the nature of an action or event in terms of “its internal temporal constituency”, 1976: p. 3.
allows the expert producers to provide the parties with alternative choices in the specific genre of agreement forms:

(19) discussions and offers of compromise / we jointly develop and agree / abide by the procedures and guidelines / not blame the mediator or try to obtain compensation or reimbursement / legal representative, counselor, or therapist / advice from an advocate or an attorney / special education program or services / threats of imminent physical harm or incidents of actual violence

4. Conclusion

Despite the limited amount of data, this study has examined the degree of discursive features shared by expert producers in their task of constructing the professional genre of US Agreement to Mediate forms. The use of agreement forms has been shown to serve the needs of parties who seek, by initiating mediation, to achieve resolution of their disputed issues, while also acknowledging the professional objectives of CADRE members.

The analysis of the macro-structure and content of the forms shows that in the majority of cases genre producers tend to construct texts for ordinary rhetorical situations and communicative purposes. The result is the production of “stable structural forms” (Bhatia 2004) which provide a barometer for a recognizable standard of agreement forms, allowing references to prospective parties in their request for an Agreement to Mediate. However, subtle differences do emerge from the dynamically conventionalized rhetorical situation(s) and purpose(s) shaped in the North Dakota agreement form, which allows genre producers “to take liberties with genre conventions” (Bhatia 2004) by exploiting the genre of the Agreement to Mediate form within its open-ended structure. Outside this structure, however, the “novel rhetorical situations” (Bhatia 2004) shaped in the Pennsylvania form are the result of organisational preferences maintained online by CADRE’s members, despite the assumed commitment shared with genre producers. As with the North Dakota form, web preferences in the Pennsylvania form may have unpredictable consequences for parties seeking knowledge about an Agreement to Mediate form in that state.

Similarities and differences have also emerged from the analytical contribution of micro-level data. The extensive use of personal forms among genre producers can be said to depend upon the social purpose of the agreement forms, which place emphasis on the subjectivity of the parties in negotiating cooperative partnership positions and developing social relationships. It therefore reinforces the parties’ own participation in the construction of a ‘personalized’ genre. This way, the proportionally higher incidence of personal forms provides a consistent rhetorical mechanism that shapes the genre-specific communicative style and function in the conventionalized setting, and similarly provides the notion of agreement forms as an operative genre between the parties and the mediator in those states. Yet, the data have shown that verbalization of first-person subjects is only relatively exploitable among genre producers, who also adopt the lexical form the parties for its own conventional function, thus reflecting more the communicative and rhetorical style in which formal legal agreements are conventionally drafted.

38 Supra note 9, p. 23.
39 Supra note 9, p. 112.
40 Supra note 9, p. 24.
In addition, the rationale of the genre has revealed that agreement forms are a product of the interaction between two parties willingly coming together to resolve their dispute under the guidance of a skilled mediator. Here, the incidence of commissive will modals in various clause structures provides the rhetorical framework in which the speaking subjects establish the ground rules by committing to each other and the mediator in relation to specific points, and similarly accounts for cultural stereotypes of American genre producers as being more direct than other English-speaking genre producers drafting documents under similar circumstances. However, the contribution of conventional third-person subjects in the lexical form the parties does not save the latter from the idea of an obligation being imposed on them by will future events.

In a context where agreement forms prepare the ground for later discussions, the speaking subjects are drawn into the durative time interval of the mediation event and are given the benefit of addressing the issues in language which is fine-tuned enough to encourage mediation between the parties. For the latter, the role of technology in permitting communication by mail or fax not only creates intimacy and familiarity that moves the mediation forward, but also anticipates the duties of the mediator as the facilitator of any final resolution, as well as the positions and attitudes of the parties expressed in a cooperative relationship.

As a result of the identified variation in the use of macro-level organisational features, varying printing techniques, and micro-level differences in the use of first- and third-person subjects, a reasonable degree of intra-generic conflicts can be said to arise in expert practices across Agreement to Mediate forms. The latter are capable of establishing a flexible concept of genre integrity in the world of reality (Bhatia 2004) – i.e., “the world of discourse in action” 41

References


41 Supra note 9, p. 18.


Harwood, Nigel (2005) ‘We do not seem to have a theory ... The theory I present here attempts to fill this gap’: inclusive and exclusive pronouns in academic writing. *Applied Linguistics* 26: 343-375.


Rescher, Nicholas (1968) Topics in Philosophical Logic. Dortrecht: Reidel.


Internet sites:
http://www.agbell.org/docs/pipfile.pdf
http://www.directionservice.org/cadre/grs.cfm
Appendix

Sample text 1 (Kansas):

Reference Number

AGREEMENT TO MEDIATE - Kansas

We, the undersigned, have been fully informed of the mediation process and agree to abide by the procedures and guidelines governing the process. We understand that:

1. The mediator is a specially trained impartial third party whose role is to assist us in making mutually determined decisions regarding the appropriate special education program and services for:

   ________________________________________________________________
   (Name of Student)

2. The mediator is not serving as a legal representative, counselor, or therapist.
3. The mediator will not make decisions regarding the special education program or services to be provided to the student.
4. The mediator cannot be called upon as a witness or consultant in any other administrative, judicial or educational process.
5. Mediation discussions are confidential. Any recording (electronic or otherwise) of a mediation session is not permitted. The only written record will be the agreement that we jointly develop and agree upon in the mediation process; and
6. Participation in a mediation session cannot delay or waive the parties’ right to proceed with a due process hearing.

Family member: _____________________________________________
Signature
Date: ______________                          _____________________________________________
Type or Print Name

Education Agency Representative: _____________________________________________
Signature
Date: ______________                          _____________________________________________
Type or Print Name

Please FAX and mail to: Mediation Consultant
Student Support Services
KS State Dept. Of Education

Sample text 2 (Minnesota):

Minnesota Special Education Mediation Service

Agreement to Mediate

Case No. __________

1. I understand we are here to find a solution to our dispute and that this is most likely to occur if I share information openly.
2. I understand that the mediator is here to help us see both sides, think about solutions, and write up an agreement. ....
3. I understand that I may seek advice from an advocate or an attorney, but neither an advocate nor an attorney is required for mediation.
4. I understand the mediator will not give legal or financial advice.
5. I understand that mediation may be stopped at any time by an administrator, parent or guardian, or the mediator.
6. If we reach a written agreement, I agree to follow it.
7. I understand that what we talk about in mediation is confidential. I agree I will not ask to use any meeting notes or any other papers from mediation if there is a hearing later. No one at the mediation, including the mediator, will give out information about the mediation unless we all first agree that it is all right.
8. I understand mediated agreements are not admissible in a due process hearing unless the parties agree otherwise or a party to the agreement believes the agreement is not being implemented.
9. I am aware that the mediator will not testify about the mediation in any subsequent proceedings.

Signature – Parent/Guardian                             Signature – School Administrator

Signature – Parent/Guardian                             Signature - Participant

Signature – Participant                                    Signature – Mediator

Date ______________
Sample text 3 (North Dakota):

**MEDIATION AGREEMENT**

**DEPARTMENT OF PUBLIC INSTRUCTION**

**OFFICE OF SPECIAL EDUCATION**

SFN 52942 (6/20/03)

<table>
<thead>
<tr>
<th>Child/Student Initials</th>
<th>Date of Birth</th>
<th>Date &amp; Place of Mediation</th>
</tr>
</thead>
</table>

Mediation Issue(s) of Parents

Mediation Issue(s) of School

Parties: Each of you understands the preference for a limited number of participants at the meeting. At this time, the only participants who will be allowed into the session, without prior consent, will be:

<table>
<thead>
<tr>
<th>Parent(s)/Guardian(s)</th>
<th>School District Representative(s)</th>
</tr>
</thead>
</table>

Other Participants (please indicate relationship to child/student)

Terms of Agreement: (use additional pages if necessary) The parties understand that mediation is an agreement-reaching process in which the mediator assists parties in reaching agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties may secure such advice throughout the mediation process. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

Neither the mediator nor the mediator’s records or notes will be available for further procedures such as a due process hearing. Any agreement reached will be reduced to writing and duplicate originals and duplicate originals given to the parents and the district.

Each of you should be aware that the length of the mediation is unknown. Please reserve the remainder of the day for the mediation.

The parties should understand that as mediator, my duty is to help the parents and the school district reach an agreement on the future placement and educational program for this child/student. While it is important and useful to review the past activities of the parties with respect to the placement and educational program of this child/student, the parties are urged to be particularly prepared to address the child/student's future placement and program. At the conclusion of mediation, all parties will discuss and agree how best and when to share the results of their mediation with other relevant parties.

Summary of Agreement

This mediation agreement is in effect for:

_____ time specified in agreement

_____ school year in question, or

_____ until circumstances change as determined by the IEP team

<table>
<thead>
<tr>
<th>Parent/Guardian Signature</th>
<th>Date</th>
</tr>
</thead>
</table>
Sample text 4 (North Dakota):

PARENT REQUEST FOR AND AGREEMENT TO MEDIATE
DEPARTMENT OF PUBLIC INSTRUCTION
OFFICE OF SPECIAL EDUCATION
SFN 52940 (6/20/01)

I/We request mediation in the matter of _______________________ (child/student’s initials) to try to reach an agreement on some or all of the issues regarding educational services for the child/student. I/We have read and understand the written materials describing mediation services and have been fully informed that the mediator is not providing the parent(s), the school district, or the child/student with legal representation. I/We also understand that the mediator is not providing counseling or therapy services.

I/We choose to pursue mediation to try to reach an agreement on some or all of the issues regarding the child/students’ educational program. I/We understand that the mediation process will involve the mediator, acting as a neutral third party, to help develop an agreement that is mutually satisfactory.

If an agreement is reached, I/we understand that the written and signed agreement may be shared with other individuals working with the child/student. I/We understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings pertaining to the child/student’s case.

The following is a summary of the issue(s) that I/we will discuss in mediation: (use the back side of this sheet if more room is needed)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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Please identify the other party(ies) that you want to meet with for mediation.

Please identify the other party(ies) who will attend the mediation with you.

Parent(s)/Guardian(s) Name(s) | Child/Student Name | Date of Birth | Telephone Number |
--- | --- | --- | --- |
      |      |      |             |
      |      |      |             |

Mail to:
Department of Public Instruction
Office of Special Education
600 E Blvd Ave, Dept 201
Bismarck, ND 58505-0440
**Sample text 5 (Pennsylvania):**

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**Office for Dispute Resolution**

**MEDIATION AGREEMENT**

We, the undersigned, having participated in a mediation session on _______ regarding _______ and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

---

Mediator _______________  
Mediator _______________  
Case Number ______________  
School Representative _____________

Parent/Guardian ______________
Parent/Guardian ______________

ODR – White Copy            SCHOOL – Canary Copy           PARENT/GUARDIAN – Pink Copy