

special education  
**mediation**  
guidelines & procedures



LET US GET IN THE MIDDLE.



NEW YORK  
**PEACE**  
INSTITUTE

# Introduction

Federal and state laws require that all schools advise parents of their right to mediation in addition, or as an alternative, to an impartial hearing for resolving disputes about Special Education. The New York State Education Department has a contract with the New York State Dispute Resolution Association (NYSDRA) to provide Special Education mediation through a network of Community Mediation Centers. Every county in New York has a Community Mediation Center as mandated by judiciary law. This manual provides guidelines for the implementation of Special Education mediation in New York City. It was developed by the New York Peace Institute in collaboration with the NYC Special Education Mediation Work Group, which includes representatives of the NYC and NYS Departments of Education, the NYC Community Dispute Resolution Centers, and several state and federally funded NYC Parent Centers.

## A Message of Gratitude

The New York Peace Institute would like to acknowledge the many organizations that contributed to the creation of this manual. Without their commitment, experience and wisdom, this project could never have been completed. Special thanks to the representatives of:



- **Advocates for Children of New York**
- **Community Mediation Services**
- **NY Center for Interpersonal Development**
- **Institute for Mediation and Conflict Resolution**
- **New York City Department of Education**
- **New York Lawyers for the Public Interest**
- **New York State Department of Education**
- **Parent to Parent**
- **Resources for Children with Special Needs**
- **Sinergia**
- **United We Stand of New York**

## About the New York Peace Institute

The New York Peace Institute is committed to promoting peace in our communities. Whether a dispute involves two people, dozens of people, or several groups, we can help. In addition to Special Education, we mediate in a wide range of areas including Early Intervention, adults with disabilities, general school disputes, custody/visitation, divorce, parent/teen conflicts, landlord/tenant issues, neighbor disputes, financial concerns and minor criminal matters. We also provide mediator training and credentialing and customized consulting and training for organizations and communities. We originated as The Safe Horizon Mediation Program in 1981. With more than 30 years experience, we are one of the largest community dispute resolution centers in the United States, and we are a nationally recognized leader in the field of conflict resolution.

## Get in touch with us.

If you need us to get in the middle of a dispute, contact us today. To learn more or talk to a member of our team, visit [www.nypeace.org](http://www.nypeace.org) or call 718.834.6671 or 212.577.1740

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# What is Mediation?



Mediation is one way to resolve disagreements over Special Education matters between parents and schools. It is a meeting conducted by an independent and approved mediator who does not take sides or make decisions, but rather assists the parties in reaching their own agreeable solutions.

Overall, the mediation process provides an opportunity for immediate improvement in communication between school and family. It offers a chance for all concerns to be discussed and for a plan to be developed that makes everyone comfortable.

## Alternative to Impartial Hearings and Resolution Sessions

Mediation can be requested at the same time as a hearing and would take place prior to the hearing. Mediation is different from the impartial hearing and resolution session processes.

## Impartial Hearing

An impartial hearing is different from Special Education Mediation where the parties come up with their own solutions. In impartial hearings, a hearing officer makes a decision based on the merits of evidence presented by both parties. Testimony is recorded and the decision may be appealed.

## Resolution Session

Prior to an impartial hearing, the Department of Education must try to resolve the dispute with the parent in a resolution session that is held within 15 days of the request for a hearing. Unlike Special Education Mediation, resolution sessions are not confidential and do not include a neutral mediator. If the issues are resolved, the parent and DOE representative sign a binding written agreement. If there is no agreement, the impartial hearing will be scheduled. **Parents may also request mediation instead of the resolution session.**

# Legal Requirements

In New York, mediation is a **FREE** service for parents and schools and is provided by a network of Community Dispute Resolution Centers (see attached “IDEA Regulations – Procedural Safeguards: Mediation” page 14). The regulations specify the following provisions regarding Special Education mediation:



## **Parent Information**

Schools must tell parents about their right to mediation whenever they are informed about impartial hearings.

## **Requesting Mediation**

Both parents and schools can request mediation.

## **Right to Impartial Hearing**

Mediation does not deny or delay a parent’s right to an impartial hearing.

## **Participation is Voluntary**

Mediation is voluntary for **BOTH** parent and school.

## **Agreements are Binding**

Mediation agreements are binding upon the parties and legally enforceable in any applicable state or federal court.

## **Discussions are Confidential**

Discussions that take place in mediation are confidential and may not be used as testimony or evidence in any subsequent due process hearing.

## **Mediators Must be Qualified**

Mediators must be certified by the Mediation Center and trained in Special Education law and procedures.

# Disputes

## Issues Appropriate for Mediation

Most issues can be addressed in mediation including disagreements regarding:

- Eligibility
- Classification
- Type of program
- Services
- Make up sessions for services missed
- Transportation
- Discipline and behavior plans
- IEP goals
- Transition
- Evaluations
- Test accommodations
- Modified promotion criteria
- Communication
- Related Service Authorization
- Language related services
- Safety



## Issues NOT Appropriate for Mediation

Mediation is not available for the following issues:

- Request for non-approved private school placement;
- A school may not request mediation (or an impartial hearing) for a dispute about initial placement (though parents may); or
- Reimbursement for attorney's fees.

# Requesting Mediation

**A request for mediation is an invitation to solve a problem in a friendly and collaborative way.**

Parents and schools each have the right to request mediation and participation is voluntary for all parties. Mediation requests must be in writing. The Mediation Center usually communicates with the parent, advocate and appropriate Department of Education representative (a supervisor from the affiliated Children's First Network, Committee on Special Education, District 75 office, or school) to set up the mediation session.

## **Parent Requests**

When a parent wants to request mediation, he/she should complete a mediation request form (see attached "Request for Special Education Mediation" on page 23), or write the information in a letter. Requests should be submitted to the local Mediation Center (see attached "Community Mediation Centers" on page 17) and to the school principal. Advocates/attorneys may submit a request for mediation on behalf of a parent. The Community Mediation Center will forward the request to the appropriate Department of Education representative (affiliated Children's First Network, District 75 or Committee on Special Education supervisor).

## **School Requests**

When a school wants to initiate mediation, they must **first** inform the parent and provide them with all procedural safeguards (see attached "Sample School Letter to Parent" on page 24). The school is responsible for securing permission from the parent to release confidential information to the Mediation Center. Once the parent agrees to release the information, a copy of the mediation request should be provided to the parent, Mediation Center, and appropriate Department of Education representative.

## **Impartial Hearings/Resolution Sessions**

Mediation may be requested at the same time as an impartial hearing, and mediation may be requested **instead of the resolution session**. If mediation is requested at the same time as an impartial hearing, the mediation will be scheduled prior to the impartial hearing. The hearing may be adjourned pending the mediation outcome. If the issues are resolved in mediation, the hearing request will be withdrawn by one of the parties to the mediation.

# Voluntary Participation in Mediation

The law requires that mediation be a voluntary process for both parents and schools. All parties generally do agree to participate in mediation; however, there are occasions when either the parent or school may decline.

## **Parent Refusal to Mediate**

Sometimes parents refuse mediation because communication has broken down with the school, they have general mistrust of the school and/or the Department of Education, or they just don't have a full understanding of the dispute resolution process. In addition, parents may not realize that they can have both mediation and an impartial hearing. When parents refuse to participate in a school's request for mediation, the school may suggest that the parents speak with the Mediation Center who can explain the benefits of the mediation process and encourage parents to reconsider. This voluntary process is called a "Neutral Party Session." Schools may want to give parents a mediation fact sheet (see attached "Frequently Asked Questions about Special Education Mediation" on page 18). If the parent declines mediation, the Mediation Center will notify the appropriate Department of Education representative.

**The DOE may not deny or delay a parent's right to a due process hearing if the parent chooses not to participate in mediation or the neutral party session.**

## **School Refusal to Mediate**

A school principal might refuse mediation because they have already met with the parent several times and they don't think a neutral mediator will make any difference. The appropriate Department of Education representative is responsible for discussing mediation with the school and they may also refer the school principal to the Mediation Center for a Neutral Party Session. If the school principal declines mediation, the Mediation Center will notify the parent and appropriate Department of Education representative.

# Scheduling Mediation

## Timing

The Mediation Center will make every attempt to schedule the mediation session within 15-30 days of the date the request was received. Mediations generally last about 2-3 hours and may require an additional session.

## Location

Mediation will be held at a place that works for all parties, which can be the school, Mediation Center, or Department of Education administration office.

## Notification

Once the mediation is scheduled, the Mediation Center will provide a Reminder Notice to the parent and appropriate Department of Education representative.

## Interpreters

If interpretation is required, it may be provided through the Translation and Interpreting Unit of the Department of Education, or the Mediation Center may utilize court interpreters.

## Participants

At a minimum, the parent(s) and a Department of Education representative attend mediation, and often a school staff member also participates. The number of people should be limited and balanced so that no side feels overwhelmed. Other parties may include:

<b>Student</b>	<b>Advocate/Attorney</b>
<b>Outside Service Providers</b>	<b>In-school Service Providers</b>
<b>Principal</b>	<b>Assistant Principal</b>
<b>School Social Worker</b>	<b>School Psychologist</b>
<b>Guidance Counselor</b>	<b>Teacher</b>

## Mediators

Mediators are assigned by the Mediation Center. They are trained in education law and the Special Education process. Special Education mediators cannot be employed by the Department of Education. They are professionals from various occupations and have had extensive conflict resolution training and mediation experience.

# Preparing for Mediation

In order for mediation to be successful, both the parent and the Department of Education must be represented by someone with authority to make decisions at the mediation and each party should prepare, in advance, so that decisions may be made.

## Department of Education Representative

In NYC, each Children's First Network, Committee on Special Education or District 75 supervisor assigns a representative to mediation, depending on the school location and issue(s) in dispute. The supervisor prepares for mediation by:

- Contacting the school to discuss the issues in dispute;
- Obtaining the school's agreement to participate in mediation;
- Determining with the school which staff members should attend the mediation session and **ensuring that there is someone available who has the necessary authority on the issues and can enter into an agreement on behalf of the school;**
- Strategizing with the school for possible solutions; and
- Reviewing the student's file prior to the mediation session.
- The Department of Education Representative might also contact the parent prior to the mediation session.

## School Staff

Prior to mediation, designated school staff should discuss the issues with the appropriate Department of Education representative, and should bring the entire student file to the mediation session.

## Parents and Guardians

Parents and guardians may want to review a communication tip sheet (see attached "Communication Tips for Parents" on page 21). Parents and guardians can prepare for mediation by:

- Having an understanding of their legal rights and options;
- Bringing all relevant documents and reports to the mediation session (including the current and prior IEPs);
- Writing down the specific issues of concern and possible solutions;
- Arranging for any other support person(s) or service providers to attend the mediation session or to be available by phone; and
- Informing the Mediation Center of any school staff that they feel should attend the mediation session (participation, however, is voluntary).

# Preparing for Mediation

## Advocates or Attorneys

It is often helpful for parents to seek the advice or help of an advocate or attorney prior to mediation for information regarding the student's rights. The advocate/attorney should be someone who is willing to assist in a collaborative discussion and is open to the mediation process. It is often helpful for parents to seek the advice or help of an advocate/attorney should be someone who is willing to assist in a collaborative discussion and is open to the mediation process. (See attached "Parenting Centers that participated in the creation of the manual" on page 23.) Advocates and attorneys can prepare for mediation by:

- Meeting and talking with the family to get a thorough understanding of their perspectives and interests prior to the mediation;
- Reviewing any documents which the parent may have, including IEPs, evaluations and documented communication between the family and school;
- Assisting parents in gathering information or evaluations which may help them get the services they are seeking;
- Informing parents of the law;
- Discussing communication between the advocate and family during the mediation. This should include a discussion of who can and should speak at the mediation as well as a discussion of what to do if the parents becomes uncomfortable at the mediation and/or needs to talk to the advocate in private.



# The Mediation Session

The atmosphere in mediation is welcoming; it encourages participants to be creative, flexible, innovative, and most importantly, to listen respectfully to one another. The process is informal yet it provides a structure for communication and collaboration that many parents and school staff have not experienced with each other before.

## The mediator guides the process by:

- Defining mediation, each person's role, and the mediator's neutrality;
- Explaining confidentiality and distributing consent forms (see attached "Mediation Authorization Form" on page 25) for signature before conversation begins;
- Listening to all participants' concerns;
- Keeping the focus on student strengths as well as weaknesses;
- Clarifying the issues in dispute;
- Creating an agenda and facilitating discussion about that agenda;
- Acknowledging the emotions and feelings of the participants;
- Trying to help everyone generate workable and creative solutions;
- Meeting with each side privately, if necessary;
- Assisting in the development of an agreement and transcribing it into a written document that everyone signs.

## Written Agreements

If there is full or partial resolution, the mediator drafts an agreement (see attached "Sample Special Education Mediation Agreement" on page 26). All parties sign the agreement and copies are distributed. The agreement is essentially an action plan that describes:

- Resolution reached on each issue;
- Issues that are still unresolved;
- Timelines for implementation, if applicable;
- Responsibility for implementation of each action;
- Identification of individuals not at the mediation who need a copy of the agreement; and
- A date for follow-up, if necessary.

## Interim Agreements

The parties often agree to meet again in a follow up mediation to review a student's progress. The follow-up mediation date is specified on the agreement.

## No Agreement

If there is no agreement at mediation, the parties could proceed to an impartial hearing.

# Implementation of Mediation Agreements

Since mediation agreements are binding, all parties need to ensure that the terms of the agreement are properly implemented.



## IEP Meeting

The parties to the agreement are legally bound to follow it, so an IEP meeting must be held shortly after the mediation to update the student's IEP to be consistent with the terms of the mediation agreement. The date of the IEP meeting is usually decided at the mediation session.

## Agreement Implementation

The appropriate Department of Education representative is responsible for following up with the school to make sure the terms of the agreement are implemented as specified, and to assist them with any difficulties. The appropriate Department of Education representative should also check up with other administrative offices to follow up on agreement terms, if applicable, including, but not limited to:

- Related Service Authorizations
- Compensatory Services
- School placement site offers

If the terms of agreements are not implemented by the Department of Education, it is the same as if the terms of an IEP are not implemented. The NYS Education Department's Compliance Division can be contacted if the Department of Education is in violation of any terms in a mediation agreement. The contact information is: NYS DOE Regional Associates, Tel 718-722-4544, Fax 718-722-2032.

## Mediation Center Follow-up

The Mediation Center will send a follow-up survey within 4 months of the mediation to determine if the issues are still resolved to everyone's satisfaction. If implementation problems have arisen, the parent, advocate, or school should notify the Mediation Center in which case the parties may come back to mediation.

# ATTACHMENTS

## REFERENCE MATERIALS:

Mediation Regulations under IDEA----- Page 14

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## MEDIATION FORMS:

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## PROCEDURAL SAFEGUARDS: MEDIATION

**(See also Procedural Safeguards: Resolution Meetings and Due Process Hearings, and Procedural Safeguards: Surrogate Parents, Notice and Parental Consent and State Complaint Procedures, which can be found in the New York State Regulations, Part 200, Students with Disabilities)**

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding mediation.

### **IDEA Regulations**

#### **1. Require each public agency to allow parties to resolve disputes regarding any matter through a mediation process.**

Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under 34 CFR Part 300, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

[34 CFR 300.506(a)] [20 U.S.C. 1415(e)(1)]

The procedures must ensure that the mediation process:

- Is voluntary on the part of the parties;
- Is not 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; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

[34 CFR 300.506(b)(1)] [20 U.S.C. 1415(e)(2)(A)]

**2. Give a public agency the option of providing parents and schools choosing not to use the mediation process the opportunity to meet with a disinterested party.**

A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under sections 671 or 672 of the IDEA and who would explain the benefits of, and encourage the use of, the mediation process to the parents.

[34 CFR 300.506(b)(2)] [20 U.S.C. 1415(e)(2)(B)]

**3. Set forth the state's responsibilities for mediation.**

The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The State educational agency (SEA) must select mediators on a random, rotational, or other impartial basis.

[34 CFR 300.506(b)(3)(i)-(ii)] [20 U.S.C. 1415(e)(2)(C) and (D)]

The State must bear the cost of the mediation process, including the costs of meetings of parents with disinterested parties described in 34 CFR 300.506(b)(2).

[34 CFR 300.506(b)(4)] [20 U.S.C. 1415(e)(2)(D)]

**4. Include requirements for scheduling and location.**

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

[34 CFR 300.506(b)(5)] [20 U.S.C. 1415(e)(2)(E)]

**5. Require a written agreement that is enforceable in court if the dispute is resolved through the mediation process.**

- If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:
- States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both the parent and a representative of the agency who has the authority to bind such agency.
- [34 CFR 300.506(b)(6)] [20 U.S.C. 1415(e)(2)(F)] A written, signed mediation agreement under 34 CFR 300.506(b) is enforceable in any State court of competent jurisdiction or in a district court of the United States.<sup>1</sup>

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<sup>1</sup>Notwithstanding 34 CFR 300.506(b)(7) and 300.510(d)(2) which provide for the judicial enforcement of a written agreement reached as a result of a mediation..., there is nothing in Part 300 that would prevent the SEA from using other mechanisms to seek enforcement of a written agreement reached as a result of a mediation or resolution meeting, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States. [34 CFR 300.537] [20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B)]

[34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(F)]

**6. Require that mediation discussions be kept confidential.**

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding or any Federal court or State court of a State receiving assistance under Part 300.

[34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(G)]

**7. Establish requirements for impartiality of mediators.**

An individual who serves as a mediator under Part 300 may not be an employee of the SEA or the local educational agency (LEA) that is involved in the education or care of the child and must not have a personal or professional interest that conflicts with the person's objectivity.

[34 CFR 300.506(c)(1)] [20 U.S.C. 1415(e)]

A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under 34 CFR 300.228 solely because he or she is paid by the agency to serve as a mediator.

[34 CFR 300.506(c)(2)] [20 U.S.C. 1415(e)]

# NEW YORK CITY COMMUNITY MEDIATION CENTERS

## SPECIAL EDUCATION MEDIATION CONTACTS

### BRONX

**IMCR Dispute Resolution**  
384 East 149<sup>th</sup> St., Suite 330  
Bronx, NY 10455

telephone: 718-585-1190  
fax: 718-585-1962  
email: [imcrmediate@aol.com](mailto:imcrmediate@aol.com)  
contacts: Titus Rich  
Maria Hernandez

### BROOKLYN & MANHATTAN

**New York Peace Institute**  
210 Joralemon St, Suite 618  
Brooklyn, NY 11201

telephone: 718-834-6671 x 20  
fax: 718-834-6681  
email: [chimes@nypeace.org](mailto:chimes@nypeace.org)  
contacts: Carol Himes  
Michele Kirschbaum

### QUEENS

**Community Mediation Services**  
89-64 163<sup>rd</sup> St  
Jamaica, NY 11432

telephone: 718-523-6868  
fax: 718-523-8204  
email: [mleonard-smith@mediatenyc.org](mailto:mleonard-smith@mediatenyc.org)  
[eamazan@mediatenyc.org](mailto:eamazon@mediatenyc.org)  
contacts: Michelle Leonard  
Evelyn Amazon

### STATEN ISLAND

**NY Center for Interpersonal  
Development (NYCID)**  
130 Stuyvesant Place, 5<sup>th</sup> fl  
Staten Island, NY 10301

telephone: 718-815-4557  
fax: 718-876-6068  
email: [specialeducation@nycid.org](mailto:specialeducation@nycid.org)  
contact: Katie Cole

# FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL EDUCATION MEDIATION



(Prepared jointly by NY Lawyers for the Public Interest and United We Stand of NY)

## What is mediation?

Mediation is one of the methods used for resolving conflicts or disagreements between parents and the Department of Education over Special Education matters. It involves the voluntary participation of the Department of Education, the parent/guardian, and at times, the student. It provides an opportunity for both sides to express concerns, discuss issues and formulate agreements regarding the student's educational program.

Mediation differs from other types of meetings or negotiations because of the presence of a neutral third party, or "mediator." The mediator's role is to help both parties reach agreement on issues in dispute. Mediation differs from impartial hearings in that no one will "order" either party to do anything; parties to mediation will be required to do only what they agree voluntarily to do.

Overall, the mediation process provides an opportunity for immediate improvement in communications between school and family. It gives the parties a chance to work together to develop a plan that makes everyone comfortable.

## How do I prepare for mediation?

- It is always helpful to seek the help of an advocate/attorney. He/she will be able to provide you with information regarding your rights as a parent/guardian, and the rights of the student.
- You may request mediation by submitting a letter to your child's school. You should also give a copy of your request to the Community Dispute Referral Center in your borough.
- You should identify clearly the specific issues that concern you and understand what your rights are, as well as the rights of the student.
- Be prepared to present your concerns along with what you feel could be possible recommendations for resolutions.
- Be sure that you come prepared to keep an open mind, collaborate, be creative and willing to compromise.

## **Who should accompany me to mediation?**

It is advisable to bring an advocate with you to the mediation if it is someone who is familiar with the issues, willing to assist you in a collaborative, flexible manner and open to compromise. If you choose to attend mediation without an advocate, you should be sure to have a clear understanding of legal rights and options related to your dispute.

## **Who attends mediation?**

The people who attend the mediation include the parent/guardian, the student (particularly for older students), the advocate, the school representative, a representative from the district CSE or ISC, and the mediator. The person that represents the school district (or ISC) should be authorized to make decisions on behalf of the Department of Education.

The mediator is a volunteer and is not an employee of the Department of Education. The role of the mediator is to assist the parties in the development of an agreement.

Students who participate in this process may feel like they are finally being heard and be more willing to commit to the agreement as a means of showing their ability to take responsibility for their own education.

## **What happens during mediation?**

- The mediator will begin with his/her statement of impartiality, an explanation of the confidential nature of discussions held in mediation, and an overall description of what will happen.
- All parties introduce themselves.
- The mediator will ask the parent/guardian to begin by presenting his/her concerns regarding the student.
- Everyone will have an opportunity to speak and take notes.
- The process is very informal and provides an opportunity for communication and collaboration that many parents /guardians have not experienced before.
- The process provides the parent/guardian with the opportunity to share positive aspects of the student and his/her educational issues.
- The atmosphere should be welcoming and flexible; it should allow all participants to be creative, flexible, innovate, but most importantly, to listen respectfully to each other.
- Parents can request a location other than the school or school district office.
- The goal is to reach an agreement with which all parties will be comfortable and then transcribe it into a written document that all parties will sign.
- All present will receive a copy of the final agreement before they leave the mediation.

**What happens after the agreement is developed?**

The parties to the agreement are legally bound to adhere to it, and the Committee on Special Education or School-Based Support Team must reconvene in order to make any necessary changes to the IEP to reflect the agreement reached at mediation.

**What happens if we cannot reach an agreement?**

All of the information shared in mediation is destroyed if noted on paper, and the parent/guardian still has the option of requesting an impartial hearing.

No one, not the parent/guardian or the Department of Education, can bring testimony or evidence to the hearing that was part of the mediation discussion.

**What issues should I not bring to mediation?**

Mediation is not recommended for all cases. It is not appropriate when seeking reimbursement or prospective payment of tuition for a non-approved private school, or an order compelling the Department of Education to provide a services already mandated on the student's IEP. However, a parent/guardian may seek compensatory services via mediation for services not provided as specified on the student's IEP.

\* DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGRADED AS LEGAL ADVICES. NOR IS THEIS FACT SHEET INTENDED TO RECOMMEND MEDIATION FOR RESOLVING DISPUTES IN YOUR PARTICULAR CASE. FOR ADVICE AS TO YOUR CASE, WE ENCOURAGE YOU TO SPEAK TO AN ATTORNEY OR ADVOCATE.

# COMMUNICATION TIPS FOR PARENTS\*

First, understand that your role as a parent is unique. No one knows and loves your child the way that you do. You are the expert on your child. And, while you may not have all the answers, you want your child to be successful in school and in life. Your passion, as a parent, can help you communicate brilliantly, and sometimes, it can overtake you. Keep these tips in mind.



## **Step 1: Be mindful of your emotional pressure gauge as you work with your child’s school and KEEP COOL.**

If you expect to have difficulty when meeting with school personnel, your mind and body will be primed for battle. How can you communicate successfully if you are on the verge of overflowing in anguish and outrage? Don’t let your mind go there. Keep thoughts of past (or present) problems at school, worst fears and other negatives from creeping into your mind. Focus positively on your goals and the view that the school wants to do their best for your child.

## **Step 2: Prioritize and Plan**

What’s the most important thing that needs to be accomplished for your child? Make a list of the issues, questions, and possible solutions. Rank them. Decide if there are any you can pass on and which ones must be addressed. Plan how you are willing to give and take in order to achieve the higher goal. As a parent, you’re in a good position to present alternative solutions that might not occur to those who work for the school system. Practice, if that helps.

## **Step 3: Actively listen to understand the other person’s perspective**

If you don’t understand what someone is saying, tell him or her. Be direct:

***“I’m sorry but I just don’t understand. Could you explain that in a different way or give me some examples?”***

Keep asking and wait for responses until you do fully understand. Resist any temptation to put words into someone else’s mouth.

## **Step 4: Paraphrase, or restate so that you and others are clear in your understanding**

Often, the process of clarifying one’s understanding provides an opportunity to clear up a misconception or correct misinformation that could be critical to finding a satisfactory solution for your child. To clarify:

***“It sounds like you’re saying...”***

***“If I understand you correctly, you mean that...”***

### **Step 5: Recognize the needs, difficulties and assistance of others.**

If someone at the school has been particularly helpful, acknowledge their efforts. You're more likely to get people to listen to your requests when you show your appreciation.

***“I appreciate the huge responsibility and demands that you have...”***

Let the other person know that you recognize their feelings and that you are trying to be sympathetic to his/her needs. Validating feelings is an important part of effective listening skills.

***“I imagine this must be as frustrating for you as it is for me.”***

### **Step 6: Present options in a positive and collaborative way**

Rather than criticize the school, try a more positive approach. For example, if you are not in agreement with how your child is being disciplined in class, you might say,

***“I know my son is easily distracted. At home I give him frequent breaks when he does his homework. He responds really well to rewards. Do you think we could work out a similar system in your class?”***

### **Step 7: Follow up with a thank you**

After the meeting it is helpful to write a thank you note with a summary of what was accomplished. This will assure that everyone has the same understanding of whatever decisions were made.

### **Talking the Talk**

So, in a nutshell, when talking with staff and administrators at your child's school, you have a better chance of success if you:

- Keep your cool.
- Be clear about your goals.
- Listen.
- Ask questions.
- Clarify.
- Be gracious and appreciative of positive steps.
- Validate feelings
- Be collaborative
- Follow up



\*This document was adapted from “Steps to Success: Communicating with Your Child’s School” developed by CADRE (Consortium for Appropriate Dispute Resolution in Special Education) and NICHY (National Dissemination Center for Children with Disabilities), May 2004

## **PARENTING CENTERS** THAT PARTICIPATED IN THE CREATION OF THIS MANUAL

### **Advocates for Children**

151 West 30<sup>th</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10001  
212.947.9779

### **New York Lawyers for the Public Interest**

151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, NY 10001  
212.244.4664

### **Parent to Parent**

75 Morton Street #4C24  
New York, NY 10014  
212.741.5545

### **Resources for Children with Special Needs**

116 East 16<sup>th</sup> Street 5<sup>th</sup> Floor  
New York, NY 10003  
212.677.4650

### **United We Stand of New York**

91 Harrison Avenue  
Brooklyn, NY 11206-2901  
718.302.4313

# REQUEST FOR SPECIAL EDUCATION MEDIATION

This form will help you describe the disagreement you have with your child's school so you can request mediation. Once you have completed this form, you should give it a copy to the principal of your child's school and one to your local Mediation Center (see below). Please call the Mediation Center to let them know that you have submitted this request and they can answer any of your questions or concerns about the mediation process.

Student: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ ID: \_\_\_\_\_

Parent/Guardian: \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Cell: \_\_\_\_\_ Home: \_\_\_\_\_ e-mail: \_\_\_\_\_

Network Leader or CSE Rep: \_\_\_\_\_

School: \_\_\_\_\_ Contact: \_\_\_\_\_

Classification: \_\_\_\_\_ Placement: \_\_\_\_\_ Services: \_\_\_\_\_

Describe the problem (attach more pages as necessary):

Describe your proposed solution (attach more pages as necessary):

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Advocate/Attorney \_\_\_\_\_

**Give a copy of this request to the Community Mediation Center in your local area:**

**Bronx**

IMCR Dispute Resolution  
384 E. 149<sup>th</sup> St., Suite 330  
Bronx, NY 10455  
718-585-1190  
[imcrmediate@aol.com](mailto:imcrmediate@aol.com)

**Brooklyn and Manhattan**

New York Peace Institute  
210 Joralemon St., Suite 618  
Brooklyn, NY 11201  
718-834-6671 x 20  
[chimes@nypeace.org](mailto:chimes@nypeace.org)

**Queens**

Community Mediation Services  
89-64 163<sup>rd</sup> St.  
Jamaica, NY 11432  
718-523-6868  
[mleonard-smith@mediatenyc.org](mailto:mleonard-smith@mediatenyc.org)  
[eamazan@mediatenyc.org](mailto:eamazan@mediatenyc.org)

**Staten Island**

NY Center for Interpersonal Development (NYCID)  
130 Stuyvesant Place, 5<sup>th</sup> Floor  
Staten Island, NY 10301  
718-815-4557  
[specialeducation@nycid.org](mailto:specialeducation@nycid.org)

# SAMPLE

## SCHOOL LETTER TO PARENT REQUEST FOR MEDIATION

*Date*

*Dear Parent,*

*I understand there is a disagreement between you and the school about the next step in your child's education. I would like to suggest that we discuss the issues in dispute at mediation, a process that helps parents and school representatives work out their differences with a neutral mediator.*

*Mediation is a voluntary meeting and you are not obligated to participate. However, I hope you will consider mediation, as it is a good opportunity for us to listen to one another and gain a better understanding of each other's concerns. The mediator is not employed by the Dept. of Education and has no personal interest in the outcome. All discussions at mediation will be kept confidential.*

*I will be sending the attached Request for Mediation to the (Mediation Center), who will be calling you to explain the process in more detail. Meanwhile if you have any questions you may call the (Mediation Center) directly at \_\_\_\_\_, or you can always contact my office.*

*I look forward to meeting with you.*

*Sincerely,*

\_\_\_\_\_

*Principal*

*(Phone number, email address)*

CSE/CFN Rep



## MEDIATION AUTHORIZATION FORM

### Special Education Mediation

I, \_\_\_\_\_

the undersigned, am authorized by the Department of Education to serve as their representative in the special education mediation process and to make any and all agreements on behalf of the Department of Education. I understand that the child's parent(s)/guardian(s) and I can reach a resolution, and that the mediator(s) cannot force any such agreement upon me.

I understand and agree that discussions that occur during the mediation process relating to the subject matter of the mediation shall be CONFIDENTIAL and may not be used as evidence in any subsequent due process hearings or civil proceedings.

I also understand that my participation in mediation does not deny or delay the parent's right to an impartial hearing.

I understand that the New York Peace Institute will not treat as confidential any communication relating to child abuse or neglect that is disclosed during the mediation process, whether or not it relates to the subject matter of the mediation or whether it is made during the intake stage or the actual mediation. I acknowledge and agree that the New York Peace Institute has the right to disclose any communication made by me during a mediation relating to child abuse or neglect to the appropriate state and local governmental authorities.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## SAMPLE SPECIAL EDUCATION MEDIATION AGREEMENT

IN THE MATTER BETWEEN:

on behalf of

and

*The following represents agreement reached between \_\_\_\_\_ and  
\_\_\_\_\_ regarding the educational program for \_\_\_\_\_*

1. **Neuro-psychological Evaluation** – All parties agree that a neuro-psychological evaluation would help provide a clearer understanding of (STUDENT'S) learning style. Therefore, (DOE REP) agrees to arrange for a neuro-psychological evaluation to be conducted at the expense of the Department of Education.
2. **Outside Therapist** – All parties agree that communication between the school and (STUDENT'S) outside therapist would help the school to better understand and manage (STUDENT'S) behavior issues. Therefore, the parent agrees to give consent for the school to contact (STUDENT'S) outside therapist to discuss school related matters.
3. **Behavior Plan** – All parties agree that a thorough Functional Behavioral Assessment (FBA) would help provide insight as to the function and specifics of (STUDENT'S) behavior. Therefore:
  - The Assistant Principal agrees to arrange for the school social worker to conduct an FBA by no later than (DATE).
  - Once the FBA is completed, The Assistant Principal agrees to arrange the meeting to develop a comprehensive Behavior Plan for (STUDENT). The Behavior Plan will include input from the parent, student, advocate and outside therapist.
  - The Assistant Principal agrees to arrange for ongoing meetings with the parent and teacher to review the effectiveness of the Behavior Plan and to make changes as necessary.
4. **Review** – Once the neuro-psychological evaluation is completed and the Behavior Plan has been in effect for 60 school days, the Assistant Principal agrees to arrange for a CSE Review to discuss (STUDENT'S) progress and to reconsider if a classification and/or program change are warranted.
5. **Communication** – The Assistant Principal agrees to be the point person at the school for on-going communication with the parent.

**Agreement Delivery.** In order to implement this agreement effectively, the parties understand that various individuals must review the agreement so that they are aware of, and can comply with, its contents. Accordingly, all signatories to this agreement, as listed below, acknowledge that they were present at the mediation and have reviewed the agreement.

In addition, individuals may be identified at the mediation who, while not present at the mediation, must receive and review a copy of the agreement in order to insure compliance with the agreement provisions. Each individual who was not present at the mediation, but must receive a copy of the agreement, is listed directly below. The signatory to this agreement, who agrees to deliver the agreement to the individual, is listed.

Principal \_\_\_\_\_ agreement delivered by \_\_\_\_\_

***In compliance with Federal law (IDEA 2004) and the New York State Department of Education regulations:***

- a. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding 34 CFR 300.506(b)(7).***
- b. This agreement is binding upon the parties and is legally enforceable in any State or federal court (20 USC 1415(e)(2)(F)).***
- c. If any terms of this agreement affect the student's IEP (Individualized Educational Plan), the Committee on Special Education must immediately meet to amend the student's IEP to be consistent with this mediation agreement.***

\_\_\_\_\_  
**Mediator:**

\_\_\_\_\_  
**Parent:**

\_\_\_\_\_  
**Advocate:**

\_\_\_\_\_  
**Dept. of Education Representative:**

\_\_\_\_\_  
**School Representative:**

\_\_\_\_\_  
**Other:**

**Dated:** \_\_\_\_\_