

QUESTIONS AND ANSWERS ABOUT MEDIATION

What is mediation?

Mediation is a process through which parents and the local education agency representatives with differing viewpoints can, in an informal manner, consider and/or develop alternatives to the disputed issue.

Is mediation legally required?

No, it is a voluntary process. State special education regulations recognize the value of mediation as an optional approach, but it cannot be used to delay or replace an impartial due process hearing once there is a written request for an impartial due process hearing.

What is the value of mediation?

The use of mediation has the following benefits over the formal impartial due process hearing:

1. Through mediation, objectivity and negotiation can assist the parties in developing acceptable alternatives.
2. A negotiated agreement helps promote future positive relations.
3. Mediation can be less antagonistic and less time-consuming, as well as less costly for both parties.

What is an informal mediation conference?

It is an opportunity for both parties to meet with a third party to consider and/or develop alternatives to a dispute. The mediation conference is conducted informally to:

1. Provide open communication and discussion of alternatives.
2. Focus on the child's best interest.
3. Attempt to resolve the difference and find an alternative which is adequate, appropriate for the child's individual needs, and acceptable to both parties.
4. Discussions are confidential and may not be used as evidence in a due process hearing or civil proceeding.

Who may request mediation?

Mediation may be requested by:

1. The child's parents,

2. Other persons having primary care and custody of the child,
3. The child (If over 19 years of age), or
4. The local education agency representative.

May participants bring other persons to the mediation?

Yes. Parents and the local education agency representatives have the right to bring other people who may help them. However, in order to keep the session informal and manageable, the number of such additional persons should be kept to a minimum.

What should be the outcome of the mediation?

The mediator does not render a decision, but assists in developing alternatives to help the parties reconcile their differences in the dispute. If an agreement is reached, a written document is prepared with assistance of the mediator. A signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

What if an agreement is not reached?

If the parties are unable to come to an agreement, the mediator should advise them of their right to request, in writing, an impartial due process hearing.

Who should receive a copy of the agreement reached through mediation?

The parents and the local education agency should receive a copy of the written agreement.

How long should mediation take?

Generally, mediation can be completed in 4-6 hours. Depending on the complexity of the dispute, a longer amount of time may be needed. (It is wise to schedule a whole day for the mediation.)

May a postponement be requested?

The mediation may be postponed to a later date, if necessary, and agreeable to all concerned.

Adapted from Mediation in Special Education - A Resource Manual for Mediators. National Association of State Directors of Special Education.