

# Considering Mediation for Special Education Disputes:

## A School Administrator's Perspective

While the State Education Agency is responsible for providing mediation services, the process ultimately depends on the participation of administrators and parents in order to be successful. This resource describes the advantages and disadvantages of mediation from an administrator's perspective.

The goal is to help other administrators make informed decisions about whether mediation is an appropriate option to resolve conflict.



# What Is Mediation?



**Mediation is a voluntary process where an impartial third-party assists the school staff and the parents of a child with a disability in resolving their dispute in an informal setting.**

The state-sponsored mediator encourages the participants to identify and clarify areas of agreement and disagreement, and helps them to generate and evaluate options for resolution that will be mutually agreeable and that will incorporate their interests. With the assistance of the mediator, the school staff and parents integrate these options into a well-specified and workable solution that is then written into an agreement. When successful, mediation can avert a due process hearing or other more adversarial procedures.

## Mediation Under the IDEA

Mediation is an option to resolve disputes that can be initiated by parents and districts. It is available whether or not a due process hearing has been requested, and must meet certain requirements under the IDEA. The regulations at 34 CFR §300.506 include the following:

- ✓ Participation is voluntary on the part of the parties.
- ✓ Mediation cannot be used to deny or delay the right to a due process hearing or any other rights afforded under the IDEA.
- ✓ Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services.
- ✓ Mediators are selected on a random, rotational, or other impartial basis.
- ✓ Individuals who serve as mediators may not be an employee of the SEA or an LEA that is involved in the education or care of the child and must not have a personal or professional conflict of interest.
- ✓ The state shall bear the cost of the mediation process.
- ✓ Mediations must be scheduled in a timely manner and held in a convenient location.
- ✓ Agreements reached by the parties during the mediation process must be set forth in a legally-binding written agreement that is signed by both the parent and an authorized representative of the agency.
- ✓ 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.
- ✓ A public agency may establish procedures to require parents and schools who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who would explain the benefits of the mediation process, and encourage the parents to use the process.

*Note: The section above on Mediation Under the IDEA summarizes the mediation requirements found in the IDEA. Contact your State Department of Education for information on the full requirements or to visit: [https://sites.ed.gov/idea/files/Procedural\\_Safeguards-Mediation\\_10-4-06.pdf](https://sites.ed.gov/idea/files/Procedural_Safeguards-Mediation_10-4-06.pdf). The information in this publication is not intended to interpret these regulations but rather to discuss the mediation process in general and show how it may facilitate the collaborative resolution of disagreements between families and schools.*

# Benefits of Mediation

There are a number of reasons for local school administrators to participate in mediation. The advantages of mediation include the following:



## Mediation is less expensive than due process.

A typical due process hearing is far more expensive than mediation. The state bears the cost of mediation and many of the legal costs associated with due process do not apply to mediation. For example, attorneys are not always necessary when mediating. Even when attorneys are involved, mediation is generally less expensive than a due process hearing since the preparation of an issue statement, evidence packets, and witness lists are not necessary.



## Mediation is an expeditious process.

Unlike due process hearings, which may not occur for months after the initial filing, the mediation process must be scheduled in a timely manner. Mediations usually only require one or two sessions, particularly if they are convened in the early stages of a dispute before the parties' positions have hardened and anger has grown. Mediations are typically scheduled within several weeks of filing, and the vast majority of disputes are resolved in one session.



## Mediation improves relationships.

Special education disputes occur in the context of relationships, most of which continue into the future. Understanding the process well and offering mediation as an option to families can help prevent escalation. Encouraging families to learn more about mediation from their parent center and sharing resources designed for them can help them make an informed decision about mediation. See: *IDEA Special Education Mediation: A Guide for Parents of Children and Youth (Ages 3-21)*. A mediated settlement that addresses both school and family interests often preserves a working relationship in ways that would not be possible in a win/lose decision-making procedure such as a due process hearing. Because mediation builds on everyone's shared interest in the student's success, relationships between parents and school personnel can be reconciled and communication enhanced. Ultimately, parents and educators working well together leads to positive educational outcomes for students.



## Mediation is more collaborative.

Mediation minimizes the time spent focused on establishing blame and finding fault. Instead, mediation looks into the future to identify the child's needs and how they best can be met. In due process hearings, a third-party neutral imposes an outcome on the participants that may be unsatisfactory to one or both sides. In mediation, agreements are developed by the participants themselves — the school staff and parents craft a collaborative resolution with the assistance of the mediator.



## Mediation is confidential.

The two parties can discuss issues knowing discussions would not be admissible in any subsequent legal proceedings. Congress realized the sensitive nature of these disputes when it mandated that the discussions that occur during mediation be kept confidential.



## The mediation process is shaped by parents and educators and in some cases, the student.

Each party determines who will participate and ultimately identifies what will be included in any final agreement. The mediator does not impose a decision, and the parties are not required to reach an agreement. Either party may terminate the mediation process at any time. Mediation empowers the two parties and acknowledges their ability to arrive at a decision that reflects the best interests of the child. Agreements are mutually determined to meet the interests of the parties.



## Mediation encourages creative solutions.

Mediation is much more flexible than due process hearings and allows the two parties to “step outside the legal box” and develop new options that are mutually beneficial. Discussions in mediation can focus on issues beyond the law, such as issues of trust, respect and communication. Mediation is a free-flowing discussion, without the restrictive protocols of a due process hearing. Also, parties typically speak for themselves, whereas in a due process situation, attorneys often control the narrative.

# Concerns about Mediation

CADRE surveyed state agencies to identify some of the reasons districts may decline to mediate special education disputes. Some of the concerns that emerged are addressed below:



## Some believe that mediation leads to due process hearings.

Mediation itself does not lead to due process hearings. In fact, mediation can be an effective means of averting due process hearings. Whether due to formal mediation or pre-hearing settlements, very few disputes ever actually get to a due process hearing. National data on formal mediation under IDEA indicates that when mediation occurs without a due process complaint having also been filed, it is more likely to result in a written agreement, suggesting the potential benefit of mediation in the early stages of a dispute. During 2016-17, the national agreement rate for mediations (not related to due process hearings) was 75%.



## Some are concerned that mediated agreements will not be implemented.

Participants in mediation have ownership of any agreements that come from having participated in the mediation process, leading to high rates of compliance. In the instances that a participant does not follow through with an agreement, a mediation session can be convened to explore why implementation was problematic and to identify alternative arrangements. Sometimes arrangements for a follow-up meeting may be included in the initial agreement. Under the IDEA, mediated agreements are enforceable in state or district court.



## There is a perception that mediation will not be useful.

Mediation offers an opportunity to resolve a concern in a collaborative process, instead of an adversarial one. A majority of mediations result in agreement and even though agreements may not always be reached, participants in mediation almost always report that the time they devoted to mediation was well spent. At minimum, many report increased clarity of the issues and understanding of the other participants. Resolving disagreements without litigation means that considerable effort and expense can be avoided. Parties maintain control over both process and outcome.



## Sometimes a due process hearing is the appropriate method to resolve a special education dispute.

Mediation is a process that depends in large part on the goodwill of the parties in order to succeed. If reasonable discussion is not possible, or an impasse is inevitable, mediation may not be the answer. It must also be acknowledged that sometimes reasonable people may truly care about a child's needs yet disagree about how to meet those needs. A due process hearing may be required to provide a definitive resolution of a contested issue. Even in these cases however, mediation is an option available when a due process hearing has been filed and can result in a satisfactory resolution prior to a case going to hearing.





# Helpful Tips for Administrators Preparing for Mediation

Administrators play a vital role in a successful mediation. Below are some tips that can help administrators feel prepared and lead to a positive mediation experience.

## **Tip** Review the student's record in detail

Take time to review the student's file. Knowing the important details about the student and his/her time at your school will show your investment in his/her success and will demonstrate your positive intentions to the family. You may want to bring physical copies of important records for your reference throughout the session.

## **Tip** Schedule a pre-mediation meeting with your school-based team

Meeting with your school-based team prior to the mediation is a great way to review the nature of the issues, as well as find out any information that may be helpful during the mediation. Often, only the administrator and one or two relevant staff will be involved in the mediation. Subsequently, having input and insights from teachers and service providers is extremely helpful. This is a great time to allow staff to share their perspectives and concerns that they may not be comfortable sharing during the session. It is also an opportunity to remind everyone to maintain an open mind during the mediation.

## **Tip** Determine your negotiables

Mediation is, among other things, a negotiation. Figure out before walking into the mediation what areas are easy concessions to offer and what areas are more difficult. For example, if offering a schedule change, or changing a teacher is an easy solution, come prepared with those options. If there are areas that are non-negotiable, know those as well. Avoid establishing a hard line when it isn't necessary, however. Mediation also offers an opportunity for identifying creative solutions so be sure to approach the session with an open mind. It is absolutely imperative that there is someone with the authority to make final decisions present in the mediation session. The work of rebuilding a positive relationship with the family can be lost if someone commits to an agreement without the signoff of the final decisionmaker.

## **Tip** Know your resources

Before something is offered as a means to resolve a concern, be sure it is possible and available within your district. For example, know the processes involved in providing a monetary settlement or paying an independent tutor. If a specific training or resource is offered, ensure that district has access and personnel to comply. Avoid making a promise that you may not be able to deliver.

## **Tip** Be prepared to listen and demonstrate respect

It is critical to be prepared to listen to parents without interruption or defensiveness. While the version of events parents tell may have alternative interpretations, listening with intention and focus shows the family you value their perspective and want to engage in finding a solution. Mediation is not a time or place to argue over details and prove parents wrong. It is about moving forward together, and the best way to set that tone is by listening well. Use nonverbal behaviors that demonstrate you are actively engaged and avoid the appearance of disinterest or anger.

## **Tip** Know your staff schedules

In many instances, mediation may lead to a follow-up IEP meeting, or parent-teacher conference. You can anticipate this need and have some pre-prepared data and time options ready to offer if you take the time to look at schedules ahead of time. This saves time during the mediation and demonstrates your preparedness.

## **Tip** Be patient and present

As a busy professional, there are many demands for your attention. Mediation, however, requires focus and patience. Ensure that the time in mediation is protected from interruptions and try not to set strict time limits. It takes time for both sides to understand one another's interests, work past their own and change minds. The work of rebuilding relationships can be slow, but the benefits far outweigh the time investment.

## **Tip** Keep the focus on finding solutions for the student

Focus on problem solving, keeping the interests of all parties in the forefront. Use techniques that allow for brainstorming and that demonstrate openness to solutions. When negotiations stall, do your best to bring the focus back to the student's needs.



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