

Special Education Mediation

QUESTIONS

&

ANSWERS

North Carolina Department of Public Instruction
Exceptional Children Division

SPECIAL EDUCATION MEDIATION QUESTIONS & ANSWERS INDEX

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CHOOSING MEDIATION TO RESOLVE DIFFERENCES BETWEEN PARENTS AND SCHOOLS

Parents of children with disabilities or the school system have the right to request the Department of Public Instruction to provide mediation services if the IEP team is unable to reach consensus regarding the identification, evaluation, educational program, placement or the provision of a free, appropriate public education of a child with a disability.

Mediation is a voluntary process, conducted by a qualified and impartial mediator, and provided at no cost to the parent or the school system. Mediation may not be used to delay or deny the parent's right to a due process hearing.

1. What is mediation?

Mediation is an informal meeting of the parents and school representatives led by a neutral third party, the mediator. Mediation is a voluntary process, which the parties themselves control. The mediator helps the parents and school system to resolve disagreements concerning the child's identification, evaluation, program or placement. Mediation can help the parties reach agreement about specific issues, as well as build a better working relationship for the future. Mediation can help resolve differences between parents and schools efficiently and effectively.

2. What are the benefits of mediation?

- Mediation is private and confidential.
- Mediation is a process where both the parents and the school have control and ownership over the settlement; nothing is decided unless the parties agree to it.
- Mediation concentrates on satisfying the interests of each party and provides a win-win resolution for each party and the student.
- Mediation is fast and has a high level of success.
- Mediation is fair and less time consuming than other due process actions.
- Mediation can help to maintain or restore relationships.
- Mediation is free to the parties.

3. When should I consider mediation?

Parents and schools systems are able to resolve most disputes themselves through discussions with the teacher, exceptional children program director, principal, or superintendent, or at IEP meetings. However, sometimes discussions between the parents and the school personnel break down. When these issues are left unresolved, they can escalate and damage working relationships. Mediation may assist the parties to resolve these disputes before further misunderstandings occur.

4. Who may request mediation?

- Parents, including guardians and surrogate parents, of a child with a disability (or a child suspected of having a disability)
- An adult student with a disability
- A school representative

5. How is mediation different from other meetings with the school?

Mediation is directed by a qualified, impartial mediator. Mediators have training and experience in helping clarify points of view, communicating more effectively, and resolving disputes. The mediation session provides a place and a process for handling disagreements calmly. The presence of the mediator helps keep the discussion focused on the needs of the child. The mediator makes sure that everyone is treated fairly and has a chance to express ideas and concerns without interruption. If the parties reach agreement, the mediation will end with a binding written, signed mediation agreement that states what each party has agreed to do.

6. How is mediation different from a due process hearing or a complaint investigation?

- Mediation is voluntary. A mediator helps the parties discuss the dispute and reach an agreement, but he or she does not make any decisions for the school or parent. The parties in mediation make all the decisions themselves. The mediator then helps to write an agreement that satisfies the needs of the parent, the child and the school, and that both parties sign. In mediation, control stays with the parties.
- A complaint investigation is conducted by an investigator who decides if the school has violated special education regulations. After completing the investigation, the complaint investigator reports his or her findings to the Department of Public Instruction. A Corrective Action Plan is prescribed in the report if the school has been found in violation of regulations.
- A due process hearing is conducted by an Administrative Law Judge (ALJ) who makes decisions about the special education program for the child after listening to the evidence and arguments presented by the parties. The ALJ makes a decision based upon the law, regulations, precedents and the relative merits of the case. The decision of the ALJ is binding, and can be appealed to a State Review Officer, and then to state or federal court.

7. Why do the parties need a mediator to help settle a dispute?

When IEP meetings do not resolve disagreements about the child's identification, evaluation, programming or placement and discussions are ending with the parties feeling angry and frustrated, it is common for the parties to stop listening to one another. A skilled, impartial mediator can often help the parties work through the problem. The mediator provides an impartial new face, a new perspective, a new avenue of communication, and a means to resolve the dispute quickly without escalation. A mediator can restore lost communication links, empower the parties, and encourage reasonable discussions so that the dispute can be resolved fairly and equitably.

8. What is the role of the mediator?

- To be impartial and set a positive tone
- To be an active listener and give constructive feedback
- To encourage the parties to listen to one another
- To keep the discussion focused on the child
- To help the parties assess the conflict and break it down into its separate issues
- To help the parties build reasonable and realistic agreements
- To help the parties write out a mediation agreement that clearly states what the parties have agreed to

9. When should mediation be requested?

Mediation may be requested any time there is a dispute between a parent and a school. Mediation should be requested after attempts to resolve concerns between the parent and the school, or in an IEP team meeting have failed, and the parties are considering filing for a complaint investigation or a due process hearing. It is not necessary to file a request for a complaint investigation or a due process hearing in order to have mediation.

10. How does one make a request for mediation?

A request for mediation can be made by completing a Mediation Request Form. After completing all the information required by the form, it is then mailed or faxed to the following address:

Director, Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356
Fax: 919.807.3243

A staff person from the Department of Public Instruction (DPI) will contact the other party to the dispute to determine whether they will agree to mediate. If both parties agree, the DPI will assign a case number to the mediation and assign a mediator. The mediator will contact both parties to schedule a mutually agreeable date, time and location for the mediation.

If a petition for a due process hearing has been filed, the DPI will also ask the parties if they are willing to mediate before the hearing takes place. If both parties are agreeable, a mediation session will be set up, in addition to the requested hearing.

A sample of the Mediation Request Form is located in the back of this document and may be copied. If you are viewing this on-line, the form can be downloaded. Also, Mediation Request Forms may be obtained from DPI, your local exceptional children program office, or from most parent support organizations. The form can also be downloaded by clicking the web site address: www.nc.publicschools.org/ec/policy/dispute/mediation

11. What does mediation cost?

Mediation is arranged by the Department of Public Instruction and is free to the parties. In addition, mediation saves time and can prevent damage to important relationships.

The parents, representatives from the school and the mediator can meet soon after the DPI receives the written request for mediation. A written settlement can often be reached the day the parties meet. Mediation can help parents and schools build a better understanding so they can work together to develop an appropriate education for the child. Even if an agreement isn't reached, the parties have invested only a few hours of time and should have a clearer understanding of each other's positions and possible options to resolve the disagreement.

12. What if a hearing has already been requested?

When a hearing is requested, both parties are contacted by the DPI and asked if they are willing to try to mediate the dispute. If both agree, the DPI will appoint the mediator who will contact both parties to schedule the date, time and location for the mediation. The mediation may not delay the regulatory time frame for the due process hearing.

13. Is mediation required before a due process hearing?

No. However, it is strongly recommended. In almost all cases mediation is worth the time to attempt to work through a dispute before going to a hearing. Mediation encourages and empowers the parties to resolve disagreements jointly. Mediation also helps the parties to better understand the other's perspective.

14. What if one party doesn't want to participate in mediation?

Mediation is voluntary and based upon the commitment of all parties to try to reach a mutual settlement. Mediation is desirable because it is less formal, non-adversarial and is more likely to lead to a lasting resolution of the dispute. However, either party may refuse mediation. Parties cannot be forced to mediate, to continue to mediate, or to agree to a settlement.

15. How long will I have to wait for the mediation?

Generally, from the date of receipt of the Mediation Request Form, the mediation meeting is held within two to three weeks. When a Mediation Request Form is received by the DPI, a mediator is assigned almost immediately. The mediator will contact both parties to schedule the date, time and location for the mediation. Most mediations are completed within one day. The mediation meeting itself may last anywhere from three to eight hours. Set aside a full day for the mediation.

16. Where does mediation take place?

The mediation usually takes place in an informal meeting room at the school or the LEA's administrative office. A neutral site will be arranged by the mediator.

17. How does one prepare for mediation?

Mediation is an opportunity for parents and schools to communicate persuasively their view of the child's needs and the program elements required for the child to make progress. Before entering into mediation the parties should take some time to define for themselves what they expect the outcome of the mediation to be. They should have a realistic view of the range of probable outcomes. However, mediation works best when

parents and school staff are open to listening carefully to each other, and feel free to explore new options. It is difficult for mediation to be successful when the parties lock themselves into a position and are unable to move away from that position.

18. Who can the parties bring to mediation?

Generally, mediation is between the parents and the special education administrator, but other individuals may be helpful in resolving the dispute. It is important to remember, however, that the dispute is about the child's program, so the people knowledgeable about the child and his or her needs are the most valuable participants. The student may attend, if appropriate.

If the parents have an advocate or someone else who has been advising them, they may bring him or her to mediation. However, if either the parents or the school representatives decide to bring an attorney to mediation, they should provide at least seven days prior written notice to the DPI and the other party as a matter of courtesy.

Remember, however, that since mediation is an opportunity for the parties to share thoughts, opinions, and ideas about the child's education, it is usually best for the parents and school representatives to speak on their own behalf. Mediation is not a legal proceeding and the presence of attorneys for either side may have the potential for creating an adversarial atmosphere that may not necessarily be in the best interests of the child.

19. What happens at mediation?

- The mediator explains his or her role and describes the mediation process.
- The parent and a spokesperson from the school each give a summary of the dispute from their perspective. The party who requested the mediation is usually asked to speak first. This is an opportunity for both parties to describe the child's educational needs, discuss concerns, and share ideas from their perspective. Being open and honest during this session sets the tone for a cooperative and productive mediation session. (The mediator may choose to vary the sequence and meet alone with the parties first.)
- At some point during the mediation the mediator may meet separately, or in caucus, with the parties. During these private sessions, the mediator talks to each party alone about any sensitive facts or concerns, and helps that party define more clearly what they believe is in the child's interest educationally.
- During a caucus the mediator may help each party develop options for reaching an agreement. The mediator will share the ideas discussed in caucus only if they are given permission to do so. The caucus is a chance for each party to float options for the mediator to bring back to the other party.
- There is a strong preference for joint sessions during which the parents and the school personnel work together towards agreement.
- If the parties have reached agreement, the parents and the school finalize that agreement. The mediator writes out the agreement so each party can sign it, with the mediator as witness. The DPI will maintain a copy of the agreement.
- If the parties do not reach an agreement, or only reach a partial agreement, the mediator will help clarify the issues still under dispute. A hearing may go forward at this time (or may be requested if it has not been already).

20. Do the parties bring witnesses and submit evidence at the mediation?

Witnesses and evidence are not appropriate at mediation. The mediator is not a decision-maker and does not hand down a decision regarding the dispute, so it is not necessary to try and convince the mediator that your position is right, or the other party's position is wrong. The parties should feel free to bring documents that they believe will help them present their point of view, but no written information is needed.

21. Can anything said in mediation be used later as evidence in a hearing?

The factual information about the child and the dispute will be presented at a hearing. However, all of the conversations around possible settlement of the dispute that takes place at the mediation are confidential. Those discussions may not be discussed outside of mediation or used as evidence in a hearing. Neither party may tape-record the mediation. The mediator's notes are destroyed following the session. There is no verbatim record of the mediation. Unless the parties reach an agreement, there are no written details from the mediation.

22. What if the parties do not reach an agreement during mediation?

If the dispute is not resolved during the mediation, the parties may choose to do nothing or may choose to request a due process hearing or a complaint investigation. If a due process hearing has already been requested, the hearing will go forward as scheduled.

23. Is a mediation agreement legally binding?

Yes. Any agreement reached during mediation must be approved by all parties and must be consistent with the requirements of federal and state law. The agreement will be written by the mediator, and signed by the parties and witnessed by the mediator. Each party will receive a copy of the signed mediation agreement and the DPI will also retain a copy of the agreement. Typically parties comply with agreements that they willingly enter.

24. What if one party does not do what it promised to do in the mediation agreement?

If the agreement results in changes to the IEP and the parent believes the school is not implementing the changes it agreed to, they may file a complaint against the LEA using the complaint investigation process or request a due process hearing.

25. What happens to the child's program while waiting for the mediation to take place?

A request for mediation does not trigger stay put. The mediation process will not affect the child's program unless both the parent and the school representatives agree otherwise. A petition for a due process hearing will trigger stay put, i.e. the child will remain in the program that he or she was in when the request was made. With the petition for a due process hearing, the parties will be offered an opportunity to mediate an agreement to the issues. A request for a formal complaint investigation or a request for a stand-alone mediation will not trigger stay put, but the parent and the school may agree to maintain the status quo pending the completion of the stand-alone mediation.