



MEDIATION

Frequently Asked Questions

1. What is Mediation?

Sometimes when a child has a disability or is suspected of having a disability, parents and the educators involved in the child's education don't agree on the child's educational program. Mediation is one of the methods used for resolving conflicts or disagreements between parents and schools. During Mediation, parties meet with a neutral third party, the Mediator, to discuss their dispute in an attempt to reach a mutually acceptable resolution. This meeting provides an opportunity for each side to express their concerns, discuss the issues and together come up with an agreement that resolves the disagreements regarding the student's educational program.

2. How is Mediation connected to the Individuals with Disabilities Education Act (IDEA) or parents' rights under the Act?

Under the IDEA regulations, specifically §§300.506 and 303.431, each public agency must ensure that procedures are established and implemented to allow parents of children with disabilities (Part B of the IDEA) or infants and toddlers with disabilities (Part C of the IDEA) to resolve disputes through a Mediation process. In the District of Columbia, the Office of the State Superintendent implements the IDEA Mediation system for individuals who are interested in resolving their disputes in this manner.

Mediation is available to resolve disputes involving any matter under Parts B and C of the IDEA, including matters arising prior to the filing of a due process complaint. By law, the procedures must ensure that the Mediation process is voluntary on the part of the parties that Mediation is not used to deny or delay a parent's right to a hearing on the due process complaint, or deny any other rights afforded under Part B or, for infants and toddlers, Part C of the Act.

3. What are the benefits of Mediation?

Mediation has proven to be a highly successful method for resolving disputes. Parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement. Mutual agreements generally result in greater satisfaction for all parties because the parties decide the outcome. Other benefits of Mediation are that it is less formal, less costly, and less time consuming than other dispute resolution processes.



Mediation allows parties to come together in a neutral way to discuss areas of disagreement. An independent third person (the Mediator) uses his/her training to apply techniques to:

- Assist parties in explaining themselves and their concerns in an open way;
- Enable people to hear and understand each other's concerns;
- Help parties talk about finding solutions to their problems;
- Explore options for addressing the areas in conflict; and
- Improve communication and establish trust as the relationship between the parent/student and school district continues.

Mediation is a confidential voluntary process where the focus is on collaboration and communication, with emphasis on the student's needs.

4. Do we have to participate in Mediation?

No. Mediation is voluntary on the part of both parties. While the parties do not have to participate in Mediation, it can be a very successful method of resolving disputes – so it is highly recommended.

5. Who will be the Mediator?

The Mediator is a neutral third party who helps the parties work with each other to resolve the dispute. The Mediator is trained in effective Mediation techniques and in laws and regulations relating to the provision of special education and related services and, for IDEA Part C, the provision of early intervention services. By law, the Mediator is not employed by the school district or the Office of the State Superintendent of Education. This neutrality preserves the fairness and integrity of the Mediation system.

6. What is an Impartial Due Process Hearing and how does it *differ* from Mediation?

Special Education Mediation and Impartial Due Process Hearings are both processes available to parents and public educational agencies to resolve disputes relating to the identification, evaluation and/or educational placement of a child and/or the provision of a free appropriate public education to the child, or in the case of Part C, early interventions services for the infant or toddler. During Mediation, the Mediator attempts to resolve the dispute by facilitating discussion between the parties. It is the parties, not the Mediator, who decide how to resolve the dispute. If the parties can reach agreement through Mediation, a legally binding written agreement resolving some or all of the issues will be developed and signed by the parent and a representative of the agency who has the authority to bind the agency.

An Impartial Due Process Hearing is a more formal process in which a Hearing Officer presides. During a hearing, parties have the opportunity to present witnesses and testimony during a legal proceeding that is more similar to a courtroom setting. The Hearing Officer provides a written decision resolving the issues that is based upon the evidence submitted by

the parties during the hearing. In an Impartial Due Process Hearing, the Hearing Officer decides the outcome, not the parties.

7. How does Mediation work?

The manner in which the Mediation is conducted will vary somewhat depending on the methods that a particular Mediator has found most successful. Typically, the parties sitting around the table will introduce themselves. The Mediator will begin with introductory remarks explaining the role of the Mediator, the roles of the other participants, and the steps that will be followed during the Mediation. The introduction will include a discussion of proposed “ground rules” or guidelines to be agreed upon by the parties before engaging in Mediation.

The Mediator will ask the party who requested Mediation (often the parent) to begin by presenting his or her concerns regarding the student. Everyone will have the opportunity to speak.

All parties will discuss the problems, concerns and issues that brought them to Mediation, and how they view the needs and interests involved in the conflict. A Mediation meeting is an opportunity to lay out concerns, not “make a case.” The objective of the Mediation is to resolve differences and find workable solutions to the concerns that everyone can be comfortable with.

The Mediator will help participants “problem-solve”. Problem-solving Mediation involves all parties looking at possible ways to resolve the issues at hand. The Mediation process encourages creativity and flexibility. The Mediator will help the participants to arrive at an appropriate solution for all.

The end goal is to reach a final written agreement that will be agreed upon and signed by the participants. All parties will receive a copy of the final agreement.

8. What happens if the parties still don’t agree and I want to proceed with a due process hearing?

If an agreement is not reached in Mediation, and the participants agree that additional sessions will not resolve the dispute, the Mediation case is closed. By law, the option of an impartial hearing still remains. Even if there is no Mediation Agreement, the Mediation may have clarified the issues that need to be resolved at a hearing. The discussions that take place during the Mediation are confidential, and cannot be used as evidence in a due process hearing or civil proceeding in any Federal court or State court.

9. What issues can be addressed during Mediation?

The Mediation process can address many issues under Part B or C of the IDEA related to the provision of an education for a child with a disability or developmental services for an infant

or toddler with a disability. Issues that may be resolved during Mediation include, but are not limited to disputes about the:

- Identification as a child or infant or toddler with a disability;
- Evaluation of the child or infant or toddler with a disability;
- Provision of a free appropriate public education to the child or, in the case of Part C, early intervention services; and
- Educational placement, including disciplinary actions under the IDEA for students with disabilities.

10. What issues *cannot* be addressed during Mediation?

So long as the dispute arises under Part B or C of the IDEA, most issues can be addressed in the Mediation process.

11. Who pays for Mediation?

There is no cost to parents for Mediation under the IDEA Part B and C. The Office of the State Superintendent of Education pays for the costs of the Mediation system.

12. How do I know the school will follow through with the agreement?

By law, a written, signed Mediation Agreement of the parties is enforceable in any state court of competent jurisdiction, or in a district court of the United States. In addition, in the District, the State Complaint Office in the Office of the State Superintendent of Education will investigate a State Complaint alleging failure to implement a Mediation Agreement that resolved a due process complaint.

13. Who may request Mediation?

Mediation may be requested by:

- A student's parent, guardian, or other person who has legal authority to make educational decisions for a student;
- An adult student (age eighteen or older);
- The District of Columbia Public Schools or a Charter School that is a local educational agency; or
- The authorized representative of any of the above.

14. What if we need an interpreter?

You have the right to request that an interpreter be provided to assist with the Mediation process. Please indicate the need for an interpreter when the Mediation is being requested.

15. How do we prepare for Mediation?

Your preparation will depend on your role in the Mediation. Parents who are participating in Mediation may prepare for the Mediation session by writing down and reviewing the specific issues that are in dispute, as well as possible ways that they want to have the problem resolved. Bring all relevant documents and reports to the Mediation session with you – this includes any IEPs, etc., that you wish to reference or refer to. Parents may also arrange to have other parties attend the Mediation for added support. Additionally, parents may reach out to the Mediator to confirm that any individuals from the school who are critical to the conversation will be in attendance at the meeting. The Mediator will provide additional information to the parties on how to prepare Mediation when he/she contacts the parties to schedule the Mediation.

16. How does someone request Mediation?

OSSE has created a Mediation request form that may be found on the OSSE website at <http://www.osse.dc.gov>. However, you are not required to use the form. A written request for Mediation must be mailed, hand-delivered, emailed, or faxed to:

Office of the State Superintendent of Education
Student Hearing Office
810 First Street, NE, 2nd floor
Washington, DC 20002
Telephone: (202) 698-3819
Fax: (202) (202) 578-2956
By email: ossemediation@dc.gov