



ARIZONA DEPARTMENT OF
EDUCATION

Mediation Procedures

Dispute Resolution

Guidelines for your Mediation Session



What is Mediation?

Mediation is a confidential problem-solving process that relies on a third party, a Mediator, to facilitate effective communication while working toward a mutually agreeable solution. Mediation is voluntary and available to parents and public agencies to resolve disputes under IDEA Part B.

Parent: Any of the following may be considered the "Parent":

- Biological or adoptive parent of a child
- Foster parent, unless prohibited by State law, regulations, or contractual obligations with a State or local entity
- Guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State)
- Individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) and with whom the child lives
- Individual who is legally responsible for the child's welfare
- Surrogate parent who has been appointed in accordance with federal regulation.

Matters for Mediation

Mediation is available to parties to disputes involving any matter under IDEA Part B, including matters before or after a due process hearing has been requested. Additionally, state-coordinated mediation is ONLY authorized to mediate issues regarding special education. As a special education dispute resolution process, mediation is not available for allegations of civil rights violations of discrimination, retaliation, harassment, or those relating to Section 504 plans, employment matters, school policy matters, or anything not specifically related to special education under IDEA Part B.

Who Are the Mediators?

Mediators are trained and experienced professionals provided to parents and public agencies at no expense. **Mediators are impartial/neutral.** Mediators are not authorized to give legal advice, represent, or advocate for either party. Their role is to assist the parties in coming to an acceptable resolution that meets the needs of the parties involved. Mediators are selected on a random or rotational basis.

Confidentiality of Mediation Discussions

Under IDEA, 34 CFR § 300.506(b)(8), 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 of any Federal court or State court of a State receiving assistance under 34 CFR Part 300. This requirement is automatic and may not be altered or modified by parties to a mediation conducted under 34 CFR §300.506. Further, this confidentiality requirement applies regardless of whether the parties resolve the dispute through the mediation process. If the parties resolve a dispute through the mediation process, they must execute a legally binding agreement that also includes a statement that all discussions that occurred during the mediation process will remain confidential. 34 CFR § 300.506(b)(6)(i).

Mediation Agreements are Enforceable

If the parties reach agreement through mediation, the written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Who Attends the Mediation Session?

The Mediator, the parents and a representative of the public agency with the authority to commit necessary resources and fulfill all terms of the agreement reached must always attend the mediation session. Both the parents and the public agency may want to have additional individuals present, such as support staff or the youth with disabilities; therefore, the Mediator will ask the parties who will be in attendance prior to the session so everyone knows in advance who will be participating in the mediation session. Since mediation is a voluntary process on the part of both parties and a party's objection to a person the other party wishes to bring could result in withdrawing from the mediation process, any disagreement between the parties regarding participants will be addressed by the Mediator.

How Long Does Mediation Take?

Since every dispute is different, and some are more complex than others, there is no set time for completing mediation. The session may last up to eight hours, and it is recommended that participants set aside the entire day.

Where Is Mediation Held?

Sessions are held at a location convenient to both parties. The Mediator will encourage the parties to work together to determine a convenient location for a mediation session that is agreeable to both parties.

How to Prepare for Mediation?

Prior to mediation, you may want to gather and organize relevant documents to refer to during the session. The Mediator may want to talk to each of the parties in advance of the mediation to briefly discuss the dispute and the resolution priorities. Recognize that the position you have taken and what you have tried before mediation did not resolve your concerns; consider different, realistic options that would be acceptable to reach an agreement.

What to Expect at the Mediation Session?

Introduction and Explanation

The Mediator may have held a pre-mediation call with each party to briefly discuss the dispute and the mediation process. In all instances the mediation session will begin with a review of the "Mediation Overview" document, which includes ground rules, the process, and confidentiality requirements. Since the confidentiality of discussions that occur during the mediation process is not only required by IDEA but is critical to the success of mediation, the Mediator will describe common practices to ensure confidentiality and address any questions or concerns.

Joint Sessions and Separate Caucuses

The Mediator will give each party the opportunity to discuss the concerns that should be addressed to reach an agreement. These discussions may occur in a joint session with all parties or in a separate, private caucus with the Mediator. The Mediator will ask questions, help to clarify the issues, and use other techniques to ensure that there is a shared understanding of the concerns that need to be addressed in an agreement. Information discussed during separate caucuses will only be shared with the other party with consent. There may be several caucuses and joint sessions for the purpose of exploring options for agreement.

Recesses

The Mediator or either party may call a recess. This can be a good time to reflect on the discussion and consider next steps.

Conclusion of the Session

When an agreement is reached, the Mediator may assist the parties in expressing the settlement terms. The Mediator may then document the terms in an agreement for both parties. If attorneys are present, their customary settlement agreement may be used; however, if there are any additional terms not previously agreed upon, these terms must also be agreed to by both parties. If an agreement is not reached, the parties will sign a document to confirm that settlement efforts were unsuccessful.

Evaluation

At the conclusion of the mediation the Mediator will provide the parties with an opportunity to provide feedback regarding the mediation process. The parties are encouraged to complete the evaluation and provide constructive feedback so that the mediation process can be improved. All information will be confidential.