



**STATE ADMINISTRATION OF
MEDIATION**
UNDER PART C of IDEA

34 C.F.R. § 303.431



ACKNOWLEDGEMENTS

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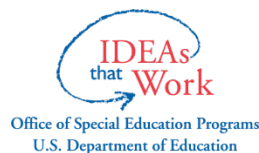
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ABOUT THIS RESOURCE

This publication was developed by CADRE, a project of Direction Service pursuant to Cooperative Agreement CFDA H326X180001 with the Office of Special Education Programs, United States Department of Education, Carmen M. Sánchez, Project Officer. The opinions expressed and materials contained herein do not necessarily reflect the position or policy of the United States Department of Education and you should not assume endorsement by the Federal Government. This resource is in the public domain. The manual may be reproduced in its entirety or portions thereof for noncommercial use without prior permission. This document may be customized by Lead Agencies to include state specific information. States are encouraged to distinguish between Federal and State regulations.

This manual draws from the OSEP’s [Dispute Resolution Self-assessment](#) and, where applicable, [OSEP Part B Memo and Q&A on Dispute Resolution \(2013\)](#), United States Department of Education policy documents, comments to the regulations, and relevant case law. While, the OSEP Memo and Q&A on Dispute Resolution (2013) is specific to Part B of the IDEA, references to the Q&A may provide insight to Part C Lead Agencies. This resource is not intended to interpret, modify, replace requirements of Federal or State law, or serve as a definitive treatment of the regulations. Application of information presented may be affected by State statutes, regulations, departmental and local policies, and any new guidance not issued at the time of this publication.



INTRODUCTION

Each State is required to establish, implement, and maintain procedural safeguards related to mediation. To assist Lead Agencies (LAs) in meeting Federal requirements under IDEA, and effectively and efficiently administer mediations, CADRE has created a general manual aligned with the Federal regulations. This manual includes hyperlinked citations, responses to some frequently asked questions, and coaching questions to prompt reflection about dispute resolution (DR) system design. States can use this manual to inform their State's written mediation procedures.

Key features needed for the state administration of mediation include:

- Written State procedures that align with IDEA
- Infrastructure to support the oversight, case management, data collection and reporting, and implementation of the procedural safeguards related to mediation
- Trained and impartial mediators that align practices with Federal and State law
- Mechanisms to effectively communicate with stakeholders about the mediation process, as well as to explain how it operates in conjunction with the other IDEA dispute resolution processes
- Means for access of mediation

CADRE has identified five management function areas for effective systems: [Systemwide Oversight, Infrastructure & Organization](#); [Program Access & Delivery](#); [Standards & Professional Development](#); [Public Awareness & Outreach Activities](#); and [Evaluation & Continuous Quality Improvement \(CQI\)](#). For more information, visit CADRE's [System Improvement](#) online resource.

To conduct a crosswalk of your state regulations, policies, and procedures with the Federal requirements under IDEA, use [OSEP's Dispute Resolution Self-Assessment](#).

Lead Agencies are strongly encouraged to periodically review their State mediation procedures to ensure that they 1) align with State and Federal law, 2) are clear, and 3) help facilitate an efficient and effective mediation system. States may consider developing an internal operations manual addressing the implementation of the state's policies and procedures.





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MEDIATION

Mediation is an impartial and voluntary process that brings parties together who have a dispute concerning any matter arising under 34 C.F.R. part [303](#), Part C of the IDEA, to have confidential discussions with a qualified and impartial mediator. The goal of mediation is for the parties to resolve the dispute and execute a legally binding written agreement reflecting that resolution.

Issues Subject to Mediation

The mediation process offers people an opportunity to resolve disputes at any time about any matter under Part C of the IDEA [34 C.F.R. § [303.431\(a\)](#)]. This includes matters related to eligibility determination and any matters arising prior to the filing of a due process complaint [34 C.F.R. § [303.322](#)].

When Mediation May Not Be Used

Mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part C [34 C.F.R. § [303.431\(b\)\(1\)](#)].

MEDIATION IS VOLUNTARY

The IDEA and its implementing regulations do not allow the Lead Agency to require a parent or public agency to participate in mediation because mediation is voluntary. However, a Lead Agency may establish procedures to offer parents and Early Intervention Service (EIS) providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested third party: (1) who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the IDEA; and (2) who would explain the benefits of and encourage the use of the mediation process to the parents [34 C.F.R. § [303.431\(d\)](#)]. Lead agencies that choose to establish these procedures must make clear to parents and the EIS providers that they have the opportunity to participate in the meeting with the disinterested third party, but that their participation is voluntary. The disinterested third party would explain the benefits of mediation, including that it is voluntary and, if successful, could result in the resolution of the dispute without the need to use more formal, costly, and adversarial due process proceedings.

MEDIATION IS CONFIDENTIAL

All discussions that occur in mediation, including the negotiation discussions and discussions involving any settlement positions of parties in a mediation session, are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in State or Federal Court [34 C.F.R. § [303.431\(b\)\(7\)](#)]. This requirement is automatic and may not be altered or modified by parties to mediation conducted under IDEA. In addition, neither the IDEA nor its implementing regulations create exceptions to these confidentiality requirements for discussions that occurred during the mediation process when the State resolves a State complaint. [[OSEP Memo and Q&A on Dispute Resolution \(July 23, 2013\), A-25](#)].

Further, this confidentiality requirement applies regardless of whether the parties resolve a 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 which occurred during the mediation process will remain confidential [34 C.F.R. § [303.431\(b\)\(5\)\(i\)](#)]. Neither the IDEA nor its implementing regulations specifically address whether the mediation agreement itself must remain confidential. However, the parties could agree to include a provision in the



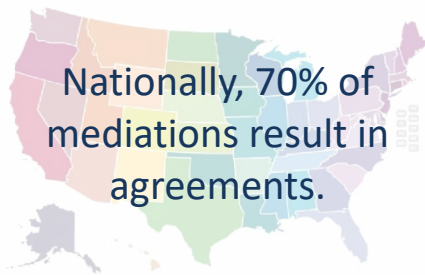
agreement that limits or permits disclosure of the agreement [[OSEP Memo and Q&A on Dispute Resolution \(July 23, 2013\), A-24](#)].

Irrespective of these provisions, States may not require parties to the mediation process to sign a confidentiality pledge, agreement, or form prior to, or as a precondition of, the commencement of the mediation process.

ENCOURAGING MEDIATION

States have encouraged the use of mediation by explaining the process and highlighting the benefits: (1) during conversations with various stakeholders and in more formal presentations; (2) in brochures, informational flyers, videos and other promotional materials; (3) on their websites and through social media platforms; and (4) through partnerships with federally funded parent centers and other organizations. Mediation must also be addressed in the State's Procedural Safeguard Notice.

While mediation cannot guarantee specific results, mediation can be an efficient and effective method of dispute resolution between parents and EIS providers.



Benefits of Mediation

- Mediation results in lowered financial and emotional costs compared to due process.
- Mediation often results in written agreements where parties have an increased commitment to and ownership of the resolution.
- Mediation enables parties to have more control over the process and decision making.
- Remedies are often individually tailored, contain workable solutions, and are easier for the parties to implement.
- Mediation may be helpful in resolving issues that are subject to State complaints or due process complaints. (See pgs. 14-15)

Coaching Question

- *How does your State encourage the use of mediation while ensuring that the process is not used to delay or deny a parent's right to a hearing on the parent's due process complaint or to deny any other rights afforded under Part C?*
-



States may use CADRE's *IDEA Early Intervention Mediation Family Guide* and companion videos to encourage mediation. The family guide is available in English, Spanish, Arabic, Korean, Russian, Simplified Chinese, and Vietnamese. The companion videos are available in English and Spanish. CADRE has also curated several State brochures which can be found at: www.cadeworks.org/main_library.



IMPROVING ACCESS

Steps should be taken to ensure that the mediation process is widely promoted, understandable, and not burdensome to access. States have improved access to the mediation process by making sure that:

- stakeholders can easily locate information on the mediation process on the Lead Agency's (and if applicable on the contracted mediation service's) website;
- information about the mediation process, including how to request mediation, is clear and easy to understand;
- there are multiple avenues to request mediation (e.g., online submission, phone);
- information and forms are available in the language(s) of the populations served;
- technical assistance is available to walk stakeholders through the mediation process and how they can prepare for their participation and answer any questions they may have, including how it compares with other processes; and
- information regarding the availability of mediation is included in the State's Procedural Safeguards Notice.

Coaching Question

- *How does your State share information on mediation with various stakeholders?*
 - *How do people access mediation in your State?*
 - *What barriers might people face when accessing mediation in your State? How might those barriers be minimized?*
-

States may want to consider having a toll-free number for stakeholders to call and trained, designated staff providing technical assistance (TA) on the DR processes. When mediation is requested, these same individuals would gather the necessary information to open a case. Having one point of contact can make accessing the mediation process easier.

Intake forms should be clear, easy to understand, and not burdensome to complete. Only ask for the information needed to open the case. CADRE has collected multiple mediation intake forms from States over the years. To view this collection as well as other State examples of letters, forms, and templates, visit CADRE's main library at www.cadeworks.org/main_library.



PARTIES TO MEDIATION

Parties to mediation include family members of an infant or toddler with a disability and the EIS provider. It's important to note that someone must attend the mediation who has the authority to legally bind the Lead Agency in an agreement. Offering mediation to non-parents when a State complaint is filed is allowed under IDEA if mediation is available to the individual or organization under State procedures [34 C.F.R. § [303.433\(b\)\(1\)\(ii\)](#)].

Other Participants

The IDEA does not address who may accompany a party at the mediation session. Successful mediation often requires that both parties understand and feel satisfied with the plan for conducting a mediation session. It is best practice to discuss and disclose who, if anyone, will be accompanying the party at the mediation session prior to that session.

Coaching Question

- *Who determines who will attend the mediation? How is this information communicated to the other party prior to the mediation?*
 - *Mediation requires that a person who is authorized to make a legally binding decision is present (e.g., a representative of the Lead Agency or someone granted authority to legally bind the agency). What is the process for ensuring the presence of someone who has the authority to legally bind the Lead Agency to an agreement?*
 - *Does your State policies or procedures address participation by attorneys?*
-

Because mediation is voluntary on the part of the parties, either party has the right not to participate for any reason, including if the party objects to the person the other party wishes to bring to the mediation session. This could include a party's objection to the attendance of an attorney representing either the parent or the Lead Agency. For example, if the parent wishes to bring an attorney to the mediation session and the Lead Agency objects, the parent may choose not to participate.



The mediation process must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques [34 C.F.R. § [303.431\(b\)\(1\)\(iii\)](#)].

MEDIATORS

Qualified Mediators

The mediator must be trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of early intervention services [34 C.F.R. § [303.431\(b\)\(1\)\(iii\)](#)]. Decisions about the effectiveness of specific techniques are based upon the mediator's independent judgment and expertise. Because of the need to allow flexibility in the independent judgment and expertise of each mediator and the unique issues of each dispute, other than providing for the confidentiality of discussions that occur during mediation, the IDEA does not address the specific techniques or procedures that States may require their mediators to use. Whether formal training and certification for mediators are required is a decision left to each State, depending on State policy [[71 Fed. Reg. 46695 \(August 2006\)](#)].

Some Lead Agencies contract with mediators who are also contracted by the State Education Agency to provide special education mediation services. This practice can be very advantageous to a Part C Dispute Resolution System with low mediation activity, but extra attention may need to be given to ensure that these mediators also know the law and regulations pertaining to early intervention services. Initial training and regular refresher courses may help ensure that mediators are knowledgeable about IDEA under Part C.



Coaching Question

- *How does your State determine whether a mediator is trained in effective mediation techniques?*
- *How does your Lead Agency determine whether a mediator is knowledgeable in laws and regulations relating to the provision of early intervention services?*
- *How are expectations and responsibilities of the mediator communicated and reinforced?*
- *What initial and ongoing training and support is provided to ensure mediators are qualified and meet performance expectations?*
- *How does your State evaluate mediators?*



Impartial Mediators

The mediator may not be an employee of the Lead Agency that is involved in the provision of early intervention or other services to the child; and must not have a personal or professional interest that conflicts with the person's objectivity [34 C.F.R. § [303.431\(c\)\(1\)](#)]. A person who otherwise qualifies as a mediator is not an employee of a Lead Agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator [34 C.F.R. § [303.431\(c\)\(2\)](#)].

Coaching Question

- ***How does your State ensure that an individual who serves as a mediator is impartial (as defined by 34 C.F.R. § [303.431\(c\)\(1\)](#))?***
- ***Does your State have a method for establishing that a mediator does not have a personal or professional conflict of interest with respect to the individual case for which the mediator may be selected?***

Selection of a Mediator

IDEA provides several mechanisms for selecting a mediator. The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations related to the provision of early intervention services [34 C.F.R. § [303.431\(b\)\(2\)\(i\)](#)]. The State must select a single mediator from this list on a random, rotational, or other impartial basis [34 C.F.R. § [303.431\(b\)\(2\)\(ii\)](#)].

Coaching Question

- ***How does your State assign a mediator in a random, rotational, or other impartial basis?***
 - ***What process does your State utilize to ensure a mediator is appointed in a timely fashion?***
 - ***How are parties notified of the mediator assignment?***
-

SCHEDULING MEDIATION SESSIONS



Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute [34 C.F.R. § [303.431\(b\)\(4\)](#)].

The IDEA provides that each session in the mediation process must be held in a location that is convenient to the parties to the dispute [34 C.F.R. § [303.431\(b\)\(4\)](#)]. If the parties are comfortable with the location of the mediation session, it is more likely that they will work cooperatively to achieve a resolution of their dispute. A suitable location would be accessible and private. Accommodations, such as interpreters, would be provided as needed. Many States offer mediation virtually. Visit CADRE's [Virtual Meetings: Strategies, Tips and Resources](#) webpage to learn more.

The IDEA does not specifically address the timing of the mediation process. However, mediation is intended to facilitate prompt resolution of disputes between parents and public agencies at the local level and decrease the use of more costly and divisive due process proceedings and civil litigation. Therefore, a State's procedures governing mediation must ensure that: (1) the mediation process is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part C of the IDEA; and (2) each session in the mediation process is scheduled in a timely manner [34 C.F.R. §§ [303.431\(b\)\(1\)\(ii\)](#) and [\(4\)](#)].

A representative from the Lead Agency or the contracted mediation service often contacts the parties to arrange logistical details. In some states, the assigned mediator works with both parties to determine the date and location of the mediation. The mediator will often discuss with the parties, especially the parents, what to expect and how to prepare for the mediation.

OSEP encourages States to maintain a log to track mediation requests. The log can be used to ensure that mediations are held in a timely manner and to facilitate the collection of information that must be reported under Section 618(a)(1)(H) and 635(a)(14) of the IDEA. See pages 15-16 for more information on mediation reporting requirements.

Coaching Question

- *How are mediations tracked in your State?*
-



Length of Sessions

The length of the mediation process depends on multiple factors, including the type and complexity of issues presented, the availability of the parties, and the willingness of the parties to cooperate. Also, the length of the mediation process will depend on the individual techniques used by the mediator.

Unless the parties agree to an extension, mediation may not affect the due process hearing timelines [34 C.F.R. §§ [303.440\(c\)](#) and [303.437\(b\)](#)] including those timelines related to resolution sessions for states adopting Part B procedures for Part C due process complaints [34 C.F.R. § [303.442\(b\)](#)]. (Note: Only a hearing officer can extend the due process hearing timeline based on a request from a party or parties [34 C.F.R. § [303.447\(c\)](#)]). Likewise, the use of mediation may not affect the 60-day State complaint timeline established in 34 C.F.R. § [303.433\(a\)](#) unless the parties agree to an extension [34 C.F.R. § [303.433\(b\)\(1\)\(ii\)](#)]. These extensions should be in writing and tracked accordingly.

Coaching Question

- ***Does your State limit how long a mediation session can last or how many sessions are allowed for a mediation? If so, is there room for adapting to the individual circumstances of a particular case (e.g., travel, scheduling, complexity of issues)?***
 - ***How do you track timelines when mediation is used to address issues in a filed State complaint or due process complaint?***
-

STATES TO BEAR COST OF MEDIATION PROCESS

The IDEA provides that the State must bear the cost of the mediation process required under 34 C.F.R. § [303.431](#), including the fee charged by the mediator, cost of recruitment and training of the mediator, and the cost of meetings described in 34 C.F.R. § [303.431\(d\)](#) to discuss the benefits of the mediation process.

States set their own rates to compensate mediators, with some adopting an hourly rate and others using a per mediation fee. A number of factors are considered when determining the rate and how to compensate mediators for costs incurred for each case and to meet other requirements. States often take in to account:

- Travel expenses;
- Prep time, including any time spent contacting the parties to schedule the sessions;
- Average length of a mediation session;
- If multiple mediation sessions are needed;
- Reporting back to the State;
- Attendance at required trainings; and
- Going rates for the area.

Coaching Question

- *How does your State determine the rate for mediators?*
 - *Do your mediation contracts address travel, reporting requirements, expectations for length of session or number of allowable sessions, prep-time, etc.?*
-

MEDIATION AGREEMENTS

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth that resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in State, Federal court, or in a State complaint investigation. For the agreement to be legally binding, it must be explicitly stated in writing. The agreement must be signed by both the parent and a representative of the Lead Agency who has the authority to bind the agency [34 C.F.R. § [303.431\(b\)\(5\)\(ii\)](#)]. It is important that the parties understand that the mediation agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States or by the State Lead Agency, if applicable [34 C.F.R. §§ [303.431\(b\)\(6\)](#) and [303.708](#)]. Parties are free to consult with others before entering into a mediation agreement.

While discussions that occur during the mediation process must be confidential, neither the IDEA nor its implementing regulations specifically address whether the mediation agreement itself must remain confidential. However, the confidentiality of information provisions in the Part C regulations in 34 C.F.R. §§ [303.401 through 303.417](#) and the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations in 34 C.F.R. part 99 would apply. Further, there is nothing in the IDEA or its implementing regulations that would prohibit the parties from agreeing voluntarily to include in their mediation agreement a provision that limits disclosure of the mediation agreement in whole or in part to third parties. Also, there is nothing in the IDEA that would prohibit the parties from agreeing to permit the agreement to be released to the public.

Failure to Implement a Mediation Agreement

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States [34 C.F.R. § [303.431\(b\)\(6\)](#)]. While IDEA addresses judicial enforcement of mediation and written settlement agreements [§§ [300.431\(b\)\(6\)](#) and [303.442\(d\)\(2\)](#)], the regulations do not prohibit the State from using other mechanisms (e.g., State complaint procedures) to seek enforcement of those agreements. States must ensure the use of other mechanisms to enforce a written agreement is not mandatory, nor would it delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States [34 C.F.R. § [303.449](#)].

Coaching Question

- *Does your state allow enforcement of a mediation agreement to be the subject of a State written complaint? If so, how are the parties informed of this option?*
-



If the mediation agreement covers a specific time period and that time period has passed, the parent may file a State complaint if the issues that were the subject of the mediation agreement recur or if new issues arise. Also, if there are issues that were not addressed by the mediation agreement, the parent may file a State complaint to seek to resolve those issues [34 C.F.R. §§ [303.432](#) and [303.708](#)]. However, once both parties have executed a legally binding mediation agreement, the parties are bound by that agreement, and a parent cannot seek to change the terms of that agreement by filing a State complaint to alter that agreement.

MEDIATION AND WRITTEN STATE COMPLAINTS

Mediation may help resolve issues that give rise to State complaints under 34 C.F.R. §§ [303.432 through 303.434](#). A State’s minimum State complaint procedures must provide an opportunity for a parent who has filed a State complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. §§ [303.430\(b\)](#) and [303.431](#) [34 C.F.R. § [303.433\(a\)\(3\)\(ii\)](#)]. Additionally, Lead Agencies may offer mediation to nonparent or organizational complainants [34 C.F.R. § [303.433\(b\)\(1\)\(ii\)](#)].

The 60-day timeline for resolving a State complaint may be extended if the parties to a mediation agree to an extension [34 C.F.R. § [303.433\(b\)\(1\)\(ii\)](#)]. This extension is not automatic and must be agreed to by all of parties.

If a State complaint is not withdrawn as a result of mediation even if the issues have been resolved, the Lead Agency must issue a written decision on the complaint.

Coaching Question

- *How is mediation offered to parties when a State complaint is filed?*
 - *How is the State informed if an extension to the 60-day timeline will be needed for parties to continue mediation?*
 - *Does your State have a mechanism for a party who filed a State complaint to withdraw the complaint in writing after issues are resolved in mediation?*
-

MEDIATION UNDER PART B DUE PROCESS PROCEDURES

For States that adopt Part B due process procedures, when a due process complaint is filed by the parent, the Lead Agency must hold a resolution meeting within 15 days of receiving the complaint [34 C.F.R. § [303.442\(a\)\(1\)](#)]. However, the resolution meeting does not need to be convened if the parent and the Lead Agency agree to mediate to resolve some or all of the issues that gave rise to the complaint [34 C.F.R. § [303.442\(a\)\(3\)\(ii\)](#)].

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement which sets forth that resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process [34 C.F.R. § [303.431\(b\)\(5-6\)](#)].

Coaching Questions

- *If using Part B procedures for due process, how will the State be informed if the parties opt for mediation instead of a resolution meeting?*
 - *If the issues that gave rise to the due process complaint are resolved in mediation, how is the State informed?*
-

MEDIATION AND PART C DUE PROCESS PROCEDURES

Each Lead Agency must ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process at any time.

Coaching Question

- *If your State adopts Part C due process procedures, is there a mechanism to encourage parties to consider mediation?*
-

REPORTING OF DISPUTE RESOLUTION DATA

Lead Agency data managers submit to Office of Special Education Programs (OSEP) their annual State data via EMAPS showing that the IDEA is being implemented. There are 12 data collections authorized under Section 618 of the IDEA, which includes the State's Part C Dispute Resolution data.

In November, Lead Agencies submit the previous year's data ending on June 30. OSEP reviews the reported data for quality issues and provides feedback. Lead Agencies submit their finalized data, generally, the following May. It is important to note that only actions initiated July 1 through June 30 are reported. Actions initiated in a previous reporting year that continued into the current reporting year are not included in the current counts. For more detailed instructions, view [OSEP's EDFacts Initiative](#). In addition to reporting on State complaints, due process complaints and hearings, and expedited due process complaints and hearings, LAs report data on mediation activity (Section 2).



Specifically, for mediation activity, Lead Agencies report:

Variable Reported	Explanation
2. Total number of mediations requested	Total number of mediation requests received through all dispute resolution processes between July 1 and June 30
2 (1) Total number of mediations held	Number of mediation requests (row 2) resulted in mediations held as of the end of the reporting period (July 1 - June 30)
2 (1)(a) Mediations held related to due process complaints	Number of mediations held were mediations held related to due process complaints
2 (1)(a)(i) Mediation agreements related to due process complaints	Number of mediations held related to due process complaints resulted in mediation agreements as of the end of the reporting period (June 30)
2 (1)(b) Mediations held not related to due process complaints	Number of mediations held were mediations held not related to due process complaints
2 (1)(b)(i) Mediation agreements not related to due process complaints	Number of mediations held not related to due process complaints resulted in mediation agreements as of the end of the reporting period (June 30)
2 (2) Mediations Pending	Number of mediation requests (row 2) were mediations pending as of the end of the reporting period (June 30). This includes mediation requests that were pending as of the end of the reporting period
2 (3) Mediations Withdrawn or Not Held	Number of mediation requests (row 2) were mediations withdrawn or not held as of the end of the reporting period (June 30)



EVALUATING YOUR STATE'S MEDIATION PROGRAM

Evaluating your State's mediation program is critical to program improvement efforts. When evaluation data informs program decisions, the following results are more likely:

- more effective policies, procedures and practices are implemented;
- access to mediation services are improved;
- more people use mediation;
- mediation agreement rates increase;
- stakeholders are satisfied with the process;
- family-provider relationships improve; and
- child outcomes improve.

In addition to the required mediation data that is reported to OSEP (see pages 15-16), States collect data to examine who (including underserved groups) is using their mediation program, how mediation is accessed, participant satisfaction with the mediation process, durability of the mediation agreements, etc. This data is used to evaluate the effectiveness of the program and inform improvement activities such as professional development to mediators.

Coaching Question

- *What mediation data does your State collect and analyze to inform program improvements?*
 - *How is this data collected?*
 - *How is it shared with stakeholders and used to inform program improvements?*
-

For information on using participant feedback to evaluate your State's mediation program, see CADRE's [Using Participant Feedback to Evaluate and Improve Quality in Mediation](#).

**Evaluation
Resources**



APPENDIX A: COACHING QUESTIONS

ENCOURAGING MEDIATION

- ❖ *How does your State encourage the use of mediation while ensuring that the process is not used to delay or deny a parent's right to a hearing on the parent's due process complaint or to deny any other rights afforded under Part C?*

IMPROVING ACCESS

- ❖ *How does your State share information on mediation with various stakeholders?*
- ❖ *How do people access mediation in your State?*
- ❖ *What barriers might people face when accessing mediation in your State? How might those barriers be minimized?*

PARTIES TO MEDIATION

Other Participants

- ❖ *Who determines who will attend the mediation? How is this information communicated to the other party prior to the mediation?*
- ❖ *Mediation requires that a person who is authorized to make a legally binding decision is present (e.g., a representative of the LA or someone granted authority to legally bind the agency). What is the process for ensuring the presence of someone who has the authority to legally bind the LA to an agreement?*
- ❖ *Does your State policies or procedures address participation by attorneys?*

MEDIATORS

Qualified Mediators

- ❖ *How does your State determine whether a mediator is trained in effective mediation techniques?*
- ❖ *How does your Lead Agency determine whether a mediator is knowledgeable in laws and regulations relating to the provision of early intervention services?*
- ❖ *How are expectations and responsibilities of the mediator communicated and reinforced?*
- ❖ *What initial and ongoing training and support is provided to ensure mediators are qualified and meet performance expectations?*

Impartial Mediators

- ❖ *How does your State ensure that an individual who serves as a mediator is impartial (as defined by [34 C.F.R. § 303.431\(c\)\(1\)](#))?*
- ❖ *Does your State have a method for establishing that a mediator does not have a personal or professional conflict of interest with respect to the individual case for which the mediator may be selected?*



Selection of a Mediator

- ❖ *How does your State assign a mediator in a random, rotational, or other impartial basis?*
- ❖ *What process does your State utilize to ensure a mediator is appointed in a timely fashion?*
- ❖ *How are parties notified of the mediator assignment?*

SCHEDULING MEDIATION SESSIONS

- ❖ *How are mediations tracked in your State?*

Length of Sessions

- ❖ *Does your State limit how long a mediation session can last or how many sessions are allowed for a mediation? If so, is there room for adapting to the individual circumstances of a particular case (e.g., travel, scheduling, complexity of issues)?*
- ❖ *How do you track timelines when mediation is used to address issues in a filed State complaint or due process complaint?*

STATES TO BEAR COST OF MEDIATION PROCESS

- ❖ *How does your State determine the rate for mediators?*
- ❖ *Do your mediation contracts address travel, reporting requirements, expectations for length of session or number of allowable sessions, prep-time, etc.?*

MEDIATION AGREEMENTS

Failure to Implement a Mediation Agreement

- ❖ *Does your state allow enforcement of a mediation agreement to be the subject of a State written complaint? If so, how are the parties informed of this option?*

MEDIATION AND WRITTEN STATE COMPLAINTS

- ❖ *How is mediation offered to parties when a State complaint is filed?*
- ❖ *How is the State informed if an extension to the 60-day timeline will be needed for parties to continue mediation?*
- ❖ *Does your State have a mechanism for a party who filed a State complaint to withdraw the complaint in writing after issues are resolved in mediation?*

MEDIATION AND DUE PROCESS COMPLAINTS

- ❖ *If using Part B procedures for due process, how will the State be informed if the parties opt for mediation instead of a resolution meeting?*
- ❖ *If the issues that gave rise to the due process complaint are resolved in mediation, how is the State informed?*

EVALUATING YOUR STATE'S MEDIATION PROGRAM

- ❖ *What mediation data does your State collect and analyze to inform program improvements?*
- ❖ *How is this data collected?*
- ❖ *How is it shared with stakeholders and used to inform program improvements?*