



STATE ADMINISTRATION OF MEDIATION

UNDER PART B of IDEA

34 CFR §300.506



ACKNOWLEDGEMENTS

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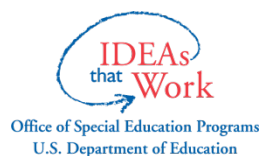
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ABOUT THIS RESOURCE

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 State Education 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 [OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), US Dept. of Education policy documents, comments to the regulations, and relevant case law. 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.



MEDIATION

Each State is required to establish, implement, and maintain procedural safeguards related to mediation. To assist State Education Agencies (SEAs) 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, coaching questions to prompt reflection about DR system design and how some procedures are, or might be, operationalized, and more. 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](#).

States 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. Changes to policy and procedures necessitate public participation [34 CFR §300.165(a)]. 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 CFR part 300 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 an opportunity for parents (including adult students) and public agencies to resolve disputes about any matter under 34 CFR part 300, including matters arising prior to the filing of a due process complaint. This includes matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to a child with a disability, as well as any other matters arising under 34 CFR part 300 that may not be the subject of a due process complaint. Because mediation must be available to parents and public agencies to resolve matters arising prior to the filing of a due process complaint, States may not require a due process complaint to be filed before a party can request mediation.

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 B [34 CFR §§[300.506\(b\)\(1\)](#) and [\(8\)](#)].

The Part B regulations prohibit a public agency from using mediation to seek to override (1) a parent's or an adult student's failure to respond to a request for, or refusal to consent to, the initial provision of special education and related services [34 CFR §[300.300\(b\)\(3\)\(i\)](#)], (2) a parent's or adult student's revocation of consent for the continued provision of special education and related services to his or her child [34 CFR §[300.300\(b\)\(4\)\(ii\)](#)], or (3) a parent's or adult student's refusal to consent, or failure to respond to a request to provide consent to an initial evaluation or reevaluation of a child who is home schooled or parentally-placed in a private school at parental expense [34 CFR §[300.300\(d\)\(4\)\(i\)](#) and 34 CFR §[300.520](#)] .

Mediation, pursuant to 34 CFR §[300.506\(a\)](#), may be used to resolve any disputes under Part B of the Act and its implementing regulations before a parent revokes consent for the continued provision of special education and related services. However, for the same reasons that mediation is not allowed when a parent refuses to provide initial consent for services (i.e., to ensure that the parent's right to refuse consent for their child's receipt of special education and related services is meaningful), mediation is not appropriate once a parent revokes consent for the provision of special education and related services [[73 Federal Register, December 1, 2008, pg. 73016](#)].

If a parent refuses consent to an initial evaluation or reevaluation of their child who is enrolled in a public school or is seeking to be enrolled in a public school, or if a parent of such a child fails to respond to a request to provide consent to an initial evaluation, the public agency may seek to engage in mediation with the parent if it believes that the child would benefit from the evaluation or reevaluation.

Coaching Question

- *In an IDEA mediation in your State, could non-IDEA issues (such as a parent's 504 related concerns that arise) be addressed?*
-

MEDIATION IS VOLUNTARY

The IDEA and its implementing regulations do not allow the SEA to require a parent or public agency to participate in mediation because mediation is voluntary. However, a SEA may establish procedures to offer parents and the LEA 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 CFR §[300.506\(b\)\(2\)](#)]. Public agencies that choose to establish these procedures must make clear to parents and the LEA 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 CFR §[300.506\(b\)\(8\)](#)]. This requirement is automatic and may not be altered or modified by parties to mediation conducted under §[300.506](#). 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 pursuant to §§[300.151 through 300.153](#). This confidentiality requirement also prohibits disclosure of mediation discussions during the resolution of a state administrative 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 CFR §[300.506\(b\)\(6\)\(i\)](#)]. 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](#)].

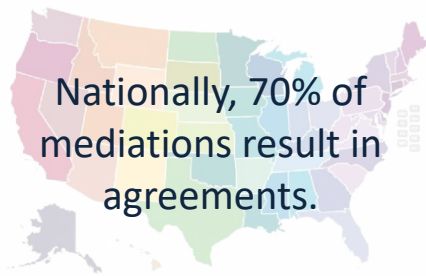
Irrespective of these provisions, (§[300.506\(b\)\(8\)](#)), States may not require parties to the mediation process to sign a confidentiality pledge, agreement, or form prior to, or as a precondition of, the commencement of the mediation process.



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 marketing 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 the parents and the LEA, or as appropriate, the SEA or other public agency.



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.
- IEPs, with the exception of initial IEPs, can be amended between annual IEP meetings through the mediation process [34 CFR [300.324\(a\)\(4\)](#)].
- Mediation may be helpful in resolving issues that are subject to State complaints or due process complaints. (See pgs. 15-16)

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 B?*

CADRE has several resources, such as the [IDEA Mediation Special Education Parent Guide](#) and companion videos, and [Considering Mediation for Special Education Disputes: A School Administrator's Perspective](#), and [Keys to Access: Encouraging the Use of Mediation by Families from Diverse Backgrounds](#) that States may use to help encourage mediation to various audiences. These resources are available at www.cadeworks.org.

CADRE
Resources

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 SEA'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 Questions

- *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?*
- *What proactive steps is your State taking to reach diverse communities to understand their experience and encourage mediation? How will you know if your efforts are successful?*

Many States have a toll-free number for stakeholders to call and an Intake Coordinator to make access to the mediation process easier. The Intake Coordinator shares information about the process and gathers the necessary information from the party requesting the mediation in order to open a case.

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 are parents of a child with a disability as defined in §300.30, or the adult student and the LEA, or as appropriate, a State agency in accordance with §300.228, the SEA, or other public agencies that have responsibility for the education of children with disabilities [34 CFR §300.506]. Unlike State complaints, which can be filed by any organization or individual, the IDEA contemplates that mediation must be made available only to parents and public agencies to resolve disputes involving any matter under 34 CFR part 300, including matters arising prior to the filing of a due process complaint.

Under §300.33, the term “public agency” includes the SEA, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. The LEA representative present at the mediation must have the authority to commit the LEA to any decision made.

Other Participants

The IDEA does not address who may accompany a party at the mediation session. A parent may choose to have their child present for all or part of the mediation session. The age and maturity of the child should be considered in determining the appropriateness of including the child in the mediation with their parent. Because 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 Questions

- *Is “who will attend the mediation” brought up by the SEA intake coordinator or the mediator? Is this information shared with the other party prior to the mediation?*
 - *Does your State policy 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 public agency. For example, if the parent wishes to bring an attorney to the mediation session and the LEA objects, the parent may choose not to participate.

For more information on student participation in mediation, see *The Involvement of Students in Their Special Education Mediations* publication on CADRE’s website: www.cadeworks.org.



MEDIATORS



The mediation process must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques [34 CFR §[300.506\(b\)\(1\)](#)].

Qualified Mediators

The mediator must be trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and related services [34 CFR §§[300.506\(b\)\(1\)\(iii\)](#) and [\(b\)\(3\)\(i\)](#)]. 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 Federal Register, August 14, 2006, pg. 46695](#)].

Some states contract with mediation services that are involved in a variety of fields and that tailor a mediation service to special education. The use of mediation professionals may help ensure that mediators are well-trained in mediation techniques, but extra attention may need to be given to ensure that mediators also know the law and regulations. Initial training and regular refresher courses may help ensure that mediators are knowledgeable about the law.

Coaching Questions

- *How does your State determine whether a mediator is trained in effective mediation techniques?*
 - *How does your State determine whether a mediator is knowledgeable in laws and regulations relating to the provision of special education and related services?*
 - *Are there State standards of practice for mediators?*
 - *What expectations does your State have for its mediators? For example, is it permissible for a mediator to obligate oneself in a mediation agreement to facilitate a parties' next IEP meeting and if so, at whose expense?*
 - *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

The mediator may not be an employee of the SEA or the LEA that is involved in the education or care of the child and must not have a personal or professional interest that conflicts with the person's objectivity [34 CFR §[300.506\(c\)\(1\)](#)]. However, if an employee of a different LEA that is not involved in the education or care of the child has no personal or professional interest that would conflict with their objectivity and possesses the requisite qualifications, that individual can serve as a mediator in a dispute involving the parents and the LEA that their child attends.

Coaching Questions

- ***How does your State ensure that an individual who serves as a mediator is impartial (as defined by §[300.506\(c\)\(1\)](#))?***
- ***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 special education and related services [34 CFR §[300.506\(b\)\(3\)\(i\)](#)]. The State must select a single mediator from this list on a random, rotational, or other impartial basis [34 CFR §[300.506\(b\)\(3\)\(ii\)](#)]. The State's selection of mediators on an impartial basis, however, would permit the parties involved in a dispute to agree on a mediator [[71 Federal Register, August 14, 2006, pg. 46695](#)].

Coaching Questions

- ***How does your State assign a mediator in a random, rotational, or other impartial basis?***
 - ***Does your State permit parties involved in a dispute to agree on a mediator? If so, how does the State help facilitate agreement?***
 - ***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 CFR [§300.506\(b\)\(5\)](#)].

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 CFR [§300.506\(b\)\(5\)](#)]. 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 [[64 Federal Register, March 12, 1999, pg. 12611](#)]. 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 B of the IDEA; and (2) each session in the mediation process is scheduled in a timely manner [34 CFR [§300.506\(b\)\(1\)\(ii\)](#) and [\(5\)](#)].

A representative from the SEA 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) of the IDEA. See page 17 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, the use of mediation may not affect the 30-day resolution period timeline or the 45-day due process hearing timeline established in §§[300.510](#) and [300.515](#) (Note: Only a hearing officer can extend the 45-day timeline based on a request from a party or parties). Likewise, the use of mediation may not affect the 60-day State complaint timeline established in §[300.152\(a\)](#) unless the parties agree to an extension [34 CFR §[300.152\(b\)\(1\)\(ii\)](#)].

Coaching Questions

- *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 section 615(e) of the IDEA and 34 CFR §[300.506](#), including the fee charged by the mediator, cost of recruitment and training of the mediator, and the cost of meetings described in 34 CFR §[300.506\(b\)\(2\)](#) to discuss the benefits of the mediation process. A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the State agency to serve as a mediator [34 CFR §[300.506\(c\)\(2\)](#)].

States may not require their LEAs to use Part B funds to pay the costs of mediation [[71 Federal Register, August 14, 2006](#)], [pg. 46624](#)]. In addition, the IDEA does not allow States that choose to make mediation available to parties other than parents or offer mediation on matters not addressed in the IDEA to use IDEA funds for those activities. [[OSEP Memo and Q&A on Dispute Resolution \(July 23, 2013\), A-16](#)].

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 Questions

- ***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 public agency who has the authority to bind the agency [34 CFR §[300.506\(b\)\(6\)](#)]. 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 SEA, if applicable [34 CFR §§[300.506\(b\)\(7\)](#) and [300.537](#)]. 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 B regulations in 34 CFR §§[300.611 through 300.626](#) and the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations in 34 CFR 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 CFR §[300.506\(b\)\(7\)](#)]. However, notwithstanding the provisions in §§[300.506\(b\)\(7\)](#) and [300.510\(d\)\(2\)](#), addressing judicial enforcement of mediation and written settlement agreements, nothing in part 300 would prevent the SEA from using other mechanisms (e.g., State complaint procedures) to seek enforcement of those agreements, provided that the use of the State's mechanisms is not mandatory and does not 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 CFR §[300.537](#)]. Therefore, in addition to judicial enforcement of mediation and resolution agreements, §[300.537](#) gives States the flexibility to allow enforcement of those agreements through other State mechanisms such as their State complaint resolution procedures in §§[300.151 through 300.153](#) [[71 Federal Register, August 14, 2006, pgs. 46604-46605 and 46703](#)].

Coaching Question

- *Does your state allow enforcement of a mediation agreement to be the subject of a State administrative 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. 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 §§300.151 through 300.153. 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 §300.506 [34 CFR §300.152(a)(3)(ii)]. Additionally, SEAs may offer mediation to nonparent or organizational complainants [[OSEP Memo and Q&A on Dispute Resolution \(July 23, 2013\), A-4](#)].

The 60-day timeline for resolving a State complaint may be extended if the parties to a mediation agree to an extension. This extension is not automatic and must be agreed to by all of parties. [[OSEP Memo and Q&A on Dispute Resolution \(July 23, 2013\), B-23](#)].

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

Coaching Questions

- *How is mediation offered to parties when a State complaint is filed?*
 - *How is the SEA 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

When a due process complaint is filed by the parent, the LEA must hold a resolution meeting within 15 days of receiving the complaint. However, the resolution meeting does not need to be convened if the parent and the district agree to mediate to resolve some or all of the issues that gave rise to the complaint [34 CFR §[300.510 \(a\)\(3\)\(ii\)](#)].

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 CFR §[300.506 \(b\)\(6-7\)](#)].

Coaching Questions

- *How will the SEA 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 SEA informed?*
-

REPORTING OF DISPUTE RESOLUTION DATA

SEA 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 B Dispute Resolution data.

In November, SEAs submit the previous school year’s (SY) data ending on June 30. OSEP reviews the reported data for quality issues and provides feedback. SEAs submit their finalized data, generally, the following May. It is important to note that only actions initiated during the school year 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 ED Facts Initiative](#). In addition to reporting on State complaints, due process complaints and hearings, and expedited due process complaints and hearings, SEAs report data on mediation activity (Section 2).

Specifically for mediation activity, SEAs 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;
- home-school relationships improve; and
- student outcomes improve.

In addition to the required mediation data that is reported to OSEP (see page 17), 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 Questions

- *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](#). To view a collection of State examples of evaluation forms and other tools, visit CADRE's main library at www.cadeworks.org/main-library.



Evaluation
Resources



APPENDIX A: COACHING QUESTIONS

MEDIATION

When Mediation May Not Be Used

- ❖ *In an IDEA mediation in your State, could non-IDEA issues (such as a parent's 504 related concerns that arise) be addressed?*

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 B?*

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?*
- ❖ *What proactive steps is your State taking to reach diverse communities to understand their experience and encourage mediation? How will you know if your efforts are successful?*

PARTIES TO MEDIATION

Other Participants

- ❖ *Is "who will attend the mediation" brought up by the SEA intake coordinator or the mediator? Is this information shared with the other party prior to the mediation?*
- ❖ *Does your State policy address participation by attorneys?*

MEDIATORS

Qualified Mediators

- ❖ *How does your State determine whether a mediator is trained in effective mediation techniques?*
- ❖ *How does your State determine whether a mediator is knowledgeable in laws and regulations relating to the provision of special education and related services?*
- ❖ *Are there State standards of practice for mediators?*
- ❖ *What expectations does your State have for its mediators? For example, is it permissible for a mediator to obligate oneself in a mediation agreement to facilitate a parties' next IEP meeting and if so, at whose expense? 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 meeting performance expectations?*



Impartial Mediators

- ❖ *How does your State ensure that an individual who serves as a mediator is impartial (as defined by §300.506(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?*
- ❖ *Does your State permit parties involved in a dispute to agree on a mediator? If so, how does the State help facilitate agreement?*
- ❖ *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 administrative 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 SEA 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

- ❖ *How will the SEA 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 SEA 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?*