

**Florida Department of Education
Bureau of Exceptional Education and Student Services**

FACT SHEET

MEDIATION - PARENTS AND SCHOOL DISTRICTS WORKING TOGETHER

What is Exceptional Student Education (ESE) Mediation?

The focus of the mediation process is to provide an environment that is conducive to the creation of a working agreement that benefits the student. The process is not intended to be confrontational or adversarial, as participants use a problem-solving approach to resolve the issues. In fact, mediation can help resolve differences before they become major barriers to parent/school relationships. A trained mediator helps the parties reach a mutually satisfactory and legally binding agreement that is in the best interest of the student. Mediation is voluntary for all parties, and discussions that occur during the mediation process are confidential and may not be used as evidence in subsequent legal proceedings.

ESE mediation may:

- resolve disagreements concerning identification, evaluation, educational placement, and/or a free appropriate public education for an exceptional student
- clarify issues causing the disagreement
- provide those involved with uninterrupted opportunities to present their point of view
- stimulate mutual problem-solving efforts
- promote positive working relationships between parents and school personnel
- help parents and school personnel focus on what they have in common, the student, rather than issues that divide them

Many school districts have implemented their own forms of mediation. Participation in this process of problem solving at the district level is strongly encouraged by the Bureau.

Requesting a Mediation

When parents and schools are unable to resolve their differences through the individual educational plan (IEP) process, either party may request mediation. Mediation may be requested before or at the same time that a formal state complaint or a request for due process is filed and is offered and discussed by Bureau staff upon the receipt of formal state complaints. While mediation is not a necessary step prior to a due process hearing, it is a step that is encouraged. It may occur prior to or concurrent with a request for a due process hearing. It may not, however, interfere with the right to a due process hearing or be used to delay due process timelines.

[Within 15 days of receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, the district must convene a meeting called a resolution session, with the parent and relevant members of the IEP Team in attendance. The purpose of the resolution session is for the parent of the child to discuss the due process complaint so that the district has the opportunity to resolve the dispute. This resolution session may only be waived if both the parent and the school district agree in writing to waive the meeting or if both parties agree to participate in mediation.]

Mediation is Voluntary

Although either the district or the parent may request mediation, both parties must agree to participate, as the mediation process is voluntary. After a request for mediation is made to the Bureau and both parties agree to mediate, the mediation is scheduled. A mediator is selected on a rotational basis. Generally, the mediation occurs within 14 days after the mediator is assigned. Mediation sessions usually last three to six hours, although sometimes longer, and participants should plan accordingly.

The Mediation Agreement

A trained ESE mediator guides the parent(s), school district or agency representative(s), and other parties who have knowledge necessary to resolve the dispute, through a structured negotiation process. If the parties reach a mediation agreement, it is put in writing and signed by both parties and the mediator. Copies of the mediation agreement are provided to each party, the Bureau, and one is included in the student's school file. The mediation agreement is a legally binding contract, which is enforceable in a state court of competent jurisdiction or in a U.S. district court.

The Mediator's Role

ESE mediators are neutral third parties who are qualified and trained in effective mediation techniques. The role of the mediator is to facilitate a negotiation process between parties who have reached an impasse. The mediator does not make the decisions as to the appropriate terms of the agreement, nor will the mediator hold that one party over another is "right." You do not need to "convince" the mediator of your position. The mediator will work with you to clarify the issues that are causing the disagreement, provide you with uninterrupted opportunities to present your point of view in a non-threatening environment, stimulate mutual problem-solving efforts, and promote the positive relationships by shifting the focus to the student's needs. Even if the mediator is an attorney, he/she is not acting in that capacity for either party during the mediation session. The parties may not subpoena the mediator(s) or compel the mediator(s) to produce any documents provided by a party in any pending or future administrative or judicial proceeding. Mediators will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding.

Confidentiality

Individuals with Disabilities Education Act (IDEA 2004) states that "...all discussions that occur during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding..." Therefore, every participant will be required to sign a confidentiality statement prior to the start of the mediation session. Confidentiality does not extend to threats of imminent physical harm or incidents of actual violence that occur during the mediation. Mediation sessions may not be video-recorded, tape-

recorded or transcribed by the mediator or any participant. Additionally, while either party may call someone for advice or information, no one may fully participate in the mediation session by telephone.

Documentation during Mediation

Documents may be brought into the mediation session for discussion. IDEA 2004 prohibits discussions that occur during the mediation from being used as evidence in any future legal proceedings. Therefore, paper will be provided for note taking to all parties, including the mediator. *All information or materials generated during the course of the mediation by the mediator and participants, including all notes, records or documents, are destroyed by the mediator after the conclusion of the mediation.*

Use of Attorneys

Either party may bring an attorney to the mediation session. Agreement versus non-agreement must be finalized at the close of the mediation session. Therefore, if you anticipate the need for an attorney to advise you before signing an agreement, you may consult one by telephone. Payment of attorney's fees should be decided prior to the mediation to avoid any disruption in reaching a mutual agreement of the issues regarding the student. Districts are not required to pay for the attorney of the parent.

Paying for Mediation

In Florida, ESE mediation is provided at no charge to parents. Mediators involved in mediation for students with disabilities are paid for by the Florida Department of Education, while districts pay for gifted education mediation. Each party is responsible for their individual expenses.

Participant Evaluations

An evaluation will be provided to all parties following the mediation. The purpose of the participant evaluation is to determine the usefulness of mediation in resolving educational disputes. No personally identifiable information is shared. Your cooperation in this matter is appreciated and will be valuable in guiding future efforts.

To request mediation, please contact:

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