



PROCEDURAL SAFEGAURDS: Understanding Mediation

Maine Parent Federation
Since 1984 . . . because every family matters

Mediation can help parents and schools that have differences reach an agreement. In formal dispute resolution, mediation tries to resolve differences with the help of an impartial mediator. The person who serves as mediator may not be an employee of the Department of Education or the local school that is involved in the education of the child. They also cannot have a personal or professional interest that affects their objectivity.

Parents, an adult child, a CDS site or a school official may request mediation. Both parties must agree to participate in order to have mediation happen.

The state pays for the mediation process. The parent pays for any costs related to preparing for mediation and the cost of anyone they ask to attend the mediation session. Once the parent files the mediation request, the Due Process Coordinator at the Maine Department of Education will give them information on free or low-cost legal aid and other related services.

If mediation is the only action you request at the state-level, it is called a *Stand-Alone Mediation*.

To file a request for stand-alone mediation, the parent can use either the state's Dispute Resolution Form, checking off Stand-Alone Mediation, or they can write a letter. The form requires certain information which would also need to be included in the letter. Some of the information required includes information about the child, an explanation of what the problem is, what has happened to try to solve the problem and a possible solution to the dispute. This request must be sent to the school district and the state. Make sure you keep a copy for your own records.

Mediation is an option even if you are asking for a complaint investigation or a due process hearing. Maine schools are encouraged to try resolving disagreements through mediation, in the case of a complaint investigation, or through either mediation or a resolution session when a due process hearing is requested.

Mediation is always voluntary, but a resolution session is required when a hearing has been requested. The resolution session can be waived, however, if both parties agree or if they have chosen mediation instead. Mediation cannot be used to deny or delay a pending hearing or rights to services.

Everything said at mediation is confidential and cannot be used in any later actions by either the school or by the parent. This is important as it allows both parties the opportunity to explore all options to see if they can reach an agreement and resolve the dispute.

While what is said at mediation is confidential, any final agreement reached through mediation is not confidential. The final agreement is in writing and must be signed by both parties and the

mediator. It may or may not become part of the child's IEP, although it sometimes guides specific changes made to the IEP. In either case, it is a binding agreement.

A parent does not have to bring an attorney with them to mediation. The parent can bring an advocate or other person who knows about special education with them to the mediation session. If the parent doesn't bring an attorney to the mediation, then the school or CDS site cannot have an attorney present either. The parent and the school or CDS site may consult an attorney before or after the mediation process.

If an attorney plans to attend mediation with a parent, the state's Due Process Office and the school district's superintendent must be notified in writing 7 days before the mediation. The two parties may agree to waive the 7-day notice requirement.

Mediation process

When the MDOE receives a request for stand-alone mediation from a parent, MDOE contacts the school district to see if it is willing to participate in mediation. If the request comes from the school, the MDOE contacts the parent.

If both parties agree to participate in mediation, the MDOE appoints a mediator and informs both sides of the date, time, and location of the mediation session. If the date of the mediation is not convenient, either party may request from the mediator an extension of the mediation date.

During the first part of a mediation session, each side is given a chance to tell their version of what the problem is, and how it could be resolved. Sometimes, the mediator keeps everyone in the same room. But the parent can ask to be in a different room from school district employees.

Mediation often involves a compromise by both sides, so during the session each side may meet alone to discuss possible solutions, with the mediator going back and forth between the two parties in an effort to reach a resolution. There are no time limits, and this is usually left to the discretion of the mediator.

If mediation succeeds in resolving all the issues, any requests for due process or complaint hearings will be withdrawn. If no agreement is reached, or reached only on some of the issues presented, parents have to decide what to do next. If parents requested a stand-alone mediation, they can request a complaint investigation or a due process hearing. If parents have already requested either of those, they will continue.

For a copy of the Notice of Procedural Safeguards go to:

Web: <http://www.maine.gov/education/speced/documents/ProceduralSafeguards.doc>

For a copy of the Maine Unified Special Education Regulations:

Web: www.maine.gov/education/speced/contentrules.htm



The contents of this fact sheet were developed, in part, by P³, a Parent Program Partnership between the Learning Disabilities Association of Maine, Maine Parent Federation and Southern Maine Parent Awareness.

This fact sheet was designed to inform the reader and its contents should not be taken as legal advice or a complete document on the subject. For more information on

Understanding Mediation and other topics of importance to families of children with disabilities and special health care needs, contact Maine Parent Federation by telephone at 1-800-870-7746 (Statewide), 207-588-1933, or by email at parentconnect@mpf.org

The contents of this fact sheet were developed, in part, under a grant from the US Department of Education, #H328M110002. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government.

