

# Special Education Mediation

Under the Individuals with Disabilities Education Act (IDEA)

## Questions and Answers



### What is special education mediation?

Special education mediation is a voluntary dispute resolution process that allows parents and school staff to work together to discuss and resolve a disagreement about special education with the help of a mediator. The Colorado Department of Education (CDE) encourages parties to consider mediation as soon as a dispute arises.

### What are the benefits of mediation?

- Focuses on the student
- Gives parties control of the outcome and the ability to creatively resolve their dispute
- Provides the least adversarial process for resolving a dispute
- Available free of cost to the parties and the quickest dispute resolution option

### Who can request mediation?

The parent of a student who may be eligible for or is receiving special education services or a Special Education Director can request mediation. To request mediation, contact the CDE Mediation Coordinator by phone (303-866-6889) or complete a mediation request form (see <http://www.cde.state.co.us/spedlaw/mediation>).

### When can mediation be requested?

Mediation can be requested anytime there is a dispute about special education for a student who may be eligible for or is receiving special education services. The CDE encourages parties to consider mediation as soon as a disagreement about special education arises. If parties are involved in a due process or state complaint, mediation may be requested any time during the process. Mediation cannot be used to deny or delay a parent's right to a due process hearing.

### What concerns can be discussed at mediation?

Mediation is available to resolve disagreements concerning special education and related services including: identification, evaluation, eligibility, development and implementation of the student's individualized education program (IEP) or individualized family service plan (IFSP), placement, least restrictive environment (LRE), discipline, and/or other matters protected by the Individuals with Disabilities Education Act (IDEA) or Exceptional Children's Educational Act (ECEA).

### What happens after I request mediation?

Once a mediation request is received, the Mediation Coordinator contacts the other party to ask if they agree to participate in mediation. Because mediation is voluntary, both parties must agree to participate in mediation for the process to occur. If the other party does not agree to mediate, then the party who requested mediation will be notified that mediation will not proceed and that the other IDEA dispute resolution options

remain available. This means that a party may file a state or due process complaint to resolve the disagreement.

### **Who decides the outcome?**

The parties decide the outcome of mediation, based on the options that are identified and discussed in the mediation session.

### **What does it cost?**

Mediation is free. The CDE provides a mediator at no cost to the parties. However, parties are responsible for any attorney fees incurred if they have their own attorney participate in the mediation.

### **When will it be scheduled?**

Once both parties have agreed to use mediation, a mediator will contact the parties to schedule a date for mediation. Mediation must be scheduled in a timely manner. Typically, mediation is completed within 30 calendar days of a mediation request.

### **What if I need an interpreter?**

If you need an interpreter, please contact the CDE Mediation Coordinator at 303-866-6889. An interpreter will be provided at no cost.

### **Who are the mediators?**

The mediators are independent contractors with the CDE. Mediators are assigned on a rotational, impartial basis. They are not employees of the CDE, nor are they employees of any school district. They are qualified, impartial mediators trained in effective mediation techniques and knowledgeable about special education law. Mediators do not take sides, do not offer legal advice, and do not share information disclosed during the mediation.

### **How can a mediator help resolve the dispute?**

A mediator can help the parties better understand each other and identify possible solutions by:

- asking questions,
- facilitating open communication between all participants,
- creating a safe and confidential environment for sharing concerns and ideas,
- encouraging all participants to be respectful of other points of view,
- clarifying points of disagreement,
- helping to identify options, and
- assisting with writing down any agreement.

### **Who can attend the mediation?**

- The parents of the student;
- the Special Education Director (or their designee who has the authority to commit district funds);

- the student, if the parents choose to have the student participate in all or part of the mediation, depending on the student's age and maturity; and,
- other persons with knowledge of the student and their individual needs, or specialized knowledge of the issues at dispute.

Each party will need to notify the mediator of who they would like to attend. Generally, smaller groups lead to more effective communication. The CDE encourages the district to have no more participants than the parents have present and to consider bringing an attorney only if the parents bring an attorney.

## **What does the mediation process look like?**

### **Scheduling**

The mediator will contact both parties within 2 business days of being assigned. The parties should have available dates ready to share with the mediator. Mediation must be scheduled in a timely manner and held at a location convenient to the parties.

The parties should plan for a full day of mediation. A mediation session may take only a few hours or may last a full day, depending on the complexity of the issues and the number of participants.

Mediation may be held at the district office if both parties are agreeable to the location. Districts should find a location with two rooms in a neutral and comfortable meeting space. Other options may include libraries or community centers with conference rooms. Most recently, parties are participating in mediation through an online platform, such as Zoom.

It is up to each party to notify their respective attendees of the time and location of the mediation session.

### **Agreement to Mediate**

Either before or at the beginning of the session, the mediator will explain the mediation process and present the parties with an Agreement to Mediate. The mediator will ask the parties to sign the form to confirm that they understand and agree to the following conditions:

- Parties are entering mediation in good faith through open and honest discussion.
- All rights to due process or procedural safeguards remain intact.
- Mediation must be completed as soon as possible.
- Any party may stop the mediation at any time.
- Discussions that occur during the mediation session are confidential.
- An agreement signed by both parties in mediation is enforceable in state or federal district court.

### **Session**

Each mediation may differ, but a typical day in mediation consists of the following:

- **Introduction** – The mediator explains his/her role as the mediator, the Agreement to Mediate, mediation confidentiality, the use of caucus, written settlement agreement, and any other procedural rules. Parties should feel free to ask the mediator questions at any time in the process.

- **Opening Discussion** – Each party will have an opportunity to explain their point of view and ideas for resolving differences. This may occur in a joint session with everyone present, or it may happen in separate meetings with each party, called a “caucus.” The mediator remains impartial while assisting parties in clarifying the issues, needs, and individual interests. The mediator guides the communication and discussion rather than determining who is right or wrong.
- **Clarifying the Information** – Parties in disputes commonly believe that they disagree about “the facts.” Sometimes disagreements are the result of gaps in knowledge about a situation or a misunderstanding about what has taken place. The mediator does not decide who is right or wrong, but can help the parties clarify these factual issues, so that the extent of the disagreement - and areas of common ground - can be better understood.
- **Exploring the Options** – The mediator will help the parties brainstorm the available options in detail, so that no reasonable possibility for resolution is overlooked. Often an acceptable solution emerges from an idea that neither party initially considered.
- **Negotiations** – Even after a solution is identified, the details will still need to be discussed. There is frequently some give-and-take during this process, to make sure that the solution will work for everyone involved.
- **Agreement** – The mediator assists the parties in preparing a written settlement agreement. To be enforceable, any agreement reached (full or partial) must be finalized in a written settlement agreement and signed by both parties during the mediation.
- **Impasse** – If the parties cannot reach an agreement (impasse) on the issues, the other IDEA dispute resolution options are still available. This means that a party may file a state or due process complaint to resolve the disagreement.
- **Evaluation** – An evaluation regarding the mediation session will be emailed to the parties soon after the mediation session is complete. This information assists with training and improvement of the mediation process.

#### **What is generally included in the terms of a settlement agreement?**

- Statements of how the issues will be resolved; who, or what team, is responsible for implementing the terms; and the timelines for implementation. Parties should consider listing a person’s title rather than a name, e.g., “Speech Language Pathologist” rather than “Jane Doe,” in the event of staff turnover.
- Signatures of the parent(s) and the representative of the district/BOCES who has the authority to bind the agency (i.e., the Special Education Director or his/her designee).

#### **What happens after an agreement is reached?**

- The terms of the agreement are implemented.
- If the parties agree to incorporate terms of the agreement into the IEP, the school district must revise the IEP, as agreed, and inform all individuals responsible for implementing the IEP of the changes.

#### **What Happens to the information learned or communicated in mediation?**

All information learned or communicated in mediation is kept confidential, by law. The CDE is informed whether there was a full settlement, partial settlement, or impasse, but nothing about the content of the



mediation session is communicated to any third party. The mediator is required to destroy all records of the mediation session and does not have a role in any other step of the dispute resolution process.

**Is there an appeal process?**

A written settlement agreement signed by both parties during a mediation is legally binding. If a party believes that the other party is not meeting the terms of the written settlement agreement, that party may seek enforcement of the agreement in state or federal court. If the terms of the settlement agreement have been incorporated into an IEP, a party may seek enforcement of such terms through IDEA dispute resolution options if they believe that the terms incorporated into the IEP are not being implemented. If any issues remain unresolved after mediation, all parties retain their right to file a State and/or Due Process Complaint to resolve the remaining issues.