

Illinois State Board of Education

Special Education Mediation

QUESTIONS & ANSWERS

Parents of children with disabilities or school personnel have the right to request state-sponsored mediation services from the Illinois State Board of Education (ISBE) if there is a difference of opinion regarding the special education services, placement and/or related services to children enrolled in Illinois public schools. Mediation is a voluntary process, conducted by a qualified and impartial mediator, and provided at no cost to the parent or the school district.

WHAT IS MEDIATION?

- Mediation is an informal meeting of the parent(s) and school employees led by a neutral third party (the mediator) with the goal of resolving the special education disagreement.

WHAT IS THE ROLE OF THE MEDIATOR?

- The mediator's role is to help the parent(s) and school employees understand each other's concerns, then consider and develop options to resolve the dispute.
- The mediator helps the participants talk about the issues, encourages them to identify and clarify areas of agreement and/or disagreement, and helps them to identify solutions that will be agreeable to both parties.

ARE THE MEDIATORS IMPARTIAL?

- Yes. A mediator “must not have a personal or professional interest that conflicts with the person’s objectivity”.
- If a mediator has a conflict of interest with respect to a particular case, another impartial mediator will be assigned.

WHAT ARE THE MEDIATORS’ QUALIFICATIONS?

Mediators must have, at minimum:

- A Bachelor’s Degree from an accredited university;
- Completed 40 hours of Basic Mediation Training;
- Experience in mediating disputes; and
- Basic knowledge of special education federal and state laws.

WHO ARE THE MEDIATORS?

- ISBE contracts with several experienced mediators throughout Illinois.
- The mediators come from a variety of professions, including special education, general education, law, social work, and psychology.
- Annually, ISBE requires the mediators to attend training in order to enhance their skills and provide current information on legal developments related to special education.

WHO PAYS FOR MEDIATION?

- The services of the mediator are provided by the Illinois State Board of Education (ISBE).
- ISBE will not pay for any attorney fees or any other costs of the parties associated with the mediation. (e.g. mileage, lodging, wage loss, etc.)

MUST BOTH PARTIES AGREE TO PARTICIPATE IN MEDIATION?

- Yes. Both parties involved in a difference of opinion must voluntarily agree to participate in the mediation process before a mediator will be assigned to the case.

WHO CAN REQUEST MEDIATION?

- Parents, including guardians and surrogate parents, of a child with a disability (or a child suspected of having a disability).
- An adult student (18 years old or older) with a disability.
- A school district spokesperson.
- An attorney or advocate acting on behalf of a parent.
- An attorney acting on behalf of a school district.

WHEN CAN YOU ASK FOR MEDIATION?

- Mediation may be requested at any time a parent or a school district spokesperson has an interest in working out issues related to a student's special education program when they have been unable to resolve the issues at the local level.
- Mediation can be requested without filing for a due process hearing.
- Mediation may be requested even if a due process has been filed.
 - However, a mandatory action called a “Resolution Meeting” must be held within 15 calendar days of receiving notice of the due process complaint unless both parties agree in writing to use state-sponsored mediation services instead of a resolution meeting.

ARE DISCUSSIONS IN MEDIATION CONFIDENTIAL?

- Yes. All discussions that occur during the mediation process are confidential and cannot be used as evidence in any later due process hearing or civil proceeding.
- Mediation participants are required to maintain the confidentiality of discussions in mediation by acknowledging, signing and acting in accordance with the following:
 - The mediator and participants will not reveal to anyone, including a hearing officer, the content of any discussions, which took place in mediation.
 - The parties and their attorneys will not call the mediator as a witness in any legal proceeding concerning this dispute.
 - The session will not be recorded by any party or the mediator.

WHO CAN ATTEND MEDIATION?

- Parent(s) and school personnel may choose who they bring to the mediation.
- Mediation participants for both parties *must* include persons who have the authority to act on behalf of the student and the school district.

- Participants should include persons who have knowledge of the student.
- Participants may include attorneys, advocates, interpreters and other relevant parties.
- The number of participants is usually limited to three persons per party.

WHO DECIDES WHO CAN ATTEND MEDIATION?

- Each party determines who they want to bring with them to mediation.
- If there is disagreement about who will participate, the mediator will work with both parties to determine who will be the most appropriate participants. Ultimately, the mediator may have to decide how the matter will be handled.

CAN ADVOCATES AND/OR ATTORNEYS ATTEND MEDIATION?

- Yes. However, if either party chooses to be represented by an advocate or attorney in the mediation process, they are responsible for any fees.

HOW ARE MEDIATORS ASSIGNED TO A CASE?

- Mediators are assigned on a rotation basis with consideration for travel limitations, scheduling or other logistical concerns and potential conflicts of interests.

WHAT HAPPENS AFTER THE MEDIATOR IS ASSIGNED TO A CASE?

- The mediator calls the contact person of each party to schedule a mutually agreeable date, time and location for the mediation session.
- Mediations are scheduled in a timely manner and in a location convenient to the parties to the dispute. Typically, mediations are held within the public school district.
- The mediator is not allowed to discuss the issues privately on the telephone with either party. Discussions will only occur at the mediation session.

HOW MUCH TIME SHOULD I SET ASIDE FOR MEDIATION?

- Recent numbers show that mediations average two to three hours in length.
- Some mediation sessions may be shorter or longer, depending on the difficulty of the disagreement and the willingness of the parties to participate.

HOW SOON IS MEDIATION SCHEDULED?

- Mediation is usually scheduled within two or three weeks of the mediator's assignment to the case.

DOES THE MEDIATOR MAKE DECISIONS ABOUT THE OUTCOME?

- No. The role of the mediator is to help the parties communicate.
- If an agreement is reached, it is developed by the participants themselves – in a joint process with the help of the mediator.

WHAT HAPPENS IF AN AGREEMENT IS NOT REACHED?

- The parties may consider filing for a due process hearing.

- If the parties are already involved in a due process hearing, they will move forward with the hearing.

IF AN AGREEMENT IS REACHED, WHAT HAPPENS NEXT?

- Upon finding a workable solution, the mediator will help the parties develop a written agreement that meets the approval of both parties.
- The agreement is signed by the parent(s) and authorized district representative.
- Upon the completion of authorized signatures, mediation agreements are legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States. [20 USC Sec 1415(e)(2)(F)]

WHAT IS GENERALLY INCLUDED IN A MEDIATION AGREEMENT?

Agreements may include:

- actions to be completed;
- responsibilities of each party;
- timelines for agreement;
- agreement to withdraw a complaint or due process hearing, if one exists;
- agreement to confidentiality of discussions; and
- notice that the agreement is a legally binding document and is enforceable in any State court of competent jurisdiction or in a district court of the United States. [20 USC Sec 1415(e)(2)(F)]

WHAT HAPPENS AFTER THE MEDIATION AGREEMENT IS WRITTEN?

- The parent(s) and school district each receive a copy of the Agreement, Mediation Record (sign in sheet), Mediation Waiver and any other related paperwork.
- The mediator forwards the original copies of all mediation documents to the Illinois State Board of Education for their records.

DOES MEDIATION DELAY OR POSTPONE A DUE PROCESS HEARING?

- If the parties are involved in a due process hearing, they may ask the hearing officer to extend the timeline of the hearing in order to complete the mediation process.
- Mediation cannot be used to delay or deny the due process hearing.

HOW DO YOU REQUEST MEDIATION?

The Illinois State Board of Education's Mediation Coordinator will help you with the process.

- Contact Sherry Colegrove, ISBE mediation coordinator in *one* of the following ways:
 - (866)262-6663 toll-free for parents
 - (217)782-5589 main number
 - Write: Illinois State Board of Education, Special Education Division, 100 North First Street, N-253, Springfield, IL 62777-0001
 - E-mail: scolegro@isbe.net