

Mediation for Parental Disputes in Special Education

Introduction

In IDEA require public agencies (school systems) to establish and implement procedures to make mediation available to parents and public agencies to resolve a dispute involving any matter arising under Part B, including matters arising prior to the filing of a due process complaint. Mediation is entirely voluntary.

While each mediation situation is unique, generally both parties to the mediation will come to the mediation session prepared to explain their own position and listen and respond to the other party's position. The mediator will facilitate a discussion but does not "take sides" or give an opinion on the issues being disputed. The mediator works with the parties to help them express their views and positions and to understand each other's perspectives. The mediator helps the parties generate potential solutions and helps them communicate and negotiate. If an agreement is reached to resolve the dispute, the mediator helps the parties record their agreement in a written, signed document.

THE MEDIATION PROCESS, SUMMARIZED

Mediation is a process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and a public agency regarding any matter arising under Part B of IDEA, including matters arising prior to the filing of a due process complaint. The law requires that the mediation process meet certain, specific conditions, as follows:

- Mediation must be voluntary on the part of both parties.
- Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other right under Part B of IDEA.
- The state must bear the cost of the mediation process.
- Each session in the mediation process must be scheduled in a timely manner and held in a location convenient to the parties in the dispute.
- Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
- Mediators must be selected on a random, rotational, or other impartial basis. [§300.506(b)(2)–(4)]
- The mediator must not be an employee of the SEA or the school district involved in the education or care of the child and cannot have a personal or professional interest that conflicts with his or her objectivity [§300.506(c)]. IDEA is very clear that the mediator is not an employee of the LEA or SEA solely because he or she is paid by the agency to serve as a mediator.
- The public agency must make sure that its representative participating in mediation has the authority to enter into a binding agreement on its behalf [§300.506(b)(6)(ii)].

If the parties resolve the dispute through the mediation process, they must execute a legally binding agreement that states the resolution and is signed by both the parent and a representative of the agency who has authority to bind the agency [§300.506(b)(6)].

A written, signed mediation agreement is enforceable in any state court of competent jurisdiction (a court that has the authority under state law to hear this type of case) or in a district court of the United States.

CONCLUSION

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a skilled and impartial facilitator (the mediator), the parties involved in the dispute are encouraged to communicate openly and respectfully about their differences and to come to an agreement.