



Frequently Asked Questions about Attorney Participation at Special Education Mediation

The Office for Dispute Resolution (ODR) offers special education mediation to parents and LEAs who need assistance in resolving a disagreement about a student's educational program. Recently, ODR has implemented a recommendation by the Special Education Advisory Panel (SEAP) to allow the participation of attorneys at special education mediations under certain circumstances. This document addresses frequently asked questions about attorney participation. Additional information is available by calling ODR at 1-800-879-2301, TTY Users: PA Relay 711 or by email to consultline@odr-pa.org.

Do other states allow attorneys to participate in mediation?

Yes. All but three states permit attorneys to participate in mediation. Allowing attorneys to attend and participate in mediation is consistent with the longstanding procedures of a majority of the country.

When can attorneys participate in mediation?

As of March 1, 2021, the procedure for attorneys at mediation will follow the procedures for attorneys participating in a resolution meeting. If the parent/guardian chooses to bring an attorney to the mediation session, the local education agency (LEA) may bring its attorney. If the parent/guardian does not bring an attorney to the mediation session, the LEA may not bring its attorney. However, if the LEA brings an attorney even though the parent/guardian does not, the parent/guardian may continue with the mediation, postpone, or cancel the mediation.

If a parent/guardian has an attorney, must the attorney attend the mediation?

No. The parent/guardian may still choose to meet with school staff at a mediation without an attorney to discuss the issues and reach resolution. Parents/guardian and LEA staff are always encouraged to keep open lines of communication with one another.

Must the LEA have their own attorney attend if they know the parent/guardian will be bringing an attorney?

No. There is no requirement that the LEA bring its counsel to the mediation when a parent/guardian indicates that they will be bringing an attorney to the mediation.

What if the parties cannot agree on the participation of attorneys at mediation?

Mediation is voluntary. Neither parents/guardian nor LEAs can be forced to participate. If parties cannot agree on the participation of attorneys at mediation, and this disagreement, in turn, results in the parties not agreeing to mediation, the parties do not need to mediate.

If the parties cannot agree on mediation, they may consider the use of an Individualized Educational Program (IEP) Facilitator to assist parties in reaching agreement. The parties may also choose to participate in the Hearing Officer Settlement Conference service offered by ODR.

If the LEA and the parent/guardian decide to bring attorneys to mediation, who pays for the attorneys?

Parties bear the cost of their own attorneys unless there is an agreement between the parties that states otherwise

May the LEA and the parent/guardian mediate attorney fees?

The mediator will contact the parties and their counsel prior to the scheduled mediation to determine if fees are an issue for the mediation. Parties are encouraged to resolve to the greatest extent possible any issues regarding attorney fees prior to the mediation, so that the mediation can be focused solely on the educational program of the student.

If the mediation fails, will the LEA be responsible for paying for their own attorney and the parent/guardian's attorney?

No. Parties bear the cost of their own attorneys unless there is an agreement between the parties that states otherwise.