

Questions and Answers on the Differences between IEP/IFSP Facilitation* and Mediation

*When referring to an "IEP Facilitator/Facilitation" or "IEP meeting" in the *Answers*, it also applies to an IFSP Facilitator/Facilitation or IFSP meeting.

Q1: When would you use IEP/IFSP Facilitation versus Mediation?

Answer: An IEP Facilitator can be helpful when families and school staff are having difficulty communicating about a student's special education needs and reaching an agreement about the student's educational program. Facilitation may also be appropriate when there are specific disagreements that the team would like support discussing. Both the family and school must agree that having a neutral, trained facilitator present at the meeting will help guide the conversation and support effective, student-focused problem solving and assist the parties in drafting an IEP.

Mediation is a dispute resolution option which can be used when there are specific disagreements that the parties would like to resolve under IDEA Part B and Part C.

Q2: Who can request IEP/IFSP Facilitation or Mediation?

Answer: Either the family or the school can request IEP facilitation or mediation. However, since both processes are voluntary, both parties must agree to participate. It is up to the parties to decide whether they request IEP facilitation or mediation depending on which dispute resolution option they feel best fits their concerns and desired outcome; and the other party will have the right to agree or decline to participate. IEP Facilitation is a state-sponsored dispute resolution and is not mandated by Federal or State law, whereas mediation is mandated under Federal law (IDEA 300.506). ConsultLine can assist parents who are unable to read or write but wish to submit a facilitation or mediation request.

Q3: How long does it take to schedule an IEP/IFSP Facilitation versus Mediation?

Answer: The length of time it takes for IEP Facilitation and Mediation to be scheduled is determined by the two parties. For IEP Facilitation, the parties first have to schedule an IEP meeting. If an IEP meeting is already scheduled, the date of the meeting should be indicated on the facilitation request form; if an IEP meeting is not scheduled, the two parties must first schedule an IEP meeting before a facilitator will be assigned. ODR prefers requests to be at least 10 days prior to the meeting, however, ODR understands that IEP meetings are sometimes scheduled within a shorter time frame and does their best to accommodate requests with less notice.

Once a mediation request has been processed, both parties receive an email from ODR with two additional forms to complete electronically: *Parent/Guardian/LEA Mediation Information Form* and *Scheduling Form*. The Scheduling Form provides a calendar that allows the parties to choose times that work for them. Times that match for both parties are identified, and scheduling is based on their choices and availability.

Q4: Who attends a Facilitated IEP/IFSP Meeting or Mediation Session?

Answer: For IEP Facilitation, the required members of the IEP team attend, in addition to the Facilitator. As with typical IEP meetings, a family can invite other people who have knowledge or special expertise regarding their child (e.g., an advocate).

For mediation, ODR suggests limiting the number of participants to no more than three people for each party. However, parties can agree to different conditions for their mediation session. Who will participate in the mediation session is based on the reason for the request. However, the school must have at least one member who has the authority to allocate district resources.

Q5: Will there be lawyers present?

Answer: In some cases, attorneys participate in IEP meetings. This is left to the discretion of the parties and their individual circumstances.

Attorneys are permitted to participate in mediation sessions should the parties decide upon their participation. If the family chooses to bring their attorney to mediation, the school is permitted to bring an attorney to mediation as well. See Q6 for information on costs incurred by parents for attorney participation in a mediation.

Q6: Is there a cost to participate?

Answer: There is no direct cost to parents to participate in IEP Facilitation or Mediation. However, if a family chooses to invite someone who requires compensation for their time (e.g., a physician, psychologist, an attorney), then that cost is the responsibility of the parent. For IEP Facilitation or Mediation requests for gifted education services, the school will cover the cost.

Q7: Who runs the Facilitated IEP/IFSP Meeting or Mediation Session?

Answer: At an IEP Facilitation, the IEP team still runs the meeting.

The mediator runs the meeting for mediation.

Q8: What role does the Facilitator/Mediator play?

Answer: Both the Facilitator and Mediator are impartial participants; they do not take sides, place blame, determine if a particular decision is right or wrong, or speak about whether the federal and state regulations are being followed.

As a guest of the IEP team, a Facilitator can help to set an agenda for the IEP meeting, establish ground rules, model effective listening techniques, help with conflict resolution related to the IEP, help to keep IEP team members on task, guide discussions, or refocus the IEP team on the student's needs.

A Mediator listens to each party's perspective of the problem, can help clarify issues to be mediated, highlight areas of agreement, and meet with parties privately to clarify any concerns or sticking points (when appropriate), and will help parties draft a mediation agreement using language developed by the parties.

Q9: Who makes the decisions during the Facilitated IEP/IFSP Meeting or Mediation Session?

Answer: A facilitator's and mediator's role is to be neutral and impartial. Neither a facilitator nor a mediator will make decisions for the parties. During IEP facilitation, the decision-making remains with the IEP team.

During a mediation, the decision-making is based on collaboration and cooperation between the parties (parent and LEA), so decisions are agreed upon and written into an agreement.

Q:10 What are the benefits of participation?

Answer: An IEP facilitation meeting can help the parties collaborate better with the help of a neutral third-party facilitator. They can develop ground rules and an agenda that can be used for future meetings (if needed) and to learn effective listening techniques and communication styles. The facilitator can also re-center/focus the student's needs for the parties and ask clarifying questions that can help to address potential conflicts or confusion.

Participation in a mediation provides pendency or "stay-put"; that is, the child remains in the current educational placement while mediation proceedings are pending. Another benefit of mediation is that it provides a non-threatening, non-adversarial environment for the parties to express their points of view and listen to other points of view. Mediation provides more flexibility in the possible outcome since it is the parties that dictate what the agreement contains.

Q:11 What is the result or desired outcome of the IEP/IFSP Facilitation or Mediation session?

Answer: The desired outcome of an IEP facilitation meeting is a completed and agreed-upon IEP.

The desired outcome for a mediation is a signed mediation agreement with agreed-upon terms that the parties determined together. A mediation agreement is legally binding in a State court of competent jurisdiction or a district court of the United States.

Q12: Why can mediation provide pendency/stay-put but not IEP/IFSP Facilitation?

Answer: IEP Facilitation is an early alternative dispute resolution option not required under the IDEA. Currently, no state law applies pendency to IEP Facilitation.

For mediation, as of June 2008, state regulations were modified to include pendent placement (stay-put status) for a child during mediation proceedings. Before June 2008, pendency also did not apply to mediation in Pennsylvania.