

Frequently Asked Questions (FAQ's) regarding Pendency during Mediation

Below are some commonly asked questions about Pendency during mediation.

Q: What is Pendency?

A: Pendency is also known as “stay put.” This means that while the parties are resolving a disagreement through mediation or due process, the student remains in his/her last agreed upon placement until the proceedings are completed.

Q: When does Pendency begin?

A: Once either mediation or due process has been requested to the other side and the Office for Dispute Resolution (ODR) has received a copy of the request, Pendency is in place.

Q: Is mediation mandatory?

A: No. Mediation is a voluntary process. Therefore both sides must agree to participate in mediation.

Q: How do parties notify ODR of their willingness to participate in mediation?

A: A mediation request form is completed and sent to ODR. Then, ODR will send an “Agreement to Mediate” form to both the parent and the school. These forms are signed and returned to ODR within 10 days. When received, ODR will schedule the mediation.

Q: What happens if one side does not return the signed “Agreement to Mediate” form to ODR within the 10 days?

A: If ODR is unable to confirm both parties agreement to participate in mediation, a letter will be sent advising that the mediation will be closed after 10 days, and that due process must be initiated within 10 days to maintain pendency.

To maximize access to the mediation process, and to ensure timely scheduling, ODR may attempt to attain verbal or emailed confirmation that the parties are willing to participate in mediation, while awaiting receipt of the Agreement to Mediate form.

Q: What happens if either the parent or the school chooses not to go to mediation?

A: If either side declines to participate in mediation, ODR will send a letter to both sides to advise them that mediation will not go forward, and that due process must be initiated within 10 days to maintain pendency.

Q: If mediation takes place, but no agreement is reached, what happens to the Pendency?

A: If no agreement is reached at a mediation session, the mediator notifies ODR, who then sends a letter to all parties advising that the mediation will be closed after 10 days, and that due process must be initiated within 10 days to maintain pendency.

Q: Does the mediator decide the stay-put placement?

A: No. Neither the mediator nor ODR has the authority to decide or enforce placement for a student. The Bureau of Special Education (BSE) investigates questions about compliance.

Q: Where can I go for more information regarding stay-put status during mediation?

A: Visit ODR's website at www.odr-pa.org for more information. Also, parents may contact the Special Education ConsultLine at 1-800-879-2301 to speak with a specialist about this and other procedural safeguards information.