

OFFICE FOR DISPUTE RESOLUTION

# Your Guide to Special Education Mediation



Be part of a positive process

## Special Education Mediation Guide

This document contains information to help you become familiar with the mediation process and prepare for a mediation session. ODR's Special Education ConsultLine and Family Engagement specialists are available to answer questions by emailing [consultline@odr-pa.org](mailto:consultline@odr-pa.org) or calling (800) 879-2301.

## Definitions Used in This Guide

This Guide uses the word "child" to refer to all children from birth to 21 receiving special education services.

This Guide uses the word "school" or "educational staff" to refer to all educational organizations and their personnel serving children from birth to 21 receiving special education services.

The use of the word "parent" in this Guide refers to all parents or guardians of children from birth to 21 receiving special education services.

In this Guide, the term "parties" refers to both the family and the school or educational staff.

# Contents

	Page
Introduction .....	1
Why should I consider mediation? .....	2
Your mediation day .....	3
Participants in the mediation process.....	5
Preparing for mediation.....	7
Frequently Asked Questions .....	8
Conclusion.....	10



# INTRODUCTION

The relationship between parents and schools can become strained when there are disagreements and conflict about a child's program. Research is clear that when parents and schools work together, children have better educational outcomes. Special education mediation is a service offered by ODR to help families of children with disabilities and schools resolve their different viewpoints on a child's special education program. If both the family and school agree to mediation, ODR case managers arrange the date, time, and place of the mediation session. The advantages of mediation are set forth in this Guide.

## Five Things to Remember About Mediation

- Mediation is a collaborative problem-solving process which can help begin the process of healing strained relationships and returning the focus, together, to the child's learning.
- Mediation is a process that depends on the willingness of the parent and school to discuss their concerns openly and honestly in hopes of reaching agreement on the area of concern.
- The decision to use mediation is completely voluntary. Neither parents nor school staff can be forced to participate in mediation.
- Mediation can be requested at any time, even if a due process hearing has already been requested or is underway. Parents do not waive their rights to a due process hearing by participating in mediation.
- In mediation, the parties reach agreement on the child's program together. In a due process hearing, the hearing officer decides what the child's program will be.

## Important Points About ODR Mediators

- Mediators facilitate discussion between the parent and school about the differing viewpoints.
- Mediators assist the parent and school in finding areas of agreement about the child's program.
- Mediators are trained in mediation techniques and special education law.
- Mediators are neutral, which means that he or she does not have an opinion about the different viewpoints of the parent and school.
- Mediators do not act as advocates or representatives of either the parent or the school.
- Mediators do not act in a way that favors either the family or the school.
- Mediators write down the agreements between the parent and the school into the "mediation agreement", which is a legally binding written document setting forth exactly what the parent and the school have agreed to.
- ODR pays the mediator directly for his or her work.

# WHY SHOULD I CONSIDER MEDIATION?

Consider some of the differences between mediation and due process hearings.

## **Time**

When you request mediation through ODR, the case manager contacts the other party regarding your request. Usually within 10 days of the request, the case manager establishes a date, time and place for the mediation session.

Though mediation sessions are scheduled for an entire day, they typically last three to five hours. On the other hand, due process hearings typically require several sessions and may take months to resolve. Preparation of witnesses and compiling evidence for a hearing can be very time-consuming for attorneys, families, and school district personnel.

## **Cost**

ODR pays all mediator and hearing officer costs for mediations and due process hearings regarding students with disabilities. ODR does not pay fees for additional participants either party may invite to a mediation session or a due process hearing, such as parent advocates, educational experts, or attorneys. Because due process hearings often take several sessions and usually include additional expenses, the cost to either party in time and money can be extensive.

## **Decision Making**

Mediation allows decision making to remain with those people who know the child the best: the parents and the educators. In mediation, all decisions about the child's program are made together by the parents and the educational staff. The mediation agreement outlines what both the parent and the school have agreed upon. The mediator does not decide the outcome of a mediation. On the contrary, in due process, all decisions and orders about the child's program are made by a hearing officer. The outcome may not be satisfactory to either the family or the school.

# YOUR MEDIATION DAY

The purpose of this section is to describe a typical mediation. Please keep in mind that although this is “typical,” any mediation process may change based on each mediator’s personal style and preferences, as well as the needs of the parties.

## Planning Your Day

ODR works with parties to find mutually agreeable dates and times for the mediation session, even in the evening if both parties agree. Because it is difficult to determine how long a mediation session will take, it is recommended that you set aside the entire day or early evening for the meeting. All participants are requested to stay until the session is finished. Typical mediation sessions last between three to five hours.

ODR contacts the parties to notify them of the date, time and place of the mediation. Once parties provide ODR with their list of participants, ODR will provide this list to each party. The school must include someone who has the authority to commit resources to resolve the disagreement. Families may invite other participants to the mediation to assist them, but any fees will be at their expense.

## Starting the Mediation/Introductions

The mediation session will start promptly at the designated time. The mediator greets and, when necessary, introduces all parties and invited guests. The mediation process and ground rules are explained. The importance of open and honest discussion, maintaining confidentiality, and the importance of each party’s commitment to a binding agreement are stressed by the mediator.

## Opening Statements

A representative from each party is given an opportunity to present their view of the issue(s). Typically, opening statements are given by the parent and Director of Special Education or LEA Representative, but the parties determine this themselves. The mediator and all participants listen without interruption. The purpose of the opening statement is to make everyone aware of all points of view. The mediator may ask questions or summarize what is said.

## Joint Session

Joint sessions, including both parties and invited guests, help to identify areas of agreement and issues that need further discussion and resolution. Open and courteous disagreement and dialogue are encouraged to suggest and evaluate possible resolutions.

## Private Session (Caucus)

The parties may have an opportunity to meet privately with the mediator; this private meeting is called a caucus. The purpose of a caucus is to give the parties an opportunity to speak confidentially with the mediator without the other side present, to express concerns or issues. The mediator will not share information from the caucus with the other party without consent.

## **Mediator Recess**

Whenever he/she feels it is necessary, the mediator may recess (take a break) to privately reflect on what has happened in the joint session or caucus to determine how best to proceed with the mediation. Parties may also request a recess for any reason.

## **Agreement Writing**

If the parties find a resolution to the issue(s), the mediator assists them in creating a written agreement. The parties determine the terms of the agreement and compose the wording. The mediator puts the agreement in writing for both parties. Both parties in the mediation session sign the agreement. Copies of the agreement are distributed to the parties as documentation of the meeting.



# PARTICIPANTS IN THE MEDIATION PROCESS

## The Mediator:

- Explains his/her role as a facilitator to assist parents and educators in reaching an agreement.
- Listens to each party's view of the problem.
- Helps identify issues to be mediated.
- Seeks statements from each party as to their position about the child's education, asking clarifying questions, as necessary, to ensure everyone understands the issues.
- Emphasizes present aspects of the disagreement, limiting discussion of the past to only what is necessary for understanding and planning. The purpose of this is to focus on positive, forward thinking resolution of the disagreement.
- When appropriate, meets privately with each party (called a caucus) and honors each party's decision as to whether information discussed in the caucus should be shared in the joint session
- Helps all parties, makes suggestions, delineates areas of agreement, but does not resolve the dispute.
- Collects, completes and distributes all forms necessary to ODR administration.
- Using the language developed by the parties, the mediator will write out the mediation agreement, which will be signed by all parties, stating exactly what the parties have agreed to.
- Has the authority to end a mediation session if in his or her professional judgment, discussions are no longer productive.

## The Parents:

May invite other participants (such as an advocate, an attorney, consultant, doctor or psychologist) to the session to help with the mediation process. The parents assume responsibility for any fees assessed by professional guests. If a parent chooses to bring an attorney with them to mediation, the school may also bring an attorney. If the parent chooses to participate in mediation without an attorney, the school is not permitted to bring an attorney.

## The School District or Agency Representatives:

- Comprise a team of three professionals who are most familiar with the student's needs. One member must have the authority to commit resources.
- Does not bring an attorney to the mediation session if the parent is not bringing an attorney.

## **The Parents and the School District or Agency Representatives both:**

- Set aside the entire day for mediation, though the session may be shorter.
- Approach the mediation in good faith, with the intention of reaching an agreement.
- Present their views, including all relevant information, in a respectful manner.
- Ask for clarification when something is not understood.
- Caucus with the mediator if requested/needed.
- Seek opportunities for collaborative problem solving.
- Consider the other's point of view when reviewing all aspects of the student's program.
- Actively participate in the session with an open mind, working together to offer suggestions, develop options and design the mediation agreement.
- Complete an evaluation of the mediation session.

## **The Office for Dispute Resolution:**

- Selects and trains mediators.
- Provides informational materials to parents, educators, and advocates interested in mediation.
- Assigns a mediator after the parties agree to use mediation.
- Evaluates and monitors the effectiveness of mediation services for parents and educators in Pennsylvania.
- Pays the mediator's fee for mediations regarding students with disabilities.
- Reviews evaluations of mediation sessions and gives feedback to mediators on each mediation session.
- Reports general mediation information in its Annual Report.

# PREPARING FOR MEDIATION

## **Planning for the session**

Keep your schedule clear for the entire day. Be sure to bring all necessary documents. Organize your information and share materials. Meet with the guests you have invited to attend and think about the following topics:

- The child
- Options that may solve the problem
- What you are willing to do
- What you want the other party to consider

All parties are urged to attend and participate with a positive attitude toward problem solving.

## **In case of an emergency...**

Should an emergency occur the day of mediation, contact the ODR at 717-901-2145 or (800) 222-3353 as soon as possible so that others can be notified. If calling after normal office hours, leave a message on the answering machine.

## FREQUENTLY ASKED QUESTIONS

### **Who can request mediation?**

Anyone involved in the child's education program can request mediation. Mediation is typically requested by either the parent or the Director/Supervisor of Special Education. If the parent has an attorney, his or her attorney can make the request. Likewise, the school's attorney can request mediation, but the parent will determine whether attorneys will actually participate in the mediation session.

### **Must a parent have an attorney to go to mediation?**

No. Until 2021, attorneys were not permitted to attend mediation. When Pennsylvania's mediation program was developed in 1986, the intent was to create a forum where parents and school staff could work through disagreements by themselves. Only parents, school representatives and the mediator attended mediation sessions. However, now, if parents choose at their expense to bring an attorney to the mediation session, they may do so. The school or educational agency may then also bring an attorney if they choose to. If the parent does not want to bring an attorney to the mediation session, then the school or educational agency will not bring an attorney either.

All parent attorneys provide their clients with a "fee agreement" document, outlining how the attorney will be compensated for his or her work for the parent. Every attorney has their own fee agreement document.

### **Who decides what issues can be discussed at mediation?**

The parties decide what issues will be discussed at the mediation session. The mediator will contact the parties prior to the actual mediation session to make a list of the issues to be discussed at the mediation session.

### **If a parent has an attorney, why not just resolve the disagreement at a due process hearing instead of mediation?**

While due process hearings are an important procedural safeguard for parents, due process hearings are time consuming, often times contentious, and decisions about the child's program are made by a hearing officer, rather than by those who know the child best: the parents and educational professionals.

## **Can I request mediation if I have already requested due process? What if the due process hearing has already begun?**

You can request mediation at any time, even if you have requested a due process hearing or even if you are in the middle of a due process hearing. Agreeing and participating in mediation will not change the timelines in a due process hearing, nor will it interfere with the due process hearing in any way. Because mediation is so often successful, however, the result may be that the due process hearing is no longer needed. If that happens, either the parent or the school will notify the hearing officer. The mediation agreement may state who will be notifying the hearing officer.

## CONCLUSION

Mediation is an option aimed at resolving conflicts and promoting better communication between parents and school district personnel regarding children with special needs, who are eligible or thought to be eligible for an IEP, 504 plan, and/or a GIEP. A mediation session provides the participants a chance to express their points of view and listen to other points of view in a nonthreatening, nonadversarial surrounding. Through the mediator's facilitation, parties may reach agreements about specific issues and find a way to approach future problems, which will result in less conflict and better working relationships for the children they care about.

The Office for Dispute Resolution is pleased that you are participating in the mediation process. Hopefully this will be a successful and positive experience for all. If, before or after the mediation session, parents have questions regarding their child's special education rights, they are encouraged to call the Special Education ConsultLine toll-free at (800) 879-2301. A Specialist will assist in explaining rights and options available.





THE OFFICE FOR DISPUTE RESOLUTION

## **OFFICE FOR DISPUTE RESOLUTION**

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**pennsylvania**  
DEPARTMENT OF EDUCATION

Through the Office for Dispute Resolution, the Pennsylvania Department of Education (PDE) fulfills its statutory mandate to maintain a special education due process system. PDE contracts with the Central Susquehanna Intermediate Unit to provide fiscal and certain management support for that office, without becoming involved in substantive operations.

The Central Susquehanna Intermediate Unit (CSIU) will not discriminate in educational programs, activities or employment practices based on race, color, national origin, gender, disability, marital status, age, religion, sexual orientation, ancestry, union membership, or other legally protected classifications. Announcement of this policy is in accord with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

Employees and program participants who have an inquiry or complaint of harassment or discrimination, or who need information about accommodations for people with disabilities, should contact the Director of Human Resources, CSIU, 90 Lawton Lane, Milton, PA 17847; (570) 523-1155.