

OFFICE FOR DISPUTE RESOLUTION

# Your Guide to Mediation



Be part of a positive process

# Mediation Guide

This document contains information to help you become familiar with the mediation process and to help you prepare for a mediation session. Please review this publication, and if you have any questions, contact the ODR at (800) 222-3353.

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# INTRODUCTION

In Pennsylvania, parents, school districts or agency administrators may resolve conflicts concerning children with special needs through mediation. When all the necessary parties in a special education conflict agree to discuss their concerns through mediation, the **Office for Dispute Resolution (ODR)** assigns a mediator to assist them through the process.

All ODR mediators are trained in conflict resolution techniques and in special education law. The mediator, acting as a neutral third party in the process, facilitates discussion and enables the parties to develop a written agreement, or, in a small number of cases, agree to disagree.

**It is important to remember three things about mediation:**

- 1) It is a process that depends on the willingness of the parties to discuss their concerns openly and honestly.
- 2) The decision to use mediation is completely voluntary.
- 3) All other rights and responsibilities under special education law, such as the right to a due process hearing, stay in place whether or not mediation is utilized.

# OFFICE FOR DISPUTE RESOLUTION SERVICES

ODR services include arranging the time, date and place of the mediation, and paying all mediator fees and expenses. The only costs to the parties are the time spent in the mediation process and the payment of fees for any guests they invite to participate.

## Mediation Sessions

Mediations are scheduled to allow a **full day** for the process. Typical sessions last between three to five hours. Mediations can be scheduled in the evenings if both parties agree. School districts are allowed up to three participants, one of which must have the authority to commit resources. Parents may invite two other participants, including an advocate, if they choose, to accompany and assist them. Because all the parties necessary for making educational decisions are present at the mediation, subsequent sessions are rarely necessary. Attorneys may not participate on behalf of either party.

## Mediation Goals

Mediation promotes a **positive relationship** between the parents and the school, and focuses on mutual problem solving. It is less stressful, less expensive and usually less time-consuming to complete than a due process hearing.

Mediators help parents and school personnel **understand each other's point of view**. In many cases, going through the mediation process helps parents and school district representatives **build the trust** necessary to resolve future disputes.

# WHY SHOULD I CONSIDER MEDIATION?

Under special education law, parents and districts have the right to resolve their disagreements through a legal proceeding called a “due process hearing.” Mediation is an optional, non-adversarial alternative for dispute resolution that does not affect other legal rights under the law, including your right to a hearing.

Before deciding on how to resolve a dispute, you may want to 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. Though mediation sessions are scheduled for an entire day, they typically last three to five hours. Mediations also can be scheduled in the evening if both parties agree. More than one mediation session is rarely needed.

Due process hearings may require several sessions. Preparation of witnesses and evidence for a hearing can be very time-consuming for attorneys, families and school district personnel.

## Cost

There is usually no cost to either party for mediations regarding students with disabilities; ODR pays all administrative and mediator fees for these cases. Fees for the participants—such as parent advocates or educational experts—are the responsibility of the inviting party. Attorneys do not participate in mediation.

Because due process hearings often take several sessions and usually include expenses, such as attorney fees and/or expert witness fees, the cost to either party can be extensive.

## Outcome

Mediation helps to establish a positive relationship between parents and school personnel through collaborative problem solving. Because the mediator does not decide the outcome and the agreement is created mutually by both parties, it is one both parties can accept. In due process hearings, however, orders are imposed by a hearing officer and may not satisfy either party.

# YOUR MEDIATION DAY

In the description below, the parent, school district representatives and/or agency representatives are called “parties.” All other people attending the mediation are called “invited guests.” 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

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. ODR works with parties to find mutually agreeable dates and times for the mediation. ODR then contacts the parties to notify them of the date, time and place of the mediation. Parties are responsible for notifying their invited guests of the scheduling details. Participants should not plan to attend other meetings or activities during the course of the day.

## 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

Each party is given an opportunity to present its view of the issue(s). 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 help to identify areas of agreement and issues that need further discussion and resolution. Open and courteous disagreement and dialog 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 clarify views and feelings and provide additional information about the issues and possible solutions. 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 to privately reflect on what has happened in the joint session or caucus.

## **Agreement Writing**

If the parties reach an agreement, the mediator assists them in forming an 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, as well as the mediator, 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 and interests, requesting clarification as necessary.
- Emphasizes present aspects of the disagreement, limiting discussion of the past to only what is necessary for understanding and planning.
- When appropriate, caucuses with each party and honors each party's decision on confidential information.
- 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.
- Uses the language developed by the parties and assists them in writing a clear, concise agreement (to be signed by all parties), stating names of programs, materials and services and specific responsibilities of school personnel, parent and/or agency or service provider.
- May terminate the session if it becomes evident that the parties cannot resolve the issues.

## The Parents:

- May invite other participants (such as an advocate, consultant, doctor or psychologist) to the session to help with the mediation process. The parents assume responsibility for any fees assessed by professional guests.
- Approach the mediation in good faith, with the intention of reaching an agreement.
- Set aside the entire day for mediation, though the session may be shorter.
- Present their views, including all relevant information.
- Ask for clarification whenever material or a point of discussion is not understood.
- Caucus with the mediator if requested/needed.
- Seek opportunities for collaborative problem solving.
- Consider the school district'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 School District or Agency Representatives:

- Comprise a team of three professionals who are most familiar with the student's needs. One member has the authority to commit resources.
- Approach the mediation in good faith, with the intention of reaching an agreement.
- Set aside the entire day for mediation, though the session may be shorter.
- Sign the authority to commit resources form.
- Present their views, including all relevant information.
- Ask for clarification whenever material or a point of discussion is not understood.
- Caucus with the mediator, if requested/needed.
- Seek opportunities for collaborative problem solving.
- Consider the parent'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 educational mediators.
- Provides informational materials to parents, educators and advocates interested in mediation.
- Assigns a mediator after the parties agree to use mediation.
- When requested, locates a neutral setting for the mediation session (for example, public facility, city hall, library) that is an appropriate facility for a private, uninterrupted meeting.
- Evaluates and monitors the effectiveness of education mediation services for parents and educators in Pennsylvania.
- Pays the mediator's fee for mediations regarding students with disabilities, and all costs of administration associated with the mediation program.
- Reviews evaluations of mediation sessions and gives feedback to mediators on each mediation session.

# 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.

## CONCLUSION

Mediation is an option aimed at resolving conflicts and promoting better communication between parents and school district personnel regarding children with special needs. A mediation session provides the participants a chance to express their points of view and listen to other points of view in a non-threatening, non-adversarial surrounding. Through the mediator's facilitation, parties may reach agreements about specific issues and find a way to approach future problems that 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, at the end of 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 the law and options available.



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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.