

SPECIAL EDUCATION MEDIATION IN SOUTH CAROLINA

AN OVERVIEW

In accordance with the Individuals with Disabilities Education Act (IDEA) regulation 34 C.F.R. § 300.506 and S.C. Code Ann. § 59-33-110, South Carolina has established a mediation process. Mediation is a dispute resolution process that parents and school districts or agencies can use to resolve disagreements regarding the evaluation, identification, placement, or provision of special education and related services for students with disabilities. Mediation is voluntary and both the parents and the school district or agency must agree to participate.

A trained mediator works with the parties during a non-adversarial session to help the parties identify and effectively communicate their concerns and identify a mutually satisfactory solution that ensures a free appropriate public education (FAPE) for the student involved in the matter. The session is more structured than a parent-teacher conference, but less formal than a due process hearing. The process is designed to assist parents and school district and agency personnel focus on what they have in common rather than on issues that divide them. Additionally, because the mediation session is confidential, it encourages open communication.

Agreements reached by the parties must be put in writing. The written document must reflect exactly what the parties agreed to during mediation. The written agreement should include specific timelines to complete tasks or provide any services that are agreed upon. The parent or legal guardian and a representative of the school district or agency, who has the authority to bind the school district or agency, must sign the mediation agreement. In accordance with the Individuals with Disabilities Education Act (IDEA) regulation 34 C.F.R. § 300.506 the signed written mediation agreement is enforceable in any state court of competent jurisdiction or in a United States District Court.

REQUESTING MEDIATION

A parent, legal guardian, surrogate parent, school district, or agency may request mediation when the parties are unable or unwilling to resolve a dispute regarding the educational program for a child with a disability without outside assistance. If both parties agree to mediation, each must sign and date the forms provided by the South Carolina Department of Education (SCDE). The parties may sign and submit the printed copies of the forms or submit a request and agreement to participate in mediation using the electronic complaint form at the following website: [Mediation - South Carolina Department of Education](#).

Mediation may occur at any time, but it must not interfere with the right to a due process hearing or with due process hearing timelines. Although mediation must be offered if a due process hearing is requested, school districts and agencies must not require participation in mediation as a prerequisite to a due process hearing. Mediation may be an alternative to a due process hearing or may be used instead of a resolution session when a due process hearing is requested. Either party may end the session and proceed with a due process hearing if after making a good faith effort the parties are unable to reach an agreement. If this occurs, all the procedural safeguards relative to due process hearings are in effect.

THE MEDIATION PROCESS

Once both parties agree to mediation **the school district or agency must immediately contact the SCDE, Office of General Counsel to appoint a mediator from the list of approved mediators and schedule the mediation.** A mediation session will be scheduled to occur within fourteen calendar days of both parties signing and dating the form agreeing to participate in mediation.

The SCDE will provide the school district or agency and parents with written information identifying the mediator and the basic guidelines governing mediation. Immediately after the mediator's assignment, the

mediator must contact all parties and advise the parties of his or her name, telephone number, and other contact information. The mediator also answers any questions about the process and may request additional information from the parties. If the parents cannot be reached by telephone, the mediator must send a letter (by certified mail, return receipt requested), which includes all the information that would have been covered by telephone.

Sessions are generally completed in three or four hours, depending on the complexity of the issues, but may take a full day. We recommend that participants set aside a full day. If the parties need to reconvene to continue the mediation process the mediator is required to issue a formal written extension of the fourteen-day timeline and submit the order of extension to the SCDE, Office of General Counsel.

WHAT IS INCLUDED IN THE MEDIATION AGREEMENT?

The agreement must be in writing and include a statement that acknowledges that both parties understand that the agreement is enforceable in any state court of competent jurisdiction or in a United States District Court. The agreement must include a statement that mediation discussions will remain confidential and an acknowledgement that the parties understand that discussions and negotiations that take place during the mediation session may not be used as evidence in any subsequent due process hearings or civil proceedings.

PREPARING FOR MEDIATION

In preparing for mediation, the parties should consider the following:

- Either of the parties may bring an attorney, advocate, consultant, or advisor to help mediate an agreement. It is very important; however, that the number of participants is kept to a minimum and they recognize this is a problem-solving process and not an adversarial confrontation.
- All participants should set aside the entire day for the mediation session, although some sessions may not last that long.
- The mediator tries to clarify issues, discover previously omitted facts, and discourage over-emphasis on irrelevant background information, philosophical biases, and preconceived conclusions.
- The mediator's role is to serve as a neutral third party. The mediator is not a judge or an arbitrator and he or she is not to resolve the dispute for the parties. The mediator's role is not to order the school district or agency to provide specific services or requests made by the parent. The mediator's role is not to make a finding that either party is wrong or right. Because mediation is a problem-solving process and is non-adversarial, it only works if both parties make a good faith effort to reach an agreement.

To prepare for mediation, both parties should do the following:

- Clearly outline their positions or views related to the dispute. *What is involved? What are you disagreeing about?*
- Determine what they want to accomplish during the mediation session or what they are proposing for the other party.
- Develop a list of alternatives or solutions that could be offered to settle the dispute. (You may want to list the most important one first, next important second, and so on.)

- Decide if an advisor (attorney, advocate, consultant, etc.) is needed to assist in reaching an agreement. If it will be difficult to participate in mediation alone, choose an advisor to represent your interests. In working toward an agreement, the advisor must understand that mediation is not an adversarial procedure but a problem-solving process.
- Think about solutions that may be short-term or long-range. Perhaps some issues can be addressed on a short-term solution basis or for a trial period to evaluate their merit. Maybe a longer period is needed to decide if the solution is workable. Remember, the parties can always come back to the table and revisit an issue if something you agreed upon is not working for the student.
- Recognize that mediation requires the give-and-take of ideas and offers before an agreement can be reached. Because of this, mediation can be a very creative, spontaneous, and dynamic process for participants.
- Remember to focus on the student's needs. Finding fault, assigning blame, making accusations, etc., sidetracks the purpose of participation in the mediation process.

THE COST OF SPECIAL EDUCATION MEDIATION

Special education mediation in South Carolina is at no cost to parents, with the exception of fees and costs incurred by the parents' attorney, advocate, or other participants whose presence is requested by the parents. The SCDE procures and underwrites the cost of training mediators and pays for the cost of the mediator.

WHO PARTICIPATES

The minimum participants are a parent and a school district or agency representative who has the authority to make decisions and to commit school district or agency resources necessary to carry out the conditions of the agreement, which may result from the mediation session. Participants, in addition to the parties to the dispute, may be those who have knowledge of the student and the student's needs or who have specialized knowledge of the issues in dispute. The number of participants in a mediation session must, however, be kept to an absolute minimum to enhance the potential for effective problem solving. The mediator makes the final decision as to who attends the mediation session.

THE ROLE OF PARTIES IN MEDIATION

The Mediator

Special education mediators have participated in formal mediation training. All mediators are

- knowledgeable about state and federal laws related to the education of students with disabilities;
- trained and effective in applying conflict resolution procedures, problem-solving approaches, and communication skills relating to interpersonal relationships;
- a neutral party who is free of bias, treating both sides with respect working to resolve the dispute;
- able to listen to each party's view of the problem; and
- concerned about students with disabilities and their right to a FAPE.

The Parent(s)

- should approach the mediation in good faith, with the intention of reaching an agreement;
- should present their views, including all relevant information;
- should ask for clarification whenever material or a point of discussion is not understood;
- should consider all aspects of the school district's or agency's program;
- should actively participate in the session and in designing the mediation agreement; and
- if necessary, may bring to the session an advisor (advocate attorney, consultant, etc.) to help with the mediation process.

The School District or Agency Representatives

- must have the authority to sign mediation agreements and bind the school district or agency to the mediation agreement;
- should approach the mediation in good faith, with the intention of reaching an agreement;
- should present their views, including all relevant information;
- should ask for clarification whenever material or a point of discussion is not understood;
- should consider all aspects of the parent's point of view;
- should actively participate in the session and in designing the mediation agreement;
- must maintain copies of any forms or other formal written documents arising from the mediation process and forward the necessary documentation to the SCDE;
- if necessary, must locate a neutral setting for the mediation session (e.g., city hall or library) that is free from interruption and has a room for private meetings; and
- should convene the student's individualized education program (IEP) team if portions of the agreement need to be incorporated into the student's IEP.

The South Carolina Department of Education

- provides and pays for the training for special education mediators and the appointment of mediators; and
- provides informational materials and technical assistance to parents, educators, and advocates interested in mediation.