

Special Education - Mediation in Missouri: *Managing conflict through effective communication*

Mediation in Missouri

Mediation provides a non-adversarial alternative to resolve disputes when conflict over the educational program for a special education student occurs between parents or adult students and representatives of responsible public agencies.

Mediation is a structured, yet informal, voluntary process in which an impartial third-party mediator helps parents or adult students and representatives of responsible public agencies reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and public agencies focus on their common interest – the student. The proceedings are confidential, and mediation will be provided at no cost to either party.

Mediation

- May resolve disputes regarding the identification, evaluation, educational placement, or the provision of special education and related services for students with disabilities.
- Clarifies areas of agreement and disagreement.
- Fosters better relationships between parents or adult students and representatives of responsible public agencies.
- Is offered free of charge to parties upon the Department of Elementary and Secondary Education's (Department's) receipt of a request for mediation raising an issue under the Individuals with Disabilities Education Act (IDEA).
- May be requested prior to or after filing a due process complaint or a child complaint.
- Is non-adversarial; attorneys may not participate or attend the mediation session on behalf of any party; however, parents and adult students may be accompanied by a lay advocate.

The Mediator

A mediator is a neutral third party trained in communication, problem solving, negotiation, and specific mediation techniques. The mediator acts as a facilitator to help parents or adult students and representatives of responsible public agencies resolve conflicts. The mediator:

- Works with the parties to determine who will attend the session.
- Educates the parties about the mediation process.
- Encourages open and honest communication.
- Establishes the ground rules for all parties to follow.
- Guides the process.
- Ensures that each party is heard.
- Rephrases information and summarizes positions.
- Clarifies issues of law and regulation.
- Facilitates the writing of the agreement.

Appointment of a Mediator

The Department will maintain a trained mediator list and assign a mediator on a rotational basis. Once assigned, the Department will send a letter empowering the mediator. Mediators will not be paid if they have not been empowered by the Department.

Roles of Parents or Adult Students and Responsible Public Agencies

Parents or adult students and responsible public agency staff are the active participants in the mediation process. The parents or adult students and public agency staff should:

- Approach mediation in good faith.
- Keep their schedule free the entire day of the mediation.
- Put aside personality conflicts and focus on the educational interests of the student.
- Be familiar with all documents related to the dispute, including the individualized education program (IEP).
- Organize their information and materials.
- Ask themselves these questions:
 - What do I/we want to accomplish?
 - What do I/we want the other party to do?
 - Are there alternative ways to resolve the conflict?
- Be honest and willing to listen.
- Be prepared to present their view of the issues and listen to the opinions of the other side.
- Be prepared to, if needed, meet separately with the mediator.
- Seek clarification of the discussion or materials.
- Be open to alternatives.
- Remember the disputing parties have complete decision-making power.

The Mediation Session

Every mediator has his/her own personal style of conducting a mediation. Mediation may include the following stages:

1. Introduction: The mediator will explain the process, set the ground rules for all parties, and respond to questions.
2. Identification of Positions: Each party will have an opportunity, without interruption, to identify positions and share information. The mediator may seek additional data or summarize the issues.

3. Expression of Interests: At this stage, the mediator helps the parties identify their interests, which are the factors underlying their positions. Goals, needs, desires, hopes, and fears are expressed, explored, and clarified.
4. On occasion, positions and underlying interests may not be clear. Opportunity is provided for each party to meet with the mediator without the other side being present for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from one-on-one sessions without consent.
5. A recess or break may be requested by any participant if emotions run high during a mediation session. This “cooling off” period provides an opportunity for all parties to communicate separately, rethink their strategies, and reflect on what has transpired.
6. Creating Alternatives: Once the basic positions and underlying interest have been identified, discussed, and clearly understood by all parties, the mediator will help the parties develop options and make decisions for resolving the conflict. Either party may propose solutions at any time during an open session or in a one-on-one session.
7. Developing and Writing a Plan: The ultimate goal of mediation is to seek a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final document, which is signed by the parents or adult students, responsible public agency representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves making changes to a student’s IEP, an IEP meeting should be convened as soon as possible.
8. Implementation: In order for the final agreement to work effectively, its provisions must be implemented. The signed document demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations. If an agreement requires the withdrawal of a child complaint or due process complaint, the complainant must notify the Department, in writing, of the withdrawal. Providing a copy of the settlement agreement is not sufficient to withdraw a complaint.

Mediation Policies

1. Department- funded mediation is not available to resolve disputes between parents or between public agencies and persons other than the parent or adult student.
2. Each party should designate a person who has the authority to make final resolution decisions.
3. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, attorneys cannot attend or participate in a mediation session.
4. The mediator will provide signed copies of the agreement to each party.
5. The mediator will be excluded from subsequent actions including child complaint investigations, due process hearings, or legal proceedings.
6. If for any reason the mediation fails, the mediator will provide each party with a statement clarifying that the mediation was unsuccessful.
7. If a decision to withdraw a child complaint is made during mediation, the **complainant** must contact the Department, in writing, to formally withdraw the complaint. An agreement made during mediation does not negate the complainant’s responsibility to withdraw the child complaint.

Comparing Systems

A [comparison of dispute resolution systems](#) can be found on the [Department’s Dispute Resolution page](#).

Conclusion

Mediation encourages parents and public agencies to work together in a partnership to resolve conflicts. Mediation provides an alternative to a costly and stressful due process hearing or formal complaint. Successful mediation reinforces educational opportunities and services for students with disabilities.

For more information on mediation, please contact the Department's Office of Special Education at (573) 751-0602.

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