

Special Education Fact Sheet*

MEDIATION

What is Mediation?

Mediation is one of the methods used for resolving conflicts or disagreements between parents and the Department of Education over special education matters. It involves the voluntary participation of the Department of Education, the parent/guardian, and at times, the student. It provides an opportunity for both sides to express concerns, discuss issues and formulate agreements regarding the student's educational program.

Mediation differs from other types of meetings or negotiations because of the presence of a neutral third party, or "mediator." The mediator's role is to help both parties reach agreement on issues in dispute. Mediations differ from impartial hearings in that no one will "order" either party to do anything; parties to mediation will be required to do only what they agree voluntarily to do.

Overall, the mediation process provides an opportunity for immediate improvement in communications between school and family. It gives the parties a chance to work together to develop a plan that makes everyone comfortable.

How Do I Prepare For Mediation?

- It is always helpful to seek the help of an advocate/attorney. He/she will be able to provide you with information regarding your rights as parent/guardian, and the rights of the student.
- You may request mediation by submitting a letter to the Integrated Service Center (ISC) in your borough (or you may use the form provided by the Department of Education). You should also give a copy of your request to the Community Dispute Referral Center in your borough.
- You should identify clearly the specific issues that concern you and understand what your rights are, as well as the rights of the student.
- Be prepared to present your concerns along with what you feel could be possible recommendations for resolutions.
- Be sure that you come prepared to:
 - ✓ keep an open mind
 - ✓ cooperate
 - ✓ collaborate
 - ✓ be creative

* This fact sheet was produced jointly by New York Lawyers for the Public Interest and United We Stand of New York.

- ✓ be innovative
- ✓ be open to compromise
- ✓ be committed to the process

Who Should Accompany Me To Mediation?

It is advisable to bring an advocate with you to the mediation if it is someone who is familiar with the issues, willing to assist you in a collaborative, flexible manner and open to compromise. If you choose to attend mediation without an advocate, you should be sure to have a clear understanding of legal rights and options related to your dispute.

It is beneficial to meet with the advocate prior to the mediation session so that you can prepare your talking points and goals for the meeting.

Who Attends The Mediation?

The people who attend the mediation include the parent/guardian, the student (particularly for older students), the advocate, the school representative, a representative from the district CSE or ISC and the mediator.

The person that represents the school district (or ISC) should be authorized to make decisions on behalf of the Department of Education.

The mediator is a volunteer and is not an employee of the Department of Education. The role of the mediator is to assist the parties in the development of an agreement.

Students who participate in this process may feel like they are finally being heard and be more willing to commit to the agreement as a means of showing their ability to take responsibility for their own education.

What happens during Mediation?

- The mediator will begin with his/her statement of impartiality, an explanation of the confidential nature of discussions held in mediation, and an overall description of what will happen.
- All parties will introduce themselves.
- The mediator will ask the parent/guardian to begin by presenting his/her concerns regarding the student.
- Everyone will have an opportunity to speak and take notes.
- The process is very informal and provides an opportunity for communication and collaboration that many parents/guardians have not experienced before.
- The process provides the parent/guardian with the opportunity to share positive aspects of the student and his/her educational issues.
- The atmosphere should be welcoming and flexible; it should allow all participants to be creative, flexible, innovative, but most importantly, to listen respectfully to each other.
- Parents can request a location other than the school or school district office.

- The goal is to reach an agreement with which all parties will be comfortable and then transcribe it into a written document that all parties will sign.
- All present will receive a copy of the final agreement before they leave the mediation.

What Happens After The Agreement Is Developed?

The parties to the agreement are legally bound to adhere to it, and the Committee on Special Education or School-Based Support Team must reconvene in order to make any necessary changes to the IEP to reflect the agreement reached at mediation.

What Happens If We Cannot Reach An Agreement?

All of the information shared in mediation is destroyed if noted on paper, and the parent/guardian still has the option of requesting an impartial hearing.

No one, not the parent/guardian or the Department of Education, can bring testimony or evidence to the hearing that was part of the mediation discussion.

What Issues Should I Not Bring To Mediation?

Mediation is not recommended for all cases. It is not the most appropriate course of action when seeking reimbursement or prospective payment of tuition for a non-approved private school, or an order compelling the Department of Education to provide a service already mandated on the student's IEP. However, a parent/guardian may seek compensatory services via mediation for services not provided as specified on the student's IEP.

TIPS

- **Keep a notebook**
 - **Record all phone conversations and in-person conferences and meetings**
 - **Keep all the papers you received from the DOE**
 - **Keep letters and envelopes**
 - **If documents are not dated, note the date you received the document on the back of the document or envelope**
- **Send all communications by certified mail or hand deliver them, asking the receiver to initial and date your copy**
- **Always**
 - **Keep a copy of everything you give to the DOE**
 - **take the name of the DOE person you're dealing with**
 - **If you can, get title, office, and detailed contact information**
 - **write it all down for future use**

DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGARDED AS LEGAL ADVICE. THIS FACT SHEET IS NOT INTENDED TO RECOMMEND MEDIATION FOR RESOLVING DISPUTES IN YOUR PARTICULAR CASE. FOR ADVICE AS TO YOUR CASE, WE ENCOURAGE YOU TO SPEAK TO AN ATTORNEY OR ADVOCATE.