

Special Education - Mediation in Missouri

Managing parents or adult students and responsible public agencies conflict through effective communication

Missouri Department of Elementary and Secondary Education, Office of Special Education

Mediation in Missouri

If conflict occurs between parents or adult students and responsible public agencies regarding the educational program for a special education student, mediation may provide a non-adversarial alternative to resolve disputes.

Mediation is a structured, yet informal, voluntary process in which an impartial third party mediator helps parents or adult students and responsible public agencies who are experiencing conflict, to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and schools 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 related services for students with disabilities
- Clarifies areas of agreement and disagreement
- Fosters better relationships between parents or adult students and responsible public agencies
- Is offered free of charge to parties upon the Department's receipt of a request for mediation raising an issue under the Individuals with Disabilities Education Act (IDEA)
- Parties can request mediation prior to or after filing a due process complaint or a child complaint
- No attorney shall participate or attend on behalf of any party at the mediation session; however, parents may be accompanied by a lay advocate

The Mediator

A mediator is a neutral third party trained in communication, problem solving, negotiation skills, and specific mediation techniques. The mediator acts as a facilitator to help parents or adult students and 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 maintains a list of qualified mediators. When both parties in a dispute agree to mediate, the parties must mutually agree on a mediator and contact that mediator who must agree to take the case. One of the parties then contacts the Department to let them know which mediator has been selected. The Department then confirms the appointment. Mediation cannot proceed until the appointment letter is issued by the Department. This ensures the Department will pay for the mediator's services. The mediator will notify the parties of the time, date, and location of the appointment.

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. It is in the best interests of all parties, including the student, to explore mediation as a means to an informal resolution of the conflict. The parents and school staff should

- Approach mediation in good faith
- Keep your schedule free the entire day of the mediation
- Put aside personality conflicts and center on the educational interests of the student
- Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP)
- Organize your information and materials
- Ask yourself 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 your view of the issues and listen to the opinions of the other side
- If needed, meet separately with the mediator
- Seek clarification of the discussion or materials
- Deal with issues, not personalities
- 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 (those 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 “caucus” 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 caucus sessions without consent.

A “recess” 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 absorb what has transpired.

5. 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 caucus.
6. 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, school 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.
7. 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. DESE funded mediation is not available to resolve disputes between parents or between public agencies and persons other than the parent (or adult student).
2. No video or tape recording of the mediation proceedings will be made.
3. Each party should designate a person who has the authority to make final resolution decisions.
4. Since 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.
5. The mediator will provide signed copies of the agreement to each party.
6. The mediator will be excluded from subsequent actions – complaint investigations, due process hearings, or legal proceedings.
7. If for any reason the mediation fails, the mediator will provide each party with a statement clarifying that the mediation was unsuccessful.
8. 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

Mediation	Impartial Due Process Hearing	Complaint Investigation
Informal	Formal	Formal
Confidential	Confidential	Confidential
Supports mutual problem solving	Solution ordered by the Administrative Hearing Commission (AHC)	Commissioner, or a designee, makes final determination
Mediation session usually less than a day	Hearing is scheduled usually for one or two days but may last several days	Process may take up to 60 days
Supports open communication	Witnesses testify under oath	Communication with investigator
Agreements made jointly	Law-based solution	Determined by findings of fact
If no agreement reached, can pursue other systems	Decision binding. However, can be appealed to state or federal court	Decision of Commissioner, or their designee, is final
Must be completed in 30 days	Can be completed in 45 days, but may take up to several months	Must be completed in 60 days unless an extension is needed to determine the findings of facts
Attorney cannot participate	Parties may be represented by attorneys	Attorneys neither required or prohibited
Parties meet face to face for an informal discussion	Parties meet face to face in a formal setting	Parties do not meet, investigator requests information from both sides and independently reviews it

Conclusion

Mediation encourages parents and schools to work together in a partnership to resolve conflicts. The process is a suitable 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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