



Special Education Mediation Fact Sheet

To discourage unnecessary and costly litigation, the federal Individuals with Disabilities Education Act (IDEA) requires states to establish and implement procedures for parents and the local education agency to resolve special education disputes through a process known as **mediation**. In New Mexico, this service is administered by the Special Education Bureau of the New Mexico Public Education Department (NMPED)

What is Mediation?

Mediation is defined as a meeting that utilizes an independent, state-approved, state-funded, trained **mediator** to assist parties to bring about a peaceful settlement to disputed matters related to a student's Individualized Education Program (IEP) or other educational, non-IEP-related issues. A mediator does not make decisions or take sides, but assists the parties in reaching their own mutually-agreeable solution. Mediation can be requested at any time if both parties agree. Discussion that occurs during mediation sessions must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

What are the Requirements?

1. Mediation is voluntary for both parties.
2. Mediation may not be used to delay or deny a parent's right to a due process hearing or to deny other rights guaranteed under the IDEA.
3. Mediation must be conducted by a qualified and impartial mediator trained in effective mediation techniques

What Happens if We Reach Agreement During Mediation?

The mediator will draft a legally binding written agreement (not an IEP) that describes the settlement reached by the parties. The parent and the representative of the local education agency who has authority to legally bind the agency will be asked to sign the agreement. The agreement is not imposed by the mediator. The parties tend to follow the terms of a mediated agreement because they participated in developing it, but if necessary such an agreement may be examined and enforced in state or U.S. district court.

How is Mediation Different from an IEP Meeting?

Remember, mediation sessions are **not** IEP meetings and it is not likely the student's full IEP team will be at a mediation session. Therefore, if the local education agency and the parents reach a written agreement through mediation on any IEP-related matters, it will then be necessary to subsequently convene an IEP meeting to revise the student's IEP or develop an IEP Addendum to inform the student's service providers of their responsibilities under the mediated agreement. This step is required by state special education rules.

A Mediation Session plus an IEP Meeting? Isn't there Another Option?

Yes. The parties can request another dispute resolution option known as a **Facilitated IEP (FIEP) meeting**. A FIEP meeting utilizes a professional mediator who is trained to *facilitate* this particular type of IEP meeting. The role of an IEP Facilitator is to ensure that the IEP Team does its best thinking and to assist the group with the *process* of the IEP meeting rather than the *content* of the IEP. The agenda for a FIEP meeting is the IEP process, and the student and his or her education

needs. The resulting written agreement is the student's IEP which is prepared by the local education agency. Unlike mediation, a FIEP meeting does not require a separate meeting to formalize the agreements that are reached. (See the *Facilitated IEP Meeting Fact Sheet*.)

How Do I Know Which Option to Use?

It is the parties' choice, but here are some general guidelines:

- If the concern is about communication or relationship issues between the parent and one or more school staff or IEP team members, then the parties may wish to request mediation.
- If the concern is solely or primarily about IEP-related matters, then the parties may agree that requesting a FIEP meeting would be the best option.
- If the concern involves **both** communication/relationship issues and IEP-related matters, then it might be beneficial for the parties to request a FIEP meeting and then explore with the IEP Facilitator, who is also a trained mediator, the possibility of conducting a mediation session **prior** to the FIEP meeting. In that way, once the parties come to the IEP table, the focus of the meeting remains on the student and his or her education needs.

How to Request Mediation

If **both** the local education agency and the parents agree that they need assistance with working out their differences with the help of a third party through mediation, then they should contact the NMPED's Special Education Bureau and ask to speak to the ADR Coordinator to obtain the *Request for Mediation* form.

What Then?

- Once the written request for mediation has been received, the state will assign and provide a Mediator on a rotation basis from its list of approved Special Education Mediators.
- The assigned Mediator may not have a personal or professional conflict of interest with either party.
- If the parties decline to accept the state-assigned, state-funded Mediator and still wish to pursue this dispute resolution option, then the local education agency must contract with and pay for the Mediator agreed upon by the parties.
- The Mediator will then contact the parties and schedule the mediation session to be held in a timely manner and in a location that is convenient for both parties.
- The Mediator will also speak by telephone with both parties prior to the mediation session to clarify the issues, gather necessary information, and explain the mediation process.
- The Mediator will work with the parties to determine who will be present during the mediation. Limiting the number of participants generally to a maximum of three individuals from the family and three from the local education agency usually works best.

If you have questions about mediation, please feel free to contact the following persons in the Special Education Bureau at (505) 827-1457:

- ADR Coordinator (for districts or charter schools)
- Parent Liaison (for parents)