



**New York State Education Department  
Office of Special Education**

**QUESTIONS AND ANSWERS ON  
SPECIAL EDUCATION MEDIATION**

**September 2016  
(Updated September 2025)**

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## What is special education mediation?

Special education mediation is a voluntary process in which parents of students with disabilities and school district personnel meet with a specially trained, impartial individual (i.e., a mediator) to work out differences in a collaborative way. During mediation, the mediator helps the parties communicate, identify concerns, and explore solutions together. Parents and schools are encouraged to reach their own agreements to support the student's well-being and educational success.

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## What are the benefits of mediation?

**Joint problem solving:** Parties have the flexibility to create their own solutions, leading to greater commitment and ownership of the agreement.

**Free of charge:** Mediation is funded by the New York State Education Department (NYSED). There is no cost to either families or school districts.

**Improved communication:** Mediators help clarify each party's interests, leading to better understanding and discussion.

**Quick scheduling:** Mediation sessions are typically scheduled within two weeks of the request

**Supportive environment:** Mediation is less adversarial, less negative, and promotes a cooperative approach compared to impartial hearings.

**Resolves conflict:** Mediators address the root causes of disputes, going beyond surface-level issues.

**Legally binding outcomes:** Written and signed mediation agreements are enforceable in any State court of competent jurisdiction or in a district court of the United States.

**Cost and time efficiency:** Mediation is often less expensive and less time-consuming than an impartial hearing.

**Party buy-in:** Since parties develop the solutions themselves, they are more likely to comply with the terms of the agreement.

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## What issues can be mediated?

During mediation, parties can discuss any concerns they may have. To qualify as a special education mediation, issues related to a free appropriate public education (FAPE) for a student with a disability must be the subject of the mediation. These issues include, but are not limited to:

- identification/classification;
- evaluation;
- recommendations for special education services;
- educational placement;
- disciplinary actions for a student with a disability;
- attorney's fees; and/or
- other matters arising under federal and State special education law and regulations that may not be the subject of an impartial hearing request.

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## **What issues cannot be mediated?**

Most issues or concerns can be mediated. However, there are a small number of issues that cannot be mediated:

- Decisions made at the subcommittee on special education level resulting in disagreement must first be referred in writing to the full committee on special education (CSE) for attempted resolution.
- Parents' failure to respond to a request for, or refusal to consent to, the initial provision of special education programs and services cannot be mediated.
- Parental revocation of consent for receipt of special education services is not subject to mediation.
- Parents' refusal to consent, or failure to respond to a request to provide consent, to an initial evaluation or reevaluation of a student who is home-schooled or parentally placed in a private school at the parents' expense cannot be resolved through mediation.

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## **When can I use mediation?**

Mediation can be used any time a neutral person can help with communication. Even if one of the parties has already filed a request for an impartial hearing or a State complaint, mediation can be requested.

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## **How do I request mediation?**

To decide if mediation is right for you, or for help with initiating the mediation process, contact the Special Education Dispute Resolution Center (SEDRC) at 1-855-RESOLVE (1-855-737-6583) or email [info@oseDisputeResolution.org](mailto:info@oseDisputeResolution.org).

Parents should submit their request to the committee on special education (CSE) or committee on preschool special education (CPSE), or to the school district's board of education. Once received, the school district should immediately notify the parent to

confirm receipt of the mediation request, provide the parent with the [Procedural Safeguards Notice](#), and contact [SEDRC](#).

When a school district is requesting mediation, it should notify the parent of the request, provide the parent with the Procedural Safeguards Notice, and contact SEDRC.

Parents and school districts can use the optional [special education mediation request form](#) which is available in multiple languages. While this form is not required, it can help identify the issues in dispute and consider ideas for how to solve the problems that are leading to conflict.

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## **What is the mediation process?**

1. The parent/guardian or school district submits a request for mediation.
2. The mediation is generally scheduled within 2 weeks. A typical mediation lasts approximately 2-3 hours but may be shorter or longer depending on the issues in dispute.
3. The mediation is held in person or virtually and is facilitated by a special education mediator.
4. If an agreement is reached, it is drafted at the mediation session and signed by both parties. The agreement is legally binding.

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## **Who must attend the mediation session?**

Both the parent(s) or guardian(s) and a representative of the school district attend the mediation session. The school representative who attends the mediation must be authorized to enter into an appropriate agreement on behalf of the school district.

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## **Can other people attend a mediation session and what are their roles?**

Yes. In mediation, both parties may agree to have others attend if it would be helpful to the process. These individuals may include, but are not limited to:

- friends/family members;
- parent advocates;
- service providers;
- interpreters; and
- attorneys.

Prior to mediation, Community Dispute Resolution Center (CDRC) staff will ask each party who they would like to accompany them to the session and what their roles will be. The CDRC staff will then communicate with both parties to ensure there is agreement

on attendance and roles. Either party may also consult with others during mediation, either by phone or by having them available in another room, before reaching an agreement.

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## **What if only one party wants to mediate?**

Mediation is voluntary. Both the parent/guardian and the district must be willing to attend mediation in order to encourage discussion and collaboration. If either party does not wish to participate, the other party may request that they attend a brief meeting with a CDRC staff member to better understand the mediation process and its benefits.

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## **Who are the mediators?**

Special education mediators receive extensive training and are approved by NYSED. Mediators provide services through a CDRC. CDRCs are nonprofit, independent agencies with extensive experience in providing mediation. CDRCs serve each of the 62 counties in New York State.

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## **Can mediation be used at the same time as an impartial hearing?**

Yes. Mediation can be requested either before an [impartial hearing request](#) or after one has been filed. If an impartial hearing is requested, the parties can also decide to use mediation rather than participate in a resolution session. If a mediation agreement is reached and signed, the impartial hearing request can be withdrawn. If the parties reach agreement on some but not all issues, a partial mediation agreement can be drafted and signed, and the remaining issues can be decided by the impartial hearing officer (IHO).

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## **What is a resolution session and how does the process differ from mediation?**

When an impartial hearing is requested by the parent(s), the school district has [15 days](#) from receipt of the due process complaint notice to convene a meeting with the parent(s) and the relevant members of the CSE/CPSE to resolve the complaint. This meeting is called a resolution meeting.

Unlike a resolution meeting, mediation includes a neutral third party, the mediator, who facilitates the meeting and helps all parties to more fully understand one another and their concerns. Mediation can be used in place of a resolution session and can be requested by either party.

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## Who pays mediation costs?

Mediation is free for both parents/guardians and the school district. Mediation is paid for by NYSED. It is the school district's responsibility to arrange for and pay for the cost of an interpreter, if needed.

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## What happens at mediation?

The mediation process starts with a neutral mediator explaining this confidential process. Each party then has an opportunity to speak and share their view of the situation. The ensuing conversation focuses on the student, and what is and what is not working with their educational program. Participants should be prepared to discuss what has brought them to mediation and the impact of the disagreement on the student. This is an opportunity to express concerns, not to "make a case". Mediation is not about proving anything; it is about resolving differences and finding a workable solution.

A mediator will help participants problem solve. Problem solving in mediation involves all parties looking at possible ways to resolve the issues at hand. The mediation process encourages creativity and flexibility. A mediator will help the participants to arrive at an appropriate solution for all.

If an acceptable solution is found, the mediator will help the parties create an agreement for the participants to review and sign. Participants receive a copy of the agreement, which is binding on both parties.

If an agreement is not reached, and all agree that additional mediation sessions will not resolve the dispute, the mediation case is closed. These issues can be discussed further with the CSE/CPSE or brought to an impartial hearing. The mediation session may have narrowed the issues that need to be resolved.

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## How can parents/guardians prepare for mediation?

Review information:

- Learn about your child's rights under [special education laws and rules](#) if possible.

Gather relevant documents:

- Bring copies of the IEP/IESP, evaluations, progress reports, medical records, and any other relevant documentation.

Develop a plan:

- Write down your concerns and examples of what has or hasn't worked in your child's education.
- Identify what issues are in conflict.

- Define your goals.
- Think about alternative solutions that could work for both sides.
- Consider what support, if any, your child needs to be successful.

Be open minded:

- Listen and consider different perspectives.
- Keep the focus on your child's best interests.

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## How can school districts prepare for mediation?

Select the mediation team:

- Identify who will attend the mediation—who has knowledge about the student?
- Authorize a decision-maker—who has knowledge about what is possible for the school district?
- Review the student's IEP/IESP.

Gather information:

- Review the student's educational history (progress, needs, and challenges).
- Gather the latest reports from teachers, therapists, and specialists.
- Talk with the student's teacher and service providers.

Develop a plan:

- Be prepared to explain the student's special education programs and support services that have been provided or proposed.
- Identify areas for flexibility, considering possible modifications or accommodations.
- Have potential solutions prepared to discuss with the parent/guardian.

Be open minded:

- Listen and consider different perspectives.
- Keep the focus on the student's best interests.

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## What happens after mediation?

Following or during mediation, any agreement reached is documented in writing, signed by both parties, and subsequently implemented. If the written agreement reached by the parties is inconsistent with the student's IEP, then the CSE/CPSE must immediately amend the student's IEP to be consistent with the mediation agreement.

If an impartial hearing has been scheduled, but all issues are resolved to the parties' satisfaction, then the party that requested the impartial hearing should submit a written withdrawal of their request for an impartial hearing to their assigned IHO.

If an agreement is reached on some but not all of the issues in dispute, the unresolved issues can be discussed further with the CSE/CPSE or addressed at an impartial hearing.

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### **What happens if a mediation agreement is reached but one or both parties are not abiding by the agreement?**

Either party can request a return to mediation at any time to address concerns about abiding by an agreement. A written, signed mediation agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States. If one or both parties are not abiding by the agreement, either party may wish to consult an attorney for further direction. In addition, if the mediation agreement resulted in a change to the student's IEP, the parent(s) could submit a written [State complaint](#) alleging that the IEP is not being implemented.

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