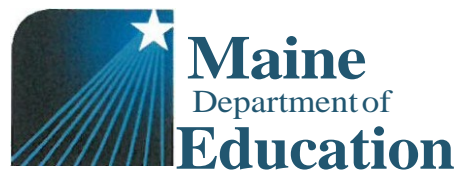


**MEDIATION HANDBOOK**  
**A GUIDE FOR PARENTS AND EDUCATORS**



**MAINE DEPARTMENT OF EDUCATION  
SPECIAL SERVICES TEAM  
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## Special Education Due Process Mediation Handbook

### **MEDIATION**

The term *mediation* describes a situation in which two parties agree to participate in a structured dispute resolution under the guidance of an impartial, neutral third party. The third party mediator facilitates the resolution of conflict and disagreement, but cannot impose a solution upon the parties. Mediation is voluntary. Furthermore, an agreement to participate in mediation is not binding on any of the parties involved. Either party may decline to participate or may discontinue participation at any time.

Special education mediation helps parents and schools resolve disagreements about a variety of special education issues, including a child's special education identification, evaluation, programming, placement, the provision of early intervening services (for children birth through two), or the provision of a free, appropriate, public education (FAPE) (for children three through twenty). Mediation is a flexible, informal way of resolving differences between parents and schools, and is most successful when the parties come together in a spirit of cooperation and compromise.

Mediators are appointed by the Commissioner of Education. This appointment establishes the mediator as an agent of the Commissioner and permits the mediator to have access to the student's educational records. A qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in special education laws and regulations conducts the mediation. A list of mediators and their qualifications is available from the Department of Education.

The Due Process Office (DPO) will issue a letter appointing the mediator and establishing the time and place of the mediation. This letter will be copied to all parties. Whenever possible, the mediation will be scheduled within two weeks of the completed request.

The cost of the mediation process is assumed by the Department of Education. The parties to mediation are responsible for their personal costs and travel expenses. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is accessible and convenient to the parties to the dispute.

At the mediation, the mediator will encourage the parties to present their concerns, opinions, and points of view. This will help to foster the mutual understanding that often leads to successful dispute resolution. No material should be sent to the mediator ahead of time. Any documents and records may be shared at the mediation session. The mediator will not consider this material as "evidence" but as information to assist the parties in resolving their differences.

Discussions that occur during the mediation process are confidential. These discussions may not be used as evidence in any subsequent due process hearing or civil procedure. The parties to the mediation may be required to sign a confidentiality pledge prior to the commencement of mediation.

### **HEARINGS, COMPLAINTS AND MEDIATIONS**

The Department will offer mediation to the school and the parents whenever the Department receives a request for a hearing or a complaint investigation. Mediation can only be arranged if both parties agree to participate. Mediation may not interfere with a parent's right to request a complaint investigation or a hearing. The timeframe for the completion of a complaint investigation (60 days) is automatically

extended when the parties involved agree to mediation. For due process hearings, there is an initial 30 day window during which the parties may resolve their disagreement through the use of resolution sessions or mediation. If the parties have agreed to participate in mediation and it is unsuccessful, the complaint investigation or hearing will proceed to completion within mandated timeframes, unless the initiating party withdraws the request for a complaint investigation or hearing. In instances where the issues are only partially mediated, the remaining issues will be the subject of the continuing complaint investigation or hearing.

Upon receipt of a request for a hearing from a parent, legal guardian, or adult student, a school district has 15 calendar days to hold a Resolution Session and up to 30 calendar days to resolve the issues identified in the hearing request.

The district and the parents may waive the Resolution Session in writing and may either opt to participate in mediation or to go directly to the hearing process. If the parties choose to mediate, the department will make arrangements for mediation to occur between the 21st and 30th days from the district's receipt of the hearing request.

If the mediation is associated with a complaint investigation, the mediation will be held prior to the complaint investigation meeting. The mediator appointed to the mediation cannot be the person who is serving as the complaint investigator for the case.

### **STAND-ALONE MEDIATION**

Parents, adult students, and schools may request mediation by itself. This *stand-alone* mediation is unrelated to a complaint investigation or a hearing. The request for mediation must be submitted in writing to the DPO in the Special Services Section of the Department of Education. A Due Process Consultant will contact the parent(s), adult student, guardian, or surrogate parents and the school district to determine that both parties agree to participate in mediation, and will then identify the next available mediator from a list maintained by the Department.

### **PARTICIPANTS**

Mediation sessions should be attended by those who can discuss the issues relevant to the case and those who can develop a mediation agreement. This would include the parent(s), adult student, guardian, or surrogate parents, and certain school district personnel. A student who has reached the age of eighteen (adult student) must be present unless the parent or guardian has been appointed as the student's guardian. As a courtesy, it is recommended that the parties give the mediator advance notice of the persons (and their titles) who will be attending the mediation.

Additionally, the parent(s), adult student, guardian, or surrogate parents may bring at their discretion:

- A parent advisor (consultant, advocate, attorney, social worker, etc.) and
- The child, if appropriate.

The school district should make available:

- An administrator empowered to make decisions and authorized to commit school resources and ensure the delivery of services; and

- Staff member(s) who may be needed to provide information and who have direct knowledge of the student.

An attorney may represent a school administrative unit in mediation only when an attorney represents the parents. An attorney, an advocate, or a person employed by an attorney's firm representing a parent shall provide the mediator, superintendent of the school administrative unit, and the Due Process Office (DPO) of the Department of Education with written notice at least seven (7) days prior to the mediation that they will be representing the parent at the mediation. If an attorney or advocate fails to provide seven (7) days written notice and would like to represent the family on the date arranged for mediation, the school district may waive the seven (7) day written notice requirement by signing a waiver form provided by the DPO and returning it to the DPO prior to the date of the mediation. Of course, parents are always free to consult with their attorney or advocate before or after the mediation session.

The mediator has the right to limit the participants at any mediation session or caucus.

### **THE ROLE OF STATE IN MEDIATION**

The Department of Education will:

- Appoint a mediator;
- Notify all parties regarding the time and place for mediation;
- Keep a record of the mediation agreement or termination statement; and
- Explain the benefits and procedures of the mediation process and encourage parents and schools to use mediation to resolve a dispute.

### **THE ROLE OF THE MEDIATOR**

The mediator cannot be an employee of the Department of Education. The mediator is an independent contractor hired by the Department of Education and must not have a personal or professional conflict of interest. The mediator is a neutral party working to assist the parent and the school to resolve a special education dispute. The mediator is not the decision-maker. In fulfilling this role, the mediator will approach the session free of bias, treating both sides with respect. The mediator will facilitate problem solving by the parties. If disagreements arise, the mediator will ensure that the right to respectfully disagree is protected while maintaining a civil and open dialogue.

The mediator will:

- Explain his/her role as a facilitator to assist the parents and the school to reach an agreement;
- Seek statements from each party about their position or points of disagreement and request clarification if necessary;
- Listen to each party's perspective of the problem;
- Help to identify the issues to be mediated;

- Emphasize the present aspects of the case, limiting discussion of the past to what is necessary for understanding and planning;
- Review records and documents as necessary with the parties;
- Meet separately with each of the parties in a caucus, when appropriate, and keep any discussion or information absolutely confidential unless requested to disclose information to the other party;
- Be helpful to both parties by identifying areas of agreement and disagreement and offering suggestions for resolving the dispute; and
- Schedule the mediation in a timely manner and hold it in a location that is accessible and convenient to the parties.

At the conclusion of the mediation session, the mediator will do one of the following:

1. Write a clear, concise agreement (to be signed by both parties) stating school and parent responsibilities. The agreement will be incorporated by reference into the student's IEP and will be binding on all parties to the agreement;
2. Terminate the session and notify the DPO if it becomes evident that an agreement cannot be reached or those persons necessary to develop a mediation agreement are not present. In the event of termination, the mediator will advise both parties of their right to proceed to a due process hearing or a complaint investigation; or
3. Recess the mediation so that it can be reconvened at a later date with new information, if that alternative seems necessary in order to reach an agreement.

### **THE ROLE OF THE PARENTS, GUARDIAN, SURROGATE PARENTS, OR ADULT STUDENT IN MEDIATION**

The parents, guardian, surrogate, or adult student will:

- Be prepared to set aside the entire day, even though most mediation sessions last between 2 to 3 hours;
- Approach the mediation in good faith, with the intention of reaching an agreement;
- Present their viewpoint, including all relevant information;
- Meet separately with the mediator as necessary. At their discretion, the parents, guardian, surrogate, or adult student may present sensitive material to the mediator privately. All such material will be kept confidential unless the party agrees that it may be shared;
- Ask for clarification whenever some aspect of the material or a point of discussion is not understood;
- Consider all aspects of the school's program; and
- Be an active participant in the session and in the development of the mediation agreement.

## **THE ROLE OF THE SCHOOL DISTRICT IN MEDIATION**

The school district representatives will:

- Be prepared to set aside the entire day, even though most mediation sessions last between 2 to 3 hours;
- Approach the mediation in good faith and with the intention of reaching an agreement;
- Assure that necessary personnel are present at the mediation, including someone with the authority to make binding decisions for the school district and to commit resources and personnel;
- Present their viewpoint, including all relevant information;
- Meet separately with the mediator as necessary;
- Ask for clarification whenever some aspect of the material or a point of discussion is not understood;
- Consider all aspects of the parents', guardian's, or surrogate parents' point of view;
- Be active participants in the session and in the development of the mediation agreement; and
- Provide a room which will be free of interruptions, as well as a second room for private meetings.

### **THE MEDIATION AGREEMENT**

When mediation is successful, the parties involved must sign a written mediation agreement. Once such an agreement is signed, it is final and binding and cannot be amended. If either party concludes at some later date that the signed agreement is unsatisfactory, they may request a new mediation, or may seek to enter into a private settlement with the other party. Any private settlement that is entered into is not enforceable through the State complaint investigation procedure.

Parents who believe that the school district is not fulfilling the requirement of the mediation agreement can request a complaint investigation from the DPO, or may seek relief in a court of competent jurisdiction.

We hope that this guide has been helpful to you. If you have any questions regarding mediation please contact any of the due process consultants or the due process coordinator at the Maine Department of Education. If you wish to request mediation, please complete the due process request form that is attached to this guide.

## **RESOURCES**

### **Maine Department of Education**

Due Process Office 624-6644

Due Process Procedures/Forms

<https://www1.maine.gov/doe/specialed/support/dispute/procedures/index.html>

Child Development Services <http://www.maine.gov/doe/cds/index.html>

MUSER Birth to Age Twenty <http://www.maine.gov/doe/specialed/laws/chapter101.pdf>

### **Legal Services**

Kids Legal 1-866-624-7787 <http://www.kidslegal.org/>

Disability Rights Maine 1-800-452-1948 <http://drme.org/>

Maine Bar Association 1-800-860-1460 <http://www.mainebar.org/page/LegalAid>

### **Advocacy Group**

The Maine Parent Federation 1-800-870-7746 <http://mpf.org/>

Southern Maine Parent Awareness 1-800-564-9696 <http://somepa.org/>

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