

Mediation
In
Special Education

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Services Provided By
Sound Options Group, LLC
Under Contract With
The Office of the Superintendent of Public Instruction (WA State)

Overview

When parents and school personnel disagree about the educational program for a student with disabilities, either of them may request mediation. Mediation is voluntary for both parents and districts, and is confidential. Special education mediation services are available at no charge to parents and school districts.

Washington's Special Education Mediation & Training Program is funded by the Office of the Superintendent of Public Instruction (OSPI), and administered by Sound Options Group, LLC. OSPI funding covers mediator fees, travel and training, and program administration, communication and materials.

What Is Mediation?

A mediation session is more structured than a parent/school conference but less formal than a due process hearing. During mediation, both parties are given an opportunity to present their view of the conflict. The mediator, a trained, neutral person, then assists the disputing parties by helping them to clarify their issues and interests, and develop a mutually acceptable agreement that meets the educational needs of the student. Unlike a judge or arbitrator, the mediator does not decide how to resolve the dispute.

Mediation in special education can:

- Resolve disagreements concerning the identification, evaluation or educational placement of a special education student.
- Resolve disagreements around the provision of FAPE (Free & Appropriate Public Education) for a special education student.

- Provide participants with uninterrupted opportunities to present their points of view.
- Encourage mutual problem-solving efforts.
- Promote positive working relationships between parents and school personnel.
- Help parents and school personnel focus on what they have in common - the student's needs - rather than on the issues that divide them.

Agreements that are reached in mediation are documented in writing and signed by the parties to the agreement. A signed copy is then given to each primary participant, and the original is kept on file with Sound Options Group. In addition, OSPI is given copies of all mediation agreements for the purpose of program evaluation.

Statistics show that over 85% of mediation participants are using the process successfully, however, if an agreement cannot be reached, the mediator may terminate the session. It is important to remember that mediation is a *confidential* process. In the event that an agreement cannot be reached, mediators will not willingly testify in other proceedings. All participants are required to sign a confidentiality pledge prior to commencing the mediation. All mediator notes are destroyed at the conclusion of the mediation.

While mediations are *not IEP meetings*, the parties are encouraged to convene an IEP meeting following the mediation to incorporate the agreements.

Is Mediation Required?

No. Mediation is voluntary for both parents and school districts. Federal regulations and OSPI recognize mediation as a viable

means for resolving conflict and as an alternative to due process proceedings. Some school districts may establish procedures for parents who elect not to use the mediation process to meet with an impartial, outside party who can explain the benefits of mediation and encourage use of the process. However, decisions as to whether or not to participate in mediation do not restrict the participants from taking any future legal actions.

The purposes of mediation are to:

- Increase the opportunity for positive and productive communication between the parents of students with disabilities and local school districts.
- Encourage mutual problem-solving efforts.
- Establish a legitimate alternative to due process hearings.
- Decrease the costs associated with special education litigation.

Who Participates In Mediation?

The primary participants in mediation are the parent(s), school district (or other public agency) representatives, and the mediator. Since the student's needs are the topic of the mediation, parents and school district personnel are expected to do most of the talking. These participants have the authority to make decisions for the child and to commit resources that are agreed upon in mediation. OSPI will provide mediation services for individuals whose primary language is not English unless it is clearly not feasible to do so.

While it is helpful to keep the number of participants to a minimum, Sound Options Group recognizes that supporters often have valuable information to share. If it is agreed that others will join the primary participants in mediation*, their roles

as support people should be kept in mind. Supporters are there to provide primary participants with information that helps them problem-solve around the needs of the student. All primary participants are encouraged to consult with support people as they feel necessary, and to call breaks if needed.

Unless the parents and school district agree otherwise, children do not typically participate in the mediation. Sound Options Group encourages parents and districts to carefully evaluate the appropriateness of the child participating in the mediation process.

**Only those persons agreed to by the primary parties, prior to the mediation, will be allowed to participate in the mediation.*

What Are The Roles Of The Parties In Mediation?

Mediators facilitate a process that is fair, and one in which the parties feel safe and heard.

The Mediator:

- Sets aside the entire day for mediation.
- Explains his or her role as a voluntary facilitator, follows professional standards of confidentiality and will not willingly testify in future legal proceedings.
- Seeks uninterrupted statements from each party as to their positions or points of disagreement, requesting clarification when needed.
- Helps identify the issues to be mediated.
- Meets separately in confidential sessions with each party.
- Emphasizes areas of agreement and helps the parties focus on the present and future aspects of the case.

- Helps the parties generate options and identify solutions that best meet the educational needs of the child with disabilities.

The Parents/Legal Guardian/Educational Surrogate Parents:

- Set aside the entire day for the mediation.
- Approach the mediation in good faith, with the intention of reaching an agreement.
- Present their view of the problem, including all pertinent information.
- Ask for clarification whenever the material or discussion is not understood.
- Meet separately with the mediator during the confidential session.
- Consider all aspects of the school district's requests.
- Actively participate in the session and in designing the mediation agreement.

School District/Public Agency Personnel:

- Set aside the entire day for the mediation.
- Approach the mediation in good faith, with the intention of reaching an agreement.
- Presents their view of the problem, including all pertinent information.
- Ask for clarification whenever the material or discussion is not understood.
- Meet separately with the mediator during the confidential session.
- Consider all aspects of the parent's requests.

- Actively participate in the session and in designing the mediation agreement.

WA State Office of Superintendent of Public Instruction (OSPI):

- Contracts with Sound Options Group, LLC to administer the statewide special education mediation program and provides for mediator fees, travel and per diem expenses, and costs for mediator training and program administration.
- Evaluates and monitors the effectiveness of the program.
- Promotes statewide awareness of the special education mediation program.
- Provides informational materials to parents, guardians, educators, advocates and others interested in special education mediation.

Sound Options Group, LLC:

- Promotes statewide awareness of the special education mediation program.
- Provides informational materials to parents, guardians, educators, advocates and others interested in special education mediation.
- Provides mediation intake, coordinates the scheduling and assignment of mediators, obtains feedback from mediation participants and provides ongoing program evaluation.
- Provides training in conflict resolution (including mediation) to parents, guardians and educators.
- Provides data in the form of quarterly and annual reports to OSPI to facilitate program evaluation.

Who Are The Mediators?

In Washington, approximately fifteen people currently serve as special education mediators under the state-funded mediation program. All mediators in the program have:

- Received training in state and federal laws and regulations related to the education of students with disabilities.
- Experience and training in conflict resolution, problem solving and communication for the effective resolution of special education disputes.

Mediators are randomly assigned on the basis of geographic proximity, the issues in dispute, the need to assure objectivity, and special considerations such as language needs.

Where Are Mediations Held?

Mediations occur statewide at locations that are mutually acceptable to the primary participants. Likely meeting places include schools, school district offices and libraries.

How Do I Request Mediation?

Mediation services may be requested by a parent, legal guardian, education surrogate parent, adult student or by school district personnel. To request a mediation, or for more information contact:

Sound Options Group, LLC
P.O. Box 11457
Bainbridge Island, WA 98110-5457
(206) 842-2298 (Seattle area)
(800) 692-2540 (Washington State)

Washington State Relay Service:
(800) 833-6388 (TDD); (800) 833-6384 (Voice)

e-mail – mail@somtg.com

A staff member of Sound Options Group will talk with callers about the dispute, help them determine if mediation is appropriate, answer questions and offer to call the other party to determine their willingness to participate in a mediation. If both parties are willing to mediate, Sound Options Group will assign a mediator and schedule a convenient date, time and location for the mediation. A confirmation letter will then be mailed to the primary participants.

Generally, a mediation can be scheduled within fourteen days of a request to mediate.

How Do I Prepare For Mediation?

It is essential that participants set aside a full day for the mediation. Mediations average six hours and can take longer, depending on the complexity of the issues. Participants are encouraged to bring lunch and snacks with them since there is not always time to leave the premises for lunch.

In addition, participants should:

- Remember that mediation is a collaborative, non-adversarial process.
- Recognize that mediation requires the good faith effort of the parties in order to reach mutually satisfactory agreements.
- Focus on the child's needs. Finding fault, fixing blame and making accusations sidetrack the mediation process.
- Clearly outline their views of the dispute. What is the dispute about? What events have led up to it? What steps have been taken, if any, to resolve the problem? What are the goals for mediation?
- Be as clear as possible about what they want and what they are proposing to the other party. What is most important?
- Invite objective input from others.
- Develop a list of possible solutions that could be offered to settle the dispute. Consider solutions that may be both short-term and long-range. Perhaps some issues could be addressed on a short-term basis, with agreements made to reevaluate the situation after some time has passed.
- Understand that durable resolutions are reached by being open to an array of possible solutions.
- Be open to the possibility that mediation has the power to turn adversaries into allies. Participants should negotiate with an attitude that trust is rebuilt through taking small steps!

What About Due Process Hearings?

Mediation is an *alternative* to a due process hearing, not a formal part of such a proceeding. Mediation may occur prior to or concurrent with a request for a due process hearing. Participation in mediation does not interfere with either the right to a due process hearing or with due process timelines.

What About Investigations By The Office For Civil Rights?

It is the policy of the Office for Civil Rights (OCR) not to proceed with or continue an investigation when complainant allegations are being investigated or addressed through a state agency or school district internal grievance procedure, including mediation and due process proceedings. Complainants may reactivate an OCR investigation if requested within sixty days of the completion of mediation.

Is Mediation Available For All Educational Disputes?

Currently, mediation is available at no cost through OSPI only for special education disputes. Mediation for other educational disputes is available through community dispute resolution centers (DRCs) and private mediators. Sound Options Group also contracts to mediate other education disputes not covered by this program.