

**Florida Department of Education (FDOE)
Bureau of Exceptional Education and Student Services**

FACT SHEET

MEDIATION - PARENTS AND SCHOOL DISTRICTS WORKING TOGETHER

What is Exceptional Student Education (ESE) Mediation?

Mediation can help resolve differences before they become major barriers to parent–school relationships. The process is not intended to be confrontational or adversarial, as participants use a problem-solving approach to resolve the issues. A court certified and trained FDOE Individuals with Disabilities Education Act (IDEA) mediator helps the parties reach a mutually satisfactory and legally binding agreement that is in the best interest of the student. Mediation is voluntary for all parties, and discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent legal proceeding.

ESE mediation may:

- resolve disagreements concerning identification, evaluation, educational placement and a free appropriate public education for an exceptional student
- clarify issues causing the disagreement
- provide those involved with uninterrupted opportunities to present their points of view
- stimulate 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—rather than the issues that divide them

Many school districts have implemented their own forms of mediation. Participation in this process of problem solving at the district level is strongly encouraged by the Bureau of Exceptional Education and Student Services (bureau).

Requesting Mediation

When parents and schools are unable to resolve their differences through the individual educational plan (IEP) process, either party may request mediation. Mediation may be requested before or at the same time that a formal state complaint is filed. Mediation may be requested before or at the same time that a request for a due process hearing is filed. Although mediation is not a necessary step prior to a due process hearing, it is a step that is encouraged. Mediation may not interfere with the right to a due process hearing or be used to delay due process timelines.

(Within 15 days of receiving notice of a parent’s due process request, and prior to the initiation of a due process hearing, the district must convene a meeting called a resolution session, which must include the parent of the student and relevant members of the IEP team. The purpose of the resolution session is for the parent to discuss the due process request so that the district has the opportunity to resolve the dispute. This resolution session may only be waived if both the parent and the school district agree in writing to waive the meeting or if both parties agree to

participate in mediation.)

A parent may submit the completed form entitled, "Request for Exceptional Student Education (ESE) Mediation," which is located on the FDOE website at <http://www.fldoe.org/core/fileparse.php/7675/urlt/MediationRequestForm.pdf>, to the local school district's ESE office or to the bureau by email at IDEAMediation@fldoe.org or by fax at 850-245-0953. A parent may also contact the bureau at 850-245-0475 with any questions.

Mediation is Voluntary

Although either the parent or the district may request mediation, both parties must agree to participate, as the mediation process is voluntary. After a request for mediation is made to the bureau and both parties agree to mediate, the mediation session is scheduled by the bureau. A mediator is selected on a rotational basis. Generally, the mediation session occurs within 14 days after the mediator is assigned. Mediation sessions can occur virtually. Participants should set aside three to six hours for this process and should plan accordingly.

The Mediation Agreement

A court certified and trained FDOE IDEA mediator guides the parent, the school district or agency representative, and other parties who have knowledge necessary to resolve the dispute, through a structured negotiation process. If the parties reach a mediation agreement, it is put in writing and signed by both parties and the mediator. Copies of the mediation agreement are provided to each party. The mediation agreement is a legally binding contract, which is enforceable in a state court of competent jurisdiction or in a U.S. district court.

The Mediator's Role

FDOE IDEA mediators in Florida are certified by the Florida Courts and are neutral third parties who are qualified and trained in effective mediation techniques. More information on Florida mediator certification requirements can be found at <https://www.flcourts.org/Resources-Services/Alternative-Dispute-Resolution/Training-Information>. The role of the mediator is to facilitate a negotiation process between parties who have reached an impasse. The mediator neither makes the decisions as to the appropriate terms of the agreement, nor holds that one party over another is "right." You do not need to "convince" the mediator of your position. The mediator will work with you to clarify the issues that are causing the disagreement, provide you with uninterrupted opportunities to present your point of view in a nonthreatening environment, stimulate mutual problem-solving efforts, and promote positive relationships by shifting the focus to the student's needs. Even if the mediator is an attorney, he or she is not acting in that capacity for either party during the mediation session. The parties may not subpoena the mediator or compel the mediator to produce any documents provided by a party in any pending or future administrative or judicial proceeding. Mediators will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding.

Mediation Location

Per law, each session in the mediation process must be held in a location that is convenient to the parties to the dispute. In addition to face-to-face mediation, the bureau also offers virtual mediation as an option if agreed upon by both parties.

Confidentiality

The IDEA states that "... all discussions that occur during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding ...". Confidentiality does not extend to threats of imminent physical harm or incidents of actual violence that occur during the mediation. Mediation sessions may not be video recorded, tape recorded or transcribed by the mediator or any participant. If only partial agreement is reached as a result of mediation that is associated with a state complaint, participants can

- sign consent for the mediator to disclose those items not agreed upon during mediation so the SEA can continue the state complaint process; or
- the complainant may choose to disclose any items not agreed upon in mediation subsequent to the mediation for the purpose of continuing the state complaint process.

Documentation During Mediation

Documents may be brought into the mediation session for discussion. IDEA prohibits discussions that occur during the mediation from being used as evidence in any future legal proceeding.

Participants of Mediation

Parties come to the mediation session with the authority to commit any resources (e.g., time, effort, funds, staff, equipment and services) under their jurisdiction to whatever they may agree to as a result of the mediation. The parents have the authority over their child and the school district representative brings written authority to commit the district's resources.

Use of Attorneys

Either party may bring an attorney to the mediation session. Agreement versus nonagreement must be finalized at the close of the mediation; therefore, if you anticipate the need for an attorney to advise you before signing an agreement, you may consult one by telephone. Payment of attorney's fees should be decided prior to the mediation to avoid any disruption in reaching a mutual agreement of the issues regarding the student. Districts are not required to pay for the attorney of the parent.

Paying for Mediation

In Florida, ESE mediation is provided at no charge to parents. Mediators involved in mediation for students with disabilities are paid for by the FDOE, whereas districts pay for gifted education mediation. Each party is responsible for their individual expenses.

Participant Evaluations

An opportunity to evaluate the process will be provided to all parties following the mediation. The purpose of the participant evaluation is to determine the usefulness of mediation in resolving educational disputes. No personally identifiable information is shared. Your cooperation in the evaluation of the process is appreciated and will be valuable in guiding future efforts.

Mediator Grievance

If you believe that a mediator has violated the ethical standards for Florida-certified mediators per Florida Rule (<https://flcourts.ccplatform.net/content/download/216759/1966500/rules-certified-court-appointed-mediators.pdf>), you may file a grievance with the Florida Courts Dispute Resolution Center. More information about this process can be obtained at the following link: <https://www.flcourts.org/Resources-Services/Alternative-Dispute-Resolution/Rules-Discipline-Sanctions>.