

IDEA Early Intervention Mediation

*A Guide for Families of Infants and Toddlers
(Birth through Age 2)*



September 2018

This publication is part of a series of guides on dispute resolution options available under Part C of the IDEA. These options include mediation, written state complaints, and due process complaints and hearings.

For more information on resolving early intervention disputes, visit the CADRE website:

www.cadeworks.org/resources/idea-early-intervention-family-guides



* This Guide describes mediation generally for Part C of the Individuals with Disabilities Education Act (IDEA). This Guide does not interpret, modify, or replace any procedural safeguards or requirements of federal or state law.



WHAT IS MEDIATION?

Mediation is a voluntary process under Part C of the IDEA that brings people together to resolve disagreements. An impartial, qualified and trained mediator helps participants communicate with each other so that everyone has an opportunity to express concerns and offer solutions. The following items are important to remember and are discussed further in this document:

- ◆ You can request mediation at any time to resolve disagreements.
- ◆ All participants must agree to participate for mediation to happen.
- ◆ The focus is on resolving disagreements and working toward a solution that satisfies all participants.
- ◆ The goal is to find a solution that meets the needs of the child and family to which all parties can agree. If a dispute is resolved through the mediation process, a written and legally binding agreement is created and signed.
- ◆ The mediator does not make decisions. All participants must agree to any decision.
- ◆ Mediation discussions are confidential. What is said in mediation cannot be used as evidence in a due process hearing or civil lawsuit.
- ◆ Mediation is voluntary so participants may leave mediation at any time.

If you have questions about information in this Guide, contact your service coordinator, state lead agency or Office of Special Education Programs (OSEP) funded parent center for assistance.

Commonly used terms and additional information is available at: www.cadeworks.org/resources/idea-early-intervention-family-guides

BENEFITS OF MEDIATION

- ◆ Mediation is free to parents.
- ◆ Mediation can help everyone better understand other points of view.
- ◆ The people who know your child best work together on solutions with you and decide the outcome.
- ◆ People tend to be more satisfied and follow through with the terms of agreements when they help create them.
- ◆ Disagreements may be resolved more quickly than with other dispute resolution options.
- ◆ Mediation focuses on current issues and creating a plan for the future.
- ◆ Mediation agreements are enforceable through state or federal courts, and may be enforceable by the state lead agency depending upon state policy.

A mediator who is trained in effective mediation techniques...

- ◆ **Facilitates open communication between mediation participants.**
- ◆ **Creates an environment where concerns can be shared.**
- ◆ **Encourages participants to be respectful and understand other points of view.**
- ◆ **Clarifies points of disagreement, may help identify options, and may assist with writing the terms of any agreement.**

CONSIDERATIONS ABOUT MEDIATION

- ◆ It is important to prepare in advance of the meeting to keep the meeting focused and make sure your concerns are addressed.
- ◆ Some complex situations might require more than one mediation session in order to create an agreement.
- ◆ There are no guarantees that mediation will lead to a written agreement.

FREQUENTLY ASKED QUESTIONS ABOUT MEDIATION

Who can request mediation?

Parents, an early intervention services (EIS) provider, state lead agency staff, or a public agency may request mediation.

When can I request mediation?

You can request mediation at any time, including prior to or when you are asking for a due process hearing or filing a written state complaint. Mediation is often used when communication is difficult and outside assistance may be helpful.

Who will choose the mediator?

Your state lead agency selects mediators on a neutral basis. The mediator must not have a personal or professional interest that conflicts with the person's objectivity and may not be an employee of the lead agency or an early intervention provider that is involved in providing early intervention or other services to the child. Some states allow parents and early intervention providers to choose a mediator together.

Does the mediator make decisions?

No. The mediator facilitates communication and does not take sides. Mediation is a problem-solving process guided by the mediator. All decisions are made by the participants.

When and where does the mediation take place?

The mediation must be held in a timely manner and take place at a time and in a location convenient to all participants.

How long does the mediation process take?

Mediation is intended to help quickly resolve disputes. The amount of time spent depends on when and how often participants can meet and the complexity of the issues involved in the dispute. Your lead agency may be able to advise you on how much time you should set aside for the mediation.

Who pays for the mediation process?

Part C of the IDEA requires states to pay for the mediation process. Parents do not pay for mediation.

May I bring someone with me to the mediation?

Yes. Some parents find it helpful to bring someone with them for support. It is a good idea to share with the mediator and other participants who you want to bring. It is also a good idea to ask who else will be attending the mediation. Everyone should know before the mediation who will be at the meeting.

Do attorneys participate in the mediation?

Whether attorneys are included in the mediation process is not specified in Part C of the IDEA. Attorney participation in mediation differs from state to state. You may want to contact your OSEP-funded parent center regarding the participation of attorneys in mediation in your state.

What if the mediation does not result in an agreement?

Using mediation does not deny or delay the other parental rights you have under Part C of the IDEA. You may still file a written state complaint or request a due process hearing to resolve an issue or disagreement.

Do mediation agreements have to be in writing?

Yes. If a dispute is resolved through the mediation process, the agreement must be in writing. It must be signed by both the parent and an authorized representative of the lead agency. The mediation agreement must state that all discussions that took place during the mediation process will remain confidential and may not be used as evidence in a later due process hearing or civil proceeding.

Do I have to sign an agreement during the mediation?

If you have reached an agreement with the lead agency, and you want to have someone else review your agreement to be sure it meets the needs of your child before signing it, you may request time to do so.

What happens if the agreement isn't followed?

Signed, written mediation agreements are legally binding and enforceable in state or federal court. If you believe your agreement isn't being followed, your state lead agency can provide you with information about your options.

What if I need an interpreter?

It is important that you understand and are able to participate fully in the mediation process. Let everyone involved know in advance that you need an interpreter. Contact your service coordinator or state lead agency for more information.



State regulations associated with Part C of the IDEA dispute resolution processes may differ from state to state.

Parents and family members are encouraged to contact their state lead agency, their service coordinator or OSEP-funded parent center for more information.

WAYS TO PREPARE FOR MEDIATION

- ◆ Make a list of the issues and questions you want to discuss during the mediation process. This can help you remember all of your concerns so you can present them in an organized manner.
- ◆ Organize any supporting documents or data that you might want to use and write dates and notes on them. Consider making additional copies for the other participants and the mediator.
- ◆ Think of questions other participants might ask and write down some possible responses.
- ◆ Identify the issues as you see them, outline what you think your child and family needs, and bring some ideas about possible solutions.
- ◆ Have a plan to deal with emotions (yours and others) during the meeting. You may ask for a break to gather your thoughts at any time during the meeting.
- ◆ Try to arrive a little before the scheduled meeting time so you have time to get ready to participate.
- ◆ The meeting is more likely to result in an agreement if everyone listens carefully to one another and is respectful.

SOURCES OF IMPORTANT INFORMATION

A current list of all parent centers in the nation is available through the **Center for Parent Information and Resources** (CPIR):

<https://parentcenterhub.org/find-your-center>

or call (973) 642-8100



The **Center for Appropriate Dispute Resolution in Special Education**

(CADRE) is the national technical assistance center on dispute resolution:

<http://www.cadeworks.org>

or call (541) 359-4210



A current list of Part C state coordinators is available through the **Early Childhood Technical Assistance Center** (ECTA): <http://ectacenter.org/contact/ptccoord.asp>



Information on the **Individuals with Disabilities Education Act (IDEA)** is available online: <https://sites.ed.gov/>



YOUR LOCAL PARENT CENTER:

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