

INFORMATION ON MEDIATION

What is mediation? Mediation is an opportunity for parents and professionals to work out their disagreements with a trained, impartial facilitator. The mediation process is non-adversarial and is a means to resolve disagreements to the mutual satisfaction of all parties. Mediation proceedings are confidential and may not be used as evidence in any subsequent due process hearings or civil proceeding. Eligibility, placement or services cannot be changed during mediation proceedings unless both parties agree. However, parents/guardians may always withdraw their child and family from early intervention services at any time without penalty. If the dispute involves an initial IFSP, the child and family must receive any services not in dispute.

Who can request mediation? Any parent, or with the consent of the parent, the parent's representative, the service coordinator, a service provider, or the REIC, may request mediation to resolve disputes regarding identification, evaluation and assessment, eligibility determination, placement, or the provision of appropriate early intervention services for an individual child or family. *Parents may not be forced to participation in mediation.* However, if parents request mediation the other party must participate. A parent may request mediation in addition to filing a request for an impartial hearing or a request for resolution of a complaint.

When can mediation be requested? Mediation can be requested at any time. Mediation may be requested alone, or simultaneously with a request for a due process hearing. A request for mediation may also be filed when filing a complaint.

How can mediation be requested? Mediation may be requested by submitting a Formal Dispute Resolution Request Form, which can be obtained from the Service Coordinator or the Procedural Safeguards Office (toll-free 877-258-6585). If a parent needs help writing a request for mediation, they can contact their Service Coordinator or REIC. The completed form should be returned to the Procedural Safeguards Office:

Procedural Safeguards Office
NJ Department of Health and Senior Services
PO Box 364
Trenton, New Jersey 08625-0364
Fax: 609-292-0296

When the Procedural Safeguards Office receives the completed form, a mediator will be contacted and the mediation will be scheduled at a time and place convenient to the parties.

Do parents need a lawyer? No. Legal representation is not required at mediation. If the parent(s) does not have a lawyer, the other party cannot have a lawyer. Upon request, the Procedural Safeguards Office will provide parents with a list of advocates and free or low-cost legal services.

What happens at a mediation? At a mediation, parents and other parties discuss areas of agreement and disagreement with a trained mediator and try to reach an agreement acceptable to everyone. During the mediation proceedings, the mediator will:

- ❑ Explain his/her role as a facilitator to assist the parties to reach agreement;
- ❑ Inform all parties of the confidential nature of all information related to the mediation;
- ❑ Inform all parties that discussions held during the mediation can not be used as evidence;
- ❑ Allow each party to present their point of view concerning the disagreement;
- ❑ Ask questions of any and all parties;
- ❑ Restate each party's position in an attempt to clarify the underlying issues;
- ❑ Caucus with each party privately. Such discussions are kept confidential from the other party unless the mediator receives permission to reveal the contents of the caucus discussion;
- ❑ Identify areas of agreement, and narrow areas of disagreement;
- ❑ Engage in focused discussion and problem-solving with all parties;
- ❑ Suggest compromises based on their knowledge of the law, facts, "best practices," and positions of the parties; and
- ❑ Work with all parties to develop the positive rapport, respect and trust needed to work in a collaborative process on behalf of the child.

Mediation proceedings may not be taped.

What are the timelines for mediation? The mediation, including issuance of any written mediation agreement, must be completed within 30 calendar days of the receipt of the request for mediation, unless the mediation was requested as part of a due process hearing or complaint investigation. In that case, the mediation must be completed within 15 calendar days to ensure adequate time for completion of the due process hearing or complaint investigation.

What happens if an agreement is reached? If an agreement is reached during mediation, the terms of the agreement will be placed in the IFSP within 5 business days by the Service Coordinator. The Procedural Safeguards Office will follow up with the Service Coordinator to ensure that this is done.

What if the disagreement is not settled? If the parent is not satisfied with the results of the mediation, s/he may request an impartial due process hearing and/or file an administrative complaint.

What are the parent(s)'s rights at mediation? At mediation, a parent has the right to:

- ❑ Be accompanied and advised by counsel, individuals with special knowledge or training with respect to early intervention services for children, friends or family members;
- ❑ Inspect and review their child and family's early intervention record;
- ❑ Have an interpreter or translator to the maximum extent possible, as needed;
- ❑ Have all proceedings kept confidential;
- ❑ Have the terms of any agreement or decision placed in the IFSP within 5 business days after receipt of the decision; and
- ❑ Withdraw at any time.