



NORTH DAKOTA
**DEPARTMENT OF
PUBLIC INSTRUCTION**

Special Education IEP Facilitation Procedure Manual

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INTRODUCTION

Parents and school staff usually agree on issues regarding evaluation, eligibility, services and placement of students with disabilities. However, there are times when disagreement occurs. Disagreements and conflict are often inevitable, but they need not produce negative results.

If a parent and school are unable to resolve a conflict concerning a student with a disability, facilitation is an available alternative dispute resolution process for both parties. A facilitated IEP meeting is an IEP meeting that includes an impartial facilitator who promotes effective communication and who assists the IEP team in developing an acceptable IEP. The facilitator keeps the team focused on the proper development of the IEP while addressing conflicts that arise. IEP facilitation is not used to resolve disputes unrelated to the IEP. The facilitator is a neutral third party, they have no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. Facilitation is completely voluntary and cannot interfere with any procedural safeguards, including a request for a due process hearing.

What is a facilitated IEP?

IEP facilitation is a voluntary process that can be utilized when both parties agree that the presence of a neutral third party would assist in the development of an appropriate IEP for a student with a disability.

Are school districts required to offer IEP facilitation?

No. Under the federal special education law, the Individuals with Disabilities Education Act (IDEA), school districts are not required to offer IEP facilitation as an alternative dispute resolution option. The North Dakota Department of Public Instruction (NDDPI), does provide IEP facilitation as an early dispute resolution option for parents and schools.

When should IEP facilitation be considered?

- When team members feel they would benefit from a neutral third party facilitating the meeting.
- Before a definite dispute arises;
- When previous attempts to resolve issues related to the IEP have been unsuccessful;
- On rare occasions, a facilitated IEP will be mandated as part of a complaint investigation corrective action.

What is the facilitator's role?

- Coordinates with the parent and the school to arrange a mutually agreeable date and location for the IEP meeting.
- Helps the team develop and ask questions about issues that may need clarification;
- Works with the parent and district to understand the IEP agenda) and guides the discussion while modeling effective communication;
- Encourages both parties to identify possible solutions to the issues;
- Assists the IEP team process toward the development of an appropriate IEP. (The casemanager runs the meeting).
- Maintains impartiality and does not take sides or impose a decision on the group.

Who are the IEP facilitators?

NDDPI contracts with professionals as independent contractors for IEP facilitation services. Facilitators are not NDDPI employees, an employee of the school district that the student attends, or someone who has a personal or professional interest that conflicts with his or her impartiality. In addition, an IEP facilitator must:

- ✓ have demonstrated knowledge of federal and state special education laws and regulations;
- ✓ have demonstrated knowledge of and experience with the IEP team meeting process; and
- ✓ have ongoing training or continuing education in special education and/or conflict resolution.

How much does IEP facilitation cost?

Facilitation is available at **no** cost to the school or parent. The NDDPI bears the costs related to special education facilitation.

What are the advantages of IEP facilitation?

- Identify disagreements concerning the identification, evaluation, placement or services of a student;
- 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; and,
- Help parents and school personnel focus on what they have in common--the student--rather than on the issues that divide them.

What if only one party wants a facilitator?

If only one party wants to use a facilitator, the NDDPI will not be able to provide one. IEP Facilitation is voluntary. Therefore, both parties must agree to use a facilitator. One of the conditions for the NDDPI to provide an IEP facilitator is that both the parent and the school complete and sign the *Request for Facilitated IEP Meeting* form.

Does the NDDPI always provide a facilitator when requested?

No. For the NDDPI to provide a facilitator the following conditions must be met:

- ✓ Both parent and school must complete and sign the Request for Facilitation form;
- ✓ the dispute must relate to the IEP meeting in which the IEP team did not reach agreement about the required elements of the IEP;
- ✓ a facilitator must be available within a reasonable time that the IEP meeting is due so as to not cause unreasonable delay of the IEP meeting;
- ✓ the dispute must not be about a manifestation determination (a meeting to determine if a student's behavior is substantially linked to the student's disability) or determination of interim alternative educational setting;
- ✓ the parties must not be involved in special education mediation at the same time;
- ✓ the issues in dispute must not be the subject of a special education complaint or due process hearing with the same school; and
- ✓ the parties must not have participated in IEP facilitation concerning the same student within the same school year of the filing of the current request for facilitation.

If the NDDPI declines to provide a facilitator, may the parties appeal the decision?

No. The NDDPI's decision not to provide an IEP facilitator is final and is not subject to review or appeal.

How does IEP facilitation differ from mediation?

In both IEP facilitation and mediation, a neutral third party is assigned to assist the parties with communicating and resolving disagreement(s). IEP Facilitation, however, involves reconvening an IEP meeting with the goal of reaching agreement about the required elements of a student's IEP.

In contrast, mediation does not involve holding an IEP meeting and may be used to resolve any disagreement arising under the IDEA, not just disagreements over elements of a student's IEP. In addition, mediation can be requested at any stage of a disagreement, even if the disagreement is the subject of a pending special education complaint investigation or due process hearing.

Who can request IEP facilitation?

Parents or school district staff may request IEP facilitation.

How is IEP facilitation requested?

Parents interested in having a neutral third party facilitated IEP meeting should begin by contacting the school district to explore their options and inquire about availability. Parents and/or districts can also contact the North Dakota Department of Public Instruction, Special Education office or parent center for information about the availability and use of IEP meeting facilitators. A Request for Facilitation form can be accessed on the North Dakota Department of Public Instruction website or it can be obtained by contacting the NDDPI Special Education Office.

Once a *Request for IEP Facilitation* is initiated, what happens?

Once the initial *Request for IEP Facilitation* is received, the NDDPI Office of Special Education contacts the other identified party to seek participation. If the other party agrees to participate in facilitation, they also complete the *Request for Facilitation* form to document their concerns or issues. If the other party declines to participate in facilitation, all efforts to resolve conflict via facilitation end.

In agreeing to participate in facilitation, the parties acknowledge that they are fully informed of the following:

- ✓ The facilitator does not provide the parents, the school district, or the student with legal representation;
- ✓ The facilitator does not provide counseling or therapy services;
- ✓ The facilitator is a neutral third party who will assist the IEP team in agreeing to a satisfactory IEP; and
- ✓ Discussions during the facilitated IEP will be held confidential and cannot be used during subsequent proceedings pertaining to the child/student's case.

How are IEP facilitators appointed?

Facilitators are appointed by the NDDPI, Office of Special Education. Geographic location, scheduling and current status of the facilitator will be taken into account when identifying the facilitator. The NDDPI provides this service at no cost to the parent or school. The process is voluntary and by requesting a facilitator, both parties understand that the NDDPI will attempt to identify a facilitator in a reasonable time from the date of request, **however this cannot be guaranteed.** In such cases the NDDPI will inform the parties and, if necessary, will recommend that the parties attempt to move forward without a facilitator in order to not delay the IEP process.

What happens once the NDDPI identifies the facilitator?

Once the facilitator is identified, the NDDPI will provide the facilitator with the names and phone numbers of the parties in order to arrange the date, time and location for the IEP meeting. The *Request for Facilitator* forms submitted by the parties will be forwarded to the facilitator. During the initial contact with the parties, the facilitator will focus on scheduling the IEP meeting, but might also clarify the areas of the IEP outlined in each party's request. Since the facilitator's role is to maintain neutrality, any information shared with the facilitator during initial contact is subject to being shared with the other party. Therefore, parties should refrain from "presenting their case" to the facilitator during the initial contact.

The facilitator will work with both parties to secure a mutually agreeable location for the IEP meeting. Confidentiality and comfort are critical in securing a neutral location. The IEP meeting may or may not occur in the school or even on school grounds, depending on the comfort level of both parties. It is crucial to hold the IEP meeting as soon as possible, and in order to do so, both parties need to be open to a more neutral setting if it is suggested. The facilitator will ask if either party has a need for accommodations and prepare accordingly.

Is there any type of procedural notice that parents receive regarding a facilitated IEP meeting?

Yes, as with any IEP meeting, the notification procedures found in the IDEA apply. Districts must give parents proper notice including the place and time where the meeting will occur, potential attendees, and the purpose of the meeting.

Beginning when the student is age 16, the notice should reflect that the meeting will include the development of postsecondary goals and transition services.

What is the role of the parents and the school district in IEP facilitation?

The parties are expected to approach the facilitated IEP in good faith and with the intention of working through any impasse they have come to. They will be active participants in the meeting and, ideally the parties will successfully complete the student's IEP.

What is the role of legal counsel in IEP facilitation?

If an attorney is secured by either party, the parties are responsible for their own legal fees. Having an attorney at the facilitated IEP meeting is not recommended. The presence of an attorney may be perceived by the other party as adversarial and may have a negative impact on open dialogue. In addition, the attorney is not a required member of the IEP team and their involvement may defeat any assistance the facilitator is there to provide. Discussions occurring during the facilitated IEP meeting are confidential.

Does the facilitator make decisions?

No, the role of the facilitator is to facilitate communication among the IEP team members and assist them to develop an effective IEP for the student. The facilitator models effective communication skills and offers ways to address and resolve conflicts in the development of the IEP. Facilitators are trained in effective communication and ways to address and resolve conflicts. The members of the IEP team are the decision-makers.

How does one prepare for a facilitated IEP meeting?

- Review all relevant documents, papers, and reports prior to the meeting.
- Share relevant documents with other persons involved in the facilitated IEP.
- Organize your information and any materials you bring to the meeting.
- Think of possible alternatives to the IEP areas that are in question.
- Put aside personality conflicts and focus on the student's best interest.
- Think about what you want to get out of the facilitation.
- Think about what you want the other party to consider.
- Think about what you are willing to be flexible with.
- Be willing to listen and compromise in the student's best interest.

Who can participate in the facilitated IEP meeting?

The number of participants at the facilitated IEP meeting will be kept to the original IEP team members in order to continue the good work that has already been done as a team. Keep in mind this IS an IEP meeting and as required with any IEP, the persons in attendance should have knowledge of the student.

How long will a facilitated IEP meeting go?

Facilitated IEP meetings can be completed in as little as two hours. However, depending upon the complexity of the issue(s), it can go beyond two hours and parties need to be prepared and plan accordingly. It is also recommended that participants prepare for the possibility that an additional meeting may be required in order to complete the IEP. An additional meeting may be scheduled by both parties and the facilitator before the conclusion of the initial meeting. The parties must keep in mind the distance the facilitator has to travel as well as their schedule.

What if the facilitated IEP meeting does not result in an acceptable IEP?

At times, the issues, disagreements and problems may not be resolved through a facilitated IEP meeting. Parties may want to consider mediation or another form of appropriate dispute resolution.

RESOURCES

www.nd.gov/dpi

North Dakota Department of Public Instruction

<https://www.cadreworks.org/>

The Center for Appropriate Dispute Resolution in Special Education (CADRE)