NORTH DAKOTA
DEPARTMENT OF
PUBLIC INSTRUCTION

SPECIAL EDUCATION MEDIATION PROCEDURE MANUAL

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Introduction

Parents and school staff usually agree on educational programming and services for students with disabilities. However, there are times when people disagree; if a conflict arises, mediation is a dispute resolution tool available for parents and schools.

Mediation is the process of using a trained, neutral third party to help parents and school personnel reach a binding agreement about the educational evaluation, eligibility, placement, or services for a student with special needs. The mediator has been trained in a communication process to handle special education disputes. Mediation is voluntary and cannot interfere with procedural safeguards (certain rights children with disabilities and their parents are guaranteed). Mediation does not delay or deny the right to a written state complaint or a due process hearing. Mediation is available to allow parties to resolve all Individuals with Disabilities Education Act (IDEA) related disputes in a timely manner by promoting communication between the parties.

What is Special Education Mediation?

Special Education Mediation is a process that assists parents and schools in resolving disagreements regarding the education of students with disabilities. It focuses on resolving disputes and finding an outcome that meets the student's needs.

The Individuals with Disabilities Education Act (IDEA) requires the North Dakota Department of Public Instruction (NDDPI) to offer mediation to parents and school districts that disagree about a student's education program. For mediation to occur, the parents and the school district **must** agree to participate.

When Should IEP Mediation be Considered?

A request for mediation will most likely occur when parties cannot agree on their positions without outside assistance. Mediation may occur on any matter under IDEA 34 CFR part 300, including issues that might arise before filing a written state complaint or a due process complaint.

Parents and schools may consider using mediation in matters including:

- Identification/Child Find
- Evaluation
- Individualized Education Program (IEP)
- Educational placement of a child with a disability, including related services
- Provisions of Free Appropriate Public Education (FAPE)

What Are the Advantages of Mediation?

Mediation can:

- Help resolve disagreements more quickly than other options, which is often more beneficial to the student
- Clarify the issues causing disputes in a timely manner
- Provide those involved with uninterrupted opportunities to present their points

of view
- Encourage mutual problem-solving efforts
- Promote positive working relationships between parents and school personnel
- Guide parents and school personnel to focus on the student rather than issues
- Allow each party the flexibility to come up with solutions and written agreements to increase commitment and ownership of the agreement
- Improve the school-family relationship

Who May Request Mediation?

Mediation is a voluntary process and may be requested by:

- A student's parent, guardian, or other people who have the legal authority to make educational decisions for the student
- An adult student who is at least 18 years old and has had parental rights transferred to them
- A school district or the authorized representative
- The State Education Agency

How Does Mediation Differ from IEP Facilitation?

Facilitation involves reconvening an IEP meeting to agree on the required elements of a student's IEP. The goal is to complete the IEP. Additionally, facilitation can be used by the IEP team when an IEP meeting is expected to address complex issues or be controversial.

In contrast to facilitation, mediation does **not** involve holding an IEP meeting. Mediation can be requested at any stage of a disagreement, even if the issue is the subject of a pending special education complaint investigation or due process hearing. In both mediation and IEP facilitation, a neutral third party is assigned by the NDDPI to assist the parties with communicating and resolving disagreements.

Who Are the Special Education Mediators?

The NDDPI contracts with qualified independent contractors for mediation services. Mediators are not employees of the NDDPI, the school district the student attends, or anyone with a personal/professional conflict of interest with the parties. Mediators are not IEP facilitators or hearing officers.

A mediator contracted by the NDDPI must:

- Have completed a training program in mediation techniques and have experience in the process of mediation
- Participate in professional development to stay up to date with changes in the field of special education and mediation
- Be knowledgeable in special education laws and regulations
- Possess appropriate personal communication skills

What is the Mediator's Role?

The mediator's role is to facilitate a confidential discussion to help achieve a mutually agreed-upon resolution to the dispute. The mediator is not a judge and does not have decision-making authority.

The mediator will create a safe environment for parties to feel comfortable by:

- Helping the participants develop ground rules for the session
- Aiding the parties in understanding each other's position
- Assisting the participants in reaching an agreement that will be legally binding
- Encouraging participants to be respectful of others' points of view
- Guiding the discussion by clarifying concerns and identifying possible solutions

How Much Does Mediation Cost?

Mediation is available at **no** cost to the school or parent. The NDDPI pays the expense related to special education mediation.

For mediation concerning Section 504, the school may request the NDDPI to assist in arranging for a mediator, but the school district pays the expense of the mediation.

What If Only One Party Wants Mediation?

If only one party wants to mediate, the NDDPI will not be able to provide this service. Mediation is voluntary. Therefore, both parties must agree to mediate. One condition for the NDDPI to provide a mediator is that both parties complete and sign the *Request for Mediation* form and list the issues they would like to discuss.

Can the Parties be Required to Mediate?

No. The IDEA requires mediation to be voluntary. In addition, when a party chooses not to participate, the party does not have to give a reason for the decision. Either party can withdraw from mediation at any time.

What Happens Once a Request for Mediation is Initiated?

Once the initial *Request for Mediation* is signed and received, the NDDPI, Office of Special Education, will contact the other identified party to seek participation if the initiator has not already asked the other party to sign. If the other party agrees to participate in mediation, they also sign the *Request for Mediation* form and should document their concerns or issues. If either party declines to participate in mediation anytime, the process ends. The other party is not required to give a reason for declining mediation.

If both parties agree to mediation, they will receive notification of the receipt of the mediation request and the status of the request. The NDDPI will appoint a mediator. Mediators are selected on a random rotation; however, the geographical location and availability of the mediators are taken into consideration.

Once the NDDPI identifies a mediator, the signed *Request for Mediation* form(s) from both parties along with all parties' names and phone numbers will be sent to the mediator. The mediator will then call to arrange the mediation session's date, time, and location. The parties need to promptly agree on a date for the mediation so the meeting can occur in a timely manner.

During the initial contact with the parties, the mediator will not only focus on scheduling the mediation session but may also clarify the areas of conflict outlined in each party's request. Since the mediator's role is to maintain neutrality, any information shared with the mediator during initial contact is subject to being shared with the other party. Therefore, parties should refrain from "presenting their case" to the mediator during the initial contact.

The mediator will seek a secure and comfortable location for the session and may need assistance from the school district to do so. Confidentiality and comfort are critical in securing a neutral site. The mediation session 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 a mediation session as soon as possible, so if suggested, both parties need to be open to a more neutral setting.

How Is Expected of the Parties During Mediation?

Before mediation, the mediator will ask if either party needs accommodations to prepare accordingly. The participants are expected to approach the mediation in good faith to try and reach a binding agreement. They will be active participants in the session and, if mediation is successful, will develop a written binding agreement with the mediator's assistance.

In agreeing to participate in mediation, the parent(s) and district understand:

- The mediation agreement is considered a legally binding document
- Mediation is an agreement-reaching process in which the mediator assists parties in reaching an agreement in a collaborative and informed manner
- The mediator has no power to decide disputed issues for the parties
- Mediation is not a substitute for independent legal advice
- The mediator must work on behalf of all parties, and the mediator cannot render individual legal advice to any party and will not render therapy or pass judgment within the mediation
- Neither the mediator nor the mediator's records or notes will be available for future proceedings, such as a due process hearing
- Any agreement reached will be in writing, and the mediator will give each party a copy
- Mediation is confidential, and disclosing information from either party is prohibited

Who Can Participate in the Mediation Session?

The parties should keep the number of participants at each mediation session to a *minimum* to enhance the potential for practical problem-solving. Successful mediation often requires that both parties understand and feel satisfied with the mediation plan. Therefore, it is in all parties' best interests to disclose who will be attending the mediation session in advance. The parties may secure independent legal advice throughout the mediation process. If either party secures an attorney, the parties are responsible for their own legal fees. The mediator will assist in making the final decision on who will attend the mediation session.

How Does One Prepare for Special Education Mediation?

To prepare for mediation, one should:

- Identify issues to discuss during mediation
- Review all relevant documents, papers, and reports before the session
- Share relevant documents with other people involved in the mediation
- Organize information and other materials to bring to the session
- Think of alternative ways of resolving the disagreement and be willing to listen
- Set aside personality conflicts and focus on the student's best interest
- Think about what you want to get out of the session
- Think about what you are willing to do
- Be ready to listen and compromise

How Long are Mediation Sessions?

Mediation sessions usually last two to four hours, depending on the complexity of the issue. More than one mediation session may be necessary to resolve the issues. The mediator may schedule additional sessions before the conclusion of the initial meeting.

What Happens During a Mediation Session?

Mediation may consist of several phases, including pre-mediation intake with each participant, the mediation itself, and any post-mediation drafting of agreements. In the mediation session, expect the following:

1) The mediator begins the session, explains the mediation process, makes introductions, and allows the parties to request ground rules. At this time, the mediator will also explain their *Agreement to Mediate*, which outlines the ethical practice of mediation, including confidentiality, neutrality, and other aspects of mediation.

2) All participants are allowed to present their issues and concerns without interruption. The mediator facilitates the conversation and may ask questions or summarize the discussion. As the mediation continues, the participants may ask each other questions and communicate directly as they seek to understand each other and make decisions.

3) The mediator may meet with parties separately and privately to clarify issues further.

4) If an agreement is reached, the parties determine the terms of the agreement, and the mediator documents these terms. The parties will be asked to sign the NDDPI *Mediation Agreement*. The district representative must have the authority to bind the school to the agreement. After signing, both parties will receive a copy of the agreement.

Note: A written, signed *Mediation Agreement* is enforceable in any State Court of competent jurisdiction or a United States District Court.

The agreement should be specific and should address the following:

- To what issue is the agreement tied
- How will it be implemented or carried out
- Who is responsible for carrying it out
- What are the associated timelines
- If services are to be rendered on a trial basis, what happens at the end of the trial period
- Specific "if/then" scenarios (if applicable)

Mediation Agreement: If mediation results in an agreement that would require changes to a student's IEP, the IEP team should convene a meeting as soon as possible. The team must incorporate the agreement elements that pertain to the student's IEP.

Not all mediation sessions result in agreements. If an agreement is not reached, the mediator will document that the mediation has been unsuccessful. If mediation is unsuccessful, alternative dispute options exist with the NDDPI.

If the mediation agreement specifies a time period and that time period has passed, a state complaint may be filed if the issues that were the subject of the mediation agreement recur or if new issues arise.

Recording: Recording mediation sessions is never allowed, and records of the proceedings will not be kept other than the written mediation agreement**.** The mediator's notes are confidential and not subject to disclosure, including by subpoena, unless allowed by law.

How is Mediation Requested?

To Request Mediation:

1) Call 701-328-2277 or go to the NDDPI website.
2) Click on "Education Program→ Special Education→ Special Education Dispute Resolution→ REQUEST FOR MEDIATION.
3) Both parties must sign the *Request for Mediation* form.
   (Each party can fill out the form separately or sign one together.)
4) Document the issues to discuss.
5) Email, mail, or fax forms to NDDPI.
6) The NDDPI will verify if the issues meet the requirements and send verification of receiving the request.

7) A qualified, impartial mediator will be assigned, and the mediator will notify the parties to set up a meeting.
8) If the issues do not meet the requirements, the NDDPI will notify both parties and offer additional resources or dispute options.

Mail, email, or fax the completed *Request for Mediation* Form to:

North Dakota Department of Public Instruction,
Office of Specially Designed Services
Attn: Director of Specially Designed Services
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Email: dpispecialed@nd.gov

Fax: 701-328-4149

Conclusion

Mediation in special education aims to provide an optional process to resolve conflicts, clarify issues, and encourage mutual problem-solving efforts between the parties. Even if the parties do not reach an agreement during the session(s), most mediations result in improved communication leading to better student outcomes.

Request for Mediation Form

REQUEST FOR MEDIATION

NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION
OFFICE OF SPECIAL EDUCATION
SFN 58601 (05/2025)

I/We request mediation in the in the matter of _____ (child/student's initials) to try to reach an agreement on some or all of the issues regarding educational services for the child/student. I/We have read and understand the written materials describing mediation services and have been fully informed of the following:

- The mediator does not provide the parent(s), the school district, or the child/student with legal representation.
- The mediator does not provide counseling or therapy services.
- The mediator is a neutral third party who will assist the group in developing an agreement that is mutually satisfactory.
- If an agreement is reached, the written and signed agreement may be shared with other individuals working with the child/student.
- The signed written agreement is considered legally-binding under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 04).
- Discussions during the mediation session will be held confidential and can not be used during subsequent proceedings pertaining to the child/student's case.
- The IEP team should reconvene to discuss components of the agreement that should be implemented in the student's IEP.

The following is a summary of the issue(s) that I/We would like to discuss in mediation: **(If more space is needed please include additional pages)**.

Please identify individuals who will accompany you to the mediation.

Name	Position/Relationship to student

Please identify other individuals that you would like to participate in this mediation.

Name	Position/Relationship to student

School (and District) Name	Address	City	State	ZIP Code
Name of School Administrator	Telephone	Email Address		

Parent/Guardian Name	Address	City	State	ZIP Code
Telephone	Cell phone or Email	Student Name	Student Date of Birth	

By signing this request, I agree to participate in mediation. Signature of Parent:	Date

By signing this request, I agree to participate in mediation. Signature of School Administrator:	Date

NOTE: NDDPI, Office of Specially Designed Services, will accept electronic signatures on this form.