

# Early Intervention & Special Education Mediation Projects

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# How it began

1997 reauthorization of IDEA— first formal introduction of mediation into IDEA law

Although several states provided options to mediate Special Education disputes prior to 1997..... The reauthorization

Mandated mediation under federal law for both IDEA, Parts B & C

# Early Intervention & Special Education Mediation Projects

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Law

Clinical Programs

Grants from

- Arkansas Department of Education

# Formal Mechanisms for Resolving Disputes

Facilitation

Mediation

State Complaint Procedures

Due Process hearings

Resolution Process

# How do they compare?

	State complaint	Due Process Hearing	ASEMP/FIEP/IFSP
<b>Who can request</b>	Any organization or individual	Parent, public agency, or the child 18 years old	Parent, public agency, or the child 18 years old
<b>Who decides</b>	State education agency officials	Impartial hearing officer	Mutually between parties
<b>Federal timeline</b>	60 calendar days	45 calendar days	14 days or less
<b>Financial cost</b>	No cost to parents or LEAs	Generally expensive for LEAs & for parents if they hire attorney	No cost to parents or LEAs
<b>Relative financial cost</b>	Generally much less expensive than due process hearings	Generally expensive, for cost of hearing officer & attorneys	Paid for by grant from Dept of Ed. Or Dept of DHS if EI case

**Mediation is 1 of 4  
Formal Mechanisms for  
Resolving Disputes**

# MEDIATION under IDEA

May be requested at any time

Mediation agreement is a legally binding agreement and is enforceable in state or federal court

Agreement is signed by both the parent and a representative of the lead agency who has the authority to bind such agency

Impartiality criteria for a mediator

Changes optional procedure to offer (not require) meeting to encourage mediation

Lead agency must select mediators on a random, rotational, or otherwise impartial basis

# Mediation

**Voluntary** and **Confidential** discussion in which a

**Trained** and **Impartial** third party

**Assists** the disputing parties in developing a

**Mutually Acceptable** solution without deciding the dispute.



# I thought you said it was confidential...

## Agreement Reached

Written, signed agreement specifies responsibilities of each party and becomes part of student's file.

Those with a need to know or who are involved in the IFSP or IEP will have access to the agreement.

# Whoa wait a minute-

## Exceptions to Confidentiality

Threat of harm to self or others

Child abuse or neglect — **not** previously reported

All parties give written consent

Communication is already public

Disclosure is required by statute

# The Agreement

Is legally binding and enforceable by any state court or federal district court

## If no Agreement

All discussions remain confidential & cannot be used in subsequent due process hearing or federal law suit.

# Now what was that about effects on Due Process Rights?

**NONE** —Mediation does not in any way deny or delay parents' rights to due process

Parents may request impartial hearing at any time before, during, or after mediation

# Guiding Principles

Honest Communication

Good Faith Effort

No One Dominates the Conversation

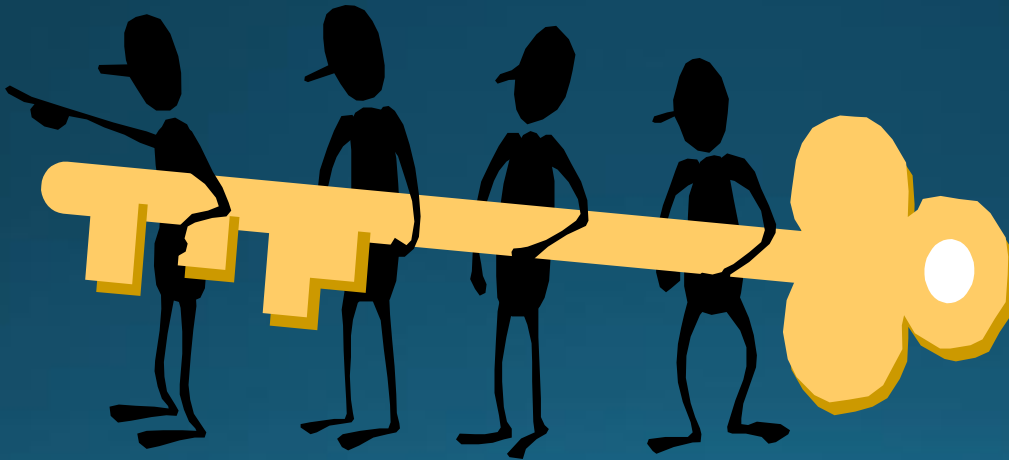
No Blame

Listen to Understand—Not to Find Fault

- Remember—understanding *doesn't mean* agreement but understanding is necessary to Problem Solving

# Mediation is...

*“guided negotiation”*



# Role of Mediator

Facilitate Open Communication

Maintain Integrity of the Process

Remain Impartial

Act as an Agent of Reality

Sift Information

Frame the Discussion

Validate Parties

★ **Goal: Empower the Parties** ★



# Can I trust that guy?

## Tell me about the Mediator

May not be employee of DHS or the Dept. of Education

May not have professional or personal interest that creates a conflict of interest or interferes with mediator's objectivity

# more about the Mediator

Trained professional, certified by the State of Arkansas in at least one area of mediation

Knowledgeable about IDEA law and regulations regarding early intervention and related services

# Responsibilities of All Participants

Participate & Provide Input

Express Wants Identify Needs

Identify Strengths

Assist in Information Development

Assist in Identifying Issues

Assist in Identifying Potential Solutions

Review Case Plans with Long-Term Perspective

# Preparing for Mediation

Gather appropriate documents

Make copies for the mediator and the other parties

Outline the issues you wish to discuss

Write out questions

Remain open to ideas which differ from yours

# Preparing for Mediation

Put aside personality conflicts

Think of what-

- You want from mediation
- You want from the other party
- The other party wants from the mediation
- The other party wants from you
- What you are willing to do

## Who Attends Early Intervention Mediation

Parents/guardians, service providers, and early intervention program personnel involved with the child

Someone from ADE with decision making authority-  
IF NEEDED

Parents may be accompanied by support persons

**Attorneys may not attend**

**The More The Merrier**

# Who Attends Special Education Mediation ?

Parents/guardians, teachers, and other interested persons with knowledge of the child.

Someone from with decision making authority (LEA)

Parents may be accompanied by support persons

Attorneys may not attend

**The More The Merrier**

# Great Odds

In most states, 85% of all  
Special Education Mediations  
reach an agreement  
.... ours is higher!

**PROGRAM FIDELITY**



	FIEP	MEDIATION
Objective	To improve process for developing the IEP	Help the parties negotiate a resolution to a defined dispute
Timing	Intervene when parties realize discussion will be difficult and complex; BEFORE any impasse is identified	Intervention is usually AFTER parties reach impasse
Method	Entire group stays together	Group stays together or works with a mediator in caucus
	Role of neutral to help with <i>meeting process</i>	Role of the neutral to help with <i>collaborative problem solving</i>
	Outcome: IEP developed or not	Outcome: written agreement
	Agenda driven	Issue driven
Focus	Conflict prevention	Conflict resolution
Length	1.5 hours allotment	3 hours allotment

# Differences-Similarities

Mediation	Facilitation
Usually positional	Hopefully not positional yet
Required by law	Not required by law
Attorneys may not attend	Attorneys may attend
Focuses on repairing relationships	Opportunity to grow relationships
Usually more complex	Misunderstandings and beginnings of trust concerns
Voluntary	Voluntary

# Communication Continuum

Cooperation	Coordination	Collaboration
		WHERE THE MAGIC HAPPENS
Short-term, informal relationships	Longer-term effort around a specific task	Ongoing, durable relationships
Sharing information	Some planning and division of roles	Commitment to a common goals
Separate goals, resources, and structures	Some shared resources, rewards, and risks	All partners contribute resources and share rewards

# Why would I mediate/facilitate?

Can help preserve the relationship

Can happen at any time during the relationship

An outside party does not impose a solution

Can talk about anything not just those issues that can go to a due process hearing

People tend to keep agreements that they create

# Meeting Preparation Worksheet

List the things you may agree on most easily.

List two realistic solutions to the problem that would work for you.

If you were another person, would these solutions work for you?

- If no, can you alter your solutions so they will work for the other person?

What are you willing to give the other person to get what you want?

What do you need from the other person to agree to give him/her what he/she wants?

What do you want your relationship to be like next month?

Six months from now?

# State Complaint Procedures

Eliminates option to have another agency investigate a complaint with subsequent lead agency review

Adds reference to compensatory services

Modifies filing deadline

Details content of complaint (including for child specific complaint, proposed resolution) and requires copy to public agency or EIS provider

Gives public agency/EIS provider opportunity to respond and at state discretion to offer a resolution

Adds option to extend timeline if parties agree to mediation

## Due Process Hearing

Retains state option to use either Part B or Part C process

Incorporates Part B procedures into Part C regulations with modifications including option of 30 or 45 day timeline

Under Part C process, extension of 30 day timeline can now be granted by hearing officer at request of either party

Requires copies of transcription, findings of fact, and decisions to be provided to parents at no cost

# Resolution Process

LEAs have 15 days to schedule a Resolution session after a request for Due Process.

If the school does not conduct the Resolution session within 15 days, the parent may request the hearing officer to begin the due process timelines.

If the school wants to conduct a Resolution session and the parent refuses to attend, after 30 days, the school may request that the complaint be dropped.

Both parties may agree in writing to waive the Resolution session and proceed to Due Process or *they may choose to go to mediation.*



# Questions?

# Arkansas Special Education Mediation Project

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