



ARIZONA DEPARTMENT OF  
**EDUCATION**

# Mediation Procedures

*Dispute Resolution*

## Guidelines for your Mediation Session

July 2023



## **What is Mediation?**

Mediation is a confidential problem-solving process that relies on a third party, a mediator, to facilitate effective communication while working toward a mutually agreeable solution. Mediation is voluntary and available to parents and public education agencies to resolve disputes before or after a due process hearing has been requested. It is also available for other disputes that may arise in the relationship between the family and school.

## **Some issues do not lend themselves to mediation, such as points of law, issues of compliance, or questions regarding the determination of a specific disability.**

Additionally, state-coordinated mediation is ONLY authorized to mediate issues regarding special education. Examples of issues that Dispute Resolution cannot mediate include issues of abuse, neglect, discrimination, retaliation, harassment, civil rights violations, employment matters, Section 504 plans, school policy matters, or anything not specifically related to special education.

## **Who Are the Mediators?**

Mediators are trained and experienced professionals provided to parents or public education agencies at no expense. **Mediators are neutral.** Their role is to assist the parties in coming to an acceptable resolution that meets the needs of the parties involved. Mediators are selected on a rotational basis. The Mediator will not participate in due process hearings or future legal proceedings. Nor will the mediator act as an enforcer of a mediation agreement. Mediators are not authorized to give legal advice, represent, or advocate for either party.

## **Who Attends the Mediation Session?**

There will generally be one mediator. The parents and the school or district may each have up to three people in attendance. At the discretion of the mediator, additional participants may be approved. There must be representation for each party with the authority to commit necessary resources and fulfill all terms of the agreement reached. If either party intends to have legal representation, prior notice must be provided. Family advisors or advocates may attend but the parent(s) will be asked to speak for themselves. Everyone will know in advance who will be participating in mediation.

## **How Long Does Mediation Take?**

Since every dispute is different, and some are more complex than others, there is no set time for completing mediation. The session may last up to eight hours, and it is recommended that participants set aside the entire day.

## **Where Is Mediation Held?**

Sessions are held at a location reasonably convenient and agreeable to both parties.

## **How to Prepare for Mediation?**

Prior to mediation, gather and organize relevant documents to which you might want to refer in the session. The Mediator may want to talk to each of the parties in advance of the mediation to discuss the dispute and the resolution priorities briefly. Recognize that the position you have taken and what you have tried before mediation did not resolve your concerns; consider different, realistic options that would be acceptable to reach an agreement.

## What to Expect at the Mediation Session?

### Introduction and Explanation

The Mediator may have held a pre-mediation call with each party to briefly discuss the dispute and the mediation process. In all instances the mediation session will begin with a review of the “Mediation Overview” document, which includes ground rules, the process, and confidentiality requirements. Since confidentiality is critical to the success of mediation, sessions may not be recorded, and individual notes will be destroyed at the conclusion of mediation.

**Under 34 CFR § 300.506(b)(8), discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under 34 CFR part 300. This requirement is automatic and may not be altered or modified by parties to mediation conducted under 34 CFR § 300.506. Further, this confidentiality requirement applies regardless of whether the parties resolve a dispute through the mediation process. If the parties resolve a dispute through the mediation process, they must execute a legally binding agreement that also includes a statement that all discussions that occurred during the mediation process will remain confidential. 34 CFR § 300.506(b)(6)(i).**

### Joint Sessions and Separate Caucuses

The Mediator will give each party the opportunity to discuss the concerns that should be addressed in a resolution. These discussions may occur in a joint session with all parties or in a separate, private caucus with the Mediator. The Mediator will ask questions, help to clarify the issues, and use other techniques to ensure that there is a shared understanding of the concerns that need to be addressed in an agreement. Information discussed during separate caucuses will only be shared with the other party with consent. There may be several caucuses and joint sessions for the purpose of exploring options for agreement.

### Recesses

The Mediator or either party may call a recess. This can be the next good time to reflect on the discussion and consider next steps.

### Conclusion of the Session

When an agreement is reached, the Mediator may assist the parties in expressing the settlement terms. The Mediator may then document the terms in an agreement for both parties. If attorneys are present, their customary settlement agreement may be used. If an agreement is not reached, the parties will sign a document to confirm that settlement efforts were unsuccessful.

### Evaluation

At the conclusion of the mediation the Mediator will provide the parties with an opportunity to provide feedback regarding the mediation process. The parties are encouraged to complete the evaluation and provide constructive feedback so that the mediation process can be improved. All information will be confidential.