

Special Education Mediation in Nevada

Frequently Asked Questions and Answers¹

1. What is Mediation?

“Mediation is an impartial system that brings the proper parties who have a dispute to confidentially discuss the disputed issues with a neutral third party with the goal of resolving the disputes in a binding written agreement.”(United States Department of Education, Office of Special Education Programs, Memorandum 01-5, 33 IDELR 247 (OSEP 2000))

Mediation, as utilized in special education, can be used to resolve disagreements between the parents² of a child with a disability or a child suspected of having a disability and the school district on any matter³ under the federal law, the Individuals with Disabilities Education Act, Part B (IDEA: 34 C.F.R Part 300, §300.506) and Nevada’s special education law and regulations (Nevada Administrative Code, NAC, Chapter 388, §388.305). The mediation system is implemented by the Nevada Department of Education.

Mediation is voluntary at every phase; that is, both the school district and the parent must agree to participate and, once mediation has begun, either one may end it at any time. Participation in mediation does not affect other legal rights under these special education laws and regulations, including the right to a due process hearing.

2. What are the Benefits of Mediation?

The focus in mediation is on collaboration and communication, with the emphasis on the student’s needs. Mediation provides a confidential environment for parents and school districts to talk openly about differences; clarify points of agreement and disagreement; explore creative solutions; and, regardless of the outcome, communication may be improved and trust rebuilt.⁴

Additional benefits:

- “Parents and educators jointly develop the final agreement rather than an outside individual.
- Parties work together, and they are in control of the outcome.

¹ The Nevada Department of Education acknowledges the excellent resources provided by the Consortium for Appropriate Dispute Resolution (CADRE) and relied upon in this document, including exemplars from the states with identified model mediation systems and practices:

<http://www.directionservice.org/cadre/exemplar/artifacts/MN-4%20Q&AmedAUG2012.pdf>

² The term ‘parent’ in this document includes any individual meeting the definition of parent under Nevada law, an adult student with a disability, or parent authorized to represent the educational interests of an adult student. (See NAC §388.071 and NRS §§388.492 and 388.493)

³ There are some exceptions with regard to the refusal of parental consent or absence of parental consent under the IDEA, 34 C.F.R. §300.300

⁴ Credit to New York State Dispute Resolution Association, <http://www.nysdra.org/consumer/specialeducation/specialeducation.aspx>

- Mutual agreements result in greater satisfaction for all parties.
- Mediation assists everyone to better understand differing points of view.
- Mediation may be less costly and disagreements are resolved more quickly than traditional litigation procedures.
- Written agreements resulting from mutual resolution frequently result in higher rates of compliance.”⁵

3. Who is the Neutral Third Party?

The neutral third party is an impartial mediator. The mediator is trained in effective mediation techniques, communication, negotiation, and problem-solving skills and is knowledgeable in the laws and regulations relating to the provision of special education and related services. Since the mediator must be impartial, the mediator may not be an employee of the school district and must not have a personal or professional conflict of interest. The mediator is appointed and paid for by the Nevada Department of Education. (34 C.F.R. §§ 300.506(c))

The mediator does not decide the dispute; take sides; or find that actions taken were right or wrong. The mediator’s role is to guide the process, encourage each participant to clearly communicate their concerns, help the parties find common ground and explore possible solutions. The mediator will not impose an agreement, but rather help the participants reach their own mutually agreeable resolution. If an agreement is reached, the mediator will assist with writing down the terms of the agreement.⁶

4. How will the mediator be selected for my mediation?

The Nevada Department of Education is responsible for maintaining a list of qualified mediators who are knowledgeable about the laws and regulations relating to the provision of special education and related services. The mediator for your mediation will be selected by the Department on a random, rotational, or other impartial basis. (34 C.F.R. §300.506(b)(2)—(4))

5. Who pays for mediation?

The Nevada Department of education is responsible for paying for the mediation process. (34 C.F.R. §300.506)

6. What is the Outcome of Mediation?

⁵ Special Education Mediation: A Guide for Parents Consortium for Appropriate Dispute Resolution (CADRE): <http://www.directionservice.org/cadre/pdf/ParentGuide.pdf>

⁶ Frequently asked Questions, CADRE: <http://www.directionservice.org/cadre/pdf/Frequently%20Asked%20Questions%20on%20Mediation.pdf>

Mediation may result in a complete agreement of the dispute; partial agreement of the dispute or no agreement. If mediation results in partial or no agreement, you may: 1) proceed with the due process hearing or state complaint investigation (if you initially requested one); 2) file a request for a due process hearing or a state complaint; or 3) seek some other way to resolve the dispute.

Mediation that does not result in a partial or complete agreement may still have the benefit of:

- Improving communication; and
- Clarifying the points of agreement as well as areas of continued disagreement;

7. What is in a mediation agreement?

A mediation agreement is a written document signed by the parent and the school district representative with authority to resolve the dispute and will include:

- The dispute the agreement covers;
- Who is agreeing to what, when, and how; and
- A statement of confidentiality.

8. How long does the mediation process take?

Each session in the mediation process must be scheduled in a timely manner. The parents involved in the dispute may not be denied the right to a hearing and the process of mediation must not be used to delay a hearing or to deny any other right afforded under the IDEA, Part B (34 C.F.R. §300.506(b); NAC, §388.305(2)).

The length of the mediation process will depend on a number of factors, including the type and complexity of issues, the availability of the parties, and the willingness of the parties to cooperate. Typically, there is only one mediation session and the session is completed in less than 6 hours. The mediator will discuss the amount of time to be set aside for the mediation session when it is scheduled.

9. Where will the mediation session be held?

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient and accessible to the parties to the dispute. (34 C.F.R. §300.506(b)(4)) If the mediation is after a due process hearing or a state complaint investigation has been requested, the timelines under those processes will control, unless an extension is granted by the Hearing Officer or, in the case of a state complaint, the parent and school district agree to extend the time to engage in mediation.

10. Who participates in the mediation? May parents or school districts bring attorneys to mediation meetings?

People attending must include someone who has the authority to make decisions and to commit the resources agreed upon as a result of the mediation - typically the parents and the school district's representative. The parents and the school district may also invite participants who they believe have important information about the issues and will be able to assist in the mediation. Typically, the number of participants is kept to a minimum (generally two persons accompanying each party) and is, preferably, balanced so that no side feels overwhelmed.

“Neither the IDEA statute nor the regulations state whether parties may be represented by attorneys or advocates at mediation meetings. However, the presence of an attorney for a public agency could contribute to a potentially adversarial atmosphere at a mediation meeting. The same is true about the presence of an attorney accompanying the parents at the mediation meeting. Even if the attorney possessed knowledge or special expertise regarding the child, an attorney's presence may have the potential for creating an adversarial atmosphere that may not necessarily be in the best interests of the child.”⁷

For this reason, the inclusion of advocates and attorneys in the mediation session is not encouraged. However, their presence is not prohibited. Due to the voluntary nature of mediation, both parties must be satisfied with the arrangements for conducting the mediation, including the participants to be in attendance at mediation. If a parent or the school district wishes to bring an individual to the mediation, including an advocate or an attorney, and the other party does not want the individual to attend, that party can elect not to proceed with mediation.

11. What occurs during the mediation session?

While each mediation is unique, generally, the mediation session consists of several stages:

- Introduction - The mediator explains his/her role; what will happen at mediation; the ground rules for the process, including the parties' agreement regarding the confidentiality of the process. The mediator will also respond to questions from the participants. If the parties did not sign an agreement to mediate before the mediation, the mediator will require that all parties read and sign the agreement to mediate. This agreement ensures the parties understand the mediation process and agree to the terms, including the confidentiality of the process.
- Sharing Points of View/Defining Issues - Each party will have an opportunity, without interruption to share their view of the dispute. These comments generally take no more than 15-20 minutes each. The mediator may ask questions to clarify or summarize parties' viewpoints.
- Caucus - At some point in the mediation, the mediator may meet with each party privately to clarify issues and/or to discuss possible solutions. This is called a caucus.
- Discussion of Options for Resolution - The mediator assists the parties to identify a wide range of possible resolutions and work together to find a way to resolve the dispute(s).

⁷ (Consortium for Appropriate Dispute Resolution (CADRE): Questions and Answers on Mediation: <http://www.directionservice.org/cadre/idea/qaonmediation.pdf>

- Agreement - If there is a partial or full agreement, the mediator assists the parties in preparing a Mediation Agreement with enough details so that the implementation of the Agreement will be clear. If the session does not result in an agreement or only partial agreement, the parties are free to pursue any of the options they had before they entered into mediation.

12. How should I prepare for a mediation session?⁸

Things to Do Before Mediation

1. Review information relating to the dispute so you are prepared on the important details concerning the child's education.
2. Think about how you can best describe the situation clearly and respectfully so that the other side can understand your point of view.
3. Determine what is important to you. From your perspective, what would be the best possible outcome? What would be an acceptable outcome?
4. Think about what the other side might want for an outcome. What might they accept?
5. Think about possible solutions and plan to share them during the mediation.
6. Think about what happens if you are unable to reach an agreement through mediation.

Things to Do in Mediation

1. When it is your turn, present the problem as you see it and what would you like to be different as clearly as you can. Avoid any language that could be perceived as blaming or putting down the other party.
2. Listen respectfully while the other side presents their information. Work to truly understand their perspective even though it may differ from your own. Remember, you do not have to accept the other side's point of view as the truth, only that it exists and is different from your own.
3. Try not to get bogged down in the past.
4. Keep an open mind and be willing to work with the other side to problem solve. There are usually multiple solutions to a problem.
5. Brainstorm with the other party for potential solutions that meet both of your interests. Evaluate them together until you reach a mutually acceptable solution.
6. Have realistic expectations regarding your case.
7. Be patient and stick to it.

13. May the parent or the school district use discussions held and offers made at the mediation in future proceedings?

⁸ Credit given to the Minnesota Department of Education - Minnesota Special Education Mediation Service as the source. See also CADRE for additional guidance:

<http://www.directionservice.org/cadre/exemplar/artifacts/Parent%20Guide%20-%20English.pdf>

No. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil court proceeding, even if the parties are unable to reach agreement through mediation. The agreement to mediate that the parents and the school district will be required to sign before mediation begins includes a confidentiality pledge.

14. How do I request mediation?

Since mediation is voluntary on the part of both the parent and the school district, ideally both parties will submit the request for mediation. A written request for mediation may be made to the Nevada Department of Education by a parent or the school district. There is a model form that may be used to request mediation on the Nevada Department of Education website at [_____](#). If only one party requests mediation, a mediator will not be appointed until the Department verifies that the other party agrees to participate in the mediation process.

15. You have not answered all of my questions. Where can I go for more information/help?

1. You may contact the Nevada Department of Education for additional information or access more information on the Nevada Department of Education web site: [_____](#).

Mediation Coordinator
Nevada Department of Education
Office of Special Education
700 East Fifth Street #113
Carson City, NV 89701
Voice: (775) 687-9123
Fax: (775) 687-9101

2. Other Resources:

Nevada:

Nevada PEP is a nonprofit organization that provides information, services and training to Nevada families of children with disabilities statewide. Nevada PEP is the designated Parent Training and Information Center funded by the United States Department of Education under the IDEA.

Nevada PEP: <http://www.nvpep.org/>
2101 S. Jones Blvd. Suite 120
Las Vegas, Nevada 89146
Phone: (702) 388-8899
Fax: (702) 388-2966
E-mail: pepinfo@nvpep.org

Satellite Office Reno/Sparks
4600 Kietzke Lane, I-202
Reno, Nevada 89502
Phone: (775) 448-9950
Fax: (775) 448-9603
Statewide: 1-800-216-5188

National Resources:

CADRE www.directionservice.org/cadre

Consortium for Appropriate Dispute Resolution in Special Education
P.O. Box 51360
Eugene, OR 97405-0906
(541) 686-5060 (voice) (541) 686-5063 (fax)

NICHCY www.nichcy.org

National Dissemination Center for Children with Disabilities
P.O. Box 1492
Washington, DC 20013-1492
800-695-0285 (voice/TTY)

The Alliance-www.taalliance.org

The Technical Assistance Alliance for Parent Centers c/o PACER Center
8161 Normandale Blvd.
Minneapolis, MN 55437-1044
888-248-0822 (voice) 952-838-0199 (fax)