

Keys to Success

All parties (parent, district representative, and mediator) agree:

- to cooperate,
- to be courteous and honest, and
- to share relevant information during the mediation process.

Please contact us for further assistance.

Parents Reaching Out
1920B Columbia Dr. SE
Albuquerque, NM 87106
1-505-247-0192 1-800-524-5176

NM PED Special Ed. Bureau
ADR Coordinator
120 South Federal Place
Room 206
Santa Fe, NM 87501
505-827-1457



Always remember your dreams for your child. They should guide the decisions you make!



Parents Reaching Out

Your One Stop Resource for a Stronger Family

Mediation

Strong partnerships between parents and schools are needed to develop successful programs for children. Effective partnerships involve building a relationship based on trust and respectful communication. Unfortunately, there are times when the partnership breaks down and conflict arises. There are many ways to resolve conflict, and, ideally, we want to solve problems without destroying relationships. Informal ways of resolving conflicts often work best, but sometimes more formal methods are needed. Mediation is a formal process that parents and school districts can use to resolve disputes.

Parents Reaching Out (PRO) and the New Mexico Public Education Department (NMPED), Special Education Bureau (SEB) have developed this brochure in order to answer your questions concerning the mediation process. Our hope is this information will help you decide if mediation is appropriate for your family, and, if it is, how to go about accessing this service. If you have further questions about mediation, please call the Parent Training Information Center at Parents Reaching Out or the NMPED SEB and ask to speak to the Alternative Dispute Resolution (ADR) Coordinator/Parent Liaison.

The Individuals with Disabilities Education Act (IDEA) requires states to establish and implement procedures for parents and the local education agency to resolve special education disputes through a process known as mediation. In New Mexico, this service is administered by the Special Education Bureau (SEB) of the New Mexico Public Education Department (NMPED).

What is Mediation?

Answer: NMAC 6.31.2.7 C (3) Definitions

“Mediation” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student’s Individualized Education Program (IEP) or other educational, non-IEP-related issues.

A mediator is impartial and does not make decisions or take sides, but assists the parties in reaching their own mutually agreeable solution. Mediation can be requested at any time if both parties agree. Discussions that occur during mediation sessions must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, though the mediated agreement itself is enforceable in court.

What are the statutory/legal requirements for mediation?



Answer: The NMPED refers to mediation three times in the regulations. 1. Third Party Intervention is available in the form of mediation to both parents and the public agency (school district) when there is disagreement between the parents and the public agency over a student’s IEP or educational program. The SEB will ensure that mediation is available to parents and the public agency who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. 2. Mediation will be offered by the SEB-NMPED if a state level complaint is filed against a school district. 3. Mediation will be offered to the parties if a due process hearing is requested.

The following are excerpts from the New Mexico administrative code; NMAC 6.31.2.13. H (3) (c) (i-vi) State complaint procedures

(c) Mediation requirements. If the parties choose to use mediation, the following requirements apply.

(i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

(ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student’s service providers of

their responsibilities under that agreement, and revise the student’s IEP accordingly.

(iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

(v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

PRO Note:

We use the terms “Third Party Assisted Intervention” and “Mediation” interchangeably.

When should mediation be requested?

Answer: You, as the parent, or the school district can request mediation at any time. Mediation will also be offered by the

NMPED SEB if a state level complaint is filed or a due process hearing is requested.

NMAC 6.31.2.13 G (2) (b) Conflict management and resolution

Third-party assisted intervention. The Special Education Bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:

- (i) is in writing;
- (ii) is submitted to the SEB;
- (iii) is a mutual request signed by both parties or their designated representatives; and
- (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level.

When should a third party assisted intervention be requested?

Answer: Any time there is a dispute or problem, even prior to filing a state-level complaint or a request for a due process hearing. The earlier the intervention is used in a dispute, the better the chance of not having the dispute escalate to a state-level complaint or a due process hearing. This will increase the possibility of maintaining the relationships that are needed for student success.

How is Mediation Different from an IEP Meeting?

Answer: Remember, mediation sessions are **not** IEP meetings and it is not likely the student's full IEP team will be at a mediation session. If the local education agency and the parents reach a written agreement through mediation on any IEP-related matters, **it will then be necessary to subsequently convene an IEP meeting to revise the student's IEP or develop an IEP Addendum to inform the student's service providers of their responsibilities under the mediated agreement.** This step is required by the NMPED's rules.

What issues can be covered during mediation?

Answer: Any item related to a child's education

How does the mediation process work?

Answer: Upon receiving a request for mediation (or third party assisted), the NM PED ADR Coordinator will contact the parent and the district by telephone to review and explain the mediation process, obtain permission to go forward with the process, determine who will be the district contact person for the process, and inform the parties of the name of the assigned Mediator. If one of the parties has a significant objection to the Mediator, an alternate Mediator may be selected by NMPED. The Mediator may only be selected by the NMPED, not by the parent or the school district.



Fast Facts

1. Mediation is voluntary for both parties. As long as both parties agree, mediation can be accessed at any time.
2. Mediation may not be used to delay or deny a parent's right to a due process hearing or to deny other rights guaranteed under IDEA.
3. Mediation must be conducted by a qualified and impartial mediator trained by the NMPED in effective mediation techniques. The mediator is appointed by the NMPED.
4. Either party can withdraw from mediation at any time (in writing).
5. Discussions that occur during mediation must be kept confidential by the mediator.
6. The mediation agreement must be signed by both the parent and a representative of the agency who has the authority to bind the agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States. If a mediated agreement involves IEP-related issues, the district will convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.
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A mediator has been assigned. What Happens Next?

Answer:

The Mediator will then contact the parties and schedule the mediation session to be held in a timely manner and in a location that is convenient for both parties.

The Mediator will also speak by telephone with both parties prior to the mediation session to clarify the issues, gather necessary information, and explain the mediation process.

The Mediator will work with the parties to determine who will be present during the mediation. In general, limiting the number of participants to a maximum of three individuals from the family and three from the local education agency usually works best.

What can I expect of the mediator?

Answer: A mediator assists parties in working out the problem by keeping communication lines open. The mediator gathers enough additional information from the two parties to be able to identify disputed issues. Communications with each party separately, or both parties together, will be continued until the problem can be resolved to their satisfaction. These communications may be conducted by telephone, e-mail, in writing, and/or face-to-face meetings.

A mediator must be impartial.

A mediator can:

- Talk to either party outside of scheduled meetings.
- Clarify what individuals say in a meeting.
- Help determine a mutually agreeable time and place for any meeting.
- Help generate options to solve issues.
- Clarify "common ground" areas between parties before mediation.
- Terminate the process if either party violates the terms of this agreement.
- Help build capacity between the district and family to build their relationship.

A mediator cannot:

- Represent either party in a due process hearing or court.
- Have their notes/records subpoenaed.
- Play the role of a therapist or attorney.
- Be a decision-making member of the IEP team.
- Advocate for either party.
- Conduct an IEP meeting.
- Use their influence to inhibit discussion points by parties.
- Dictate what can or cannot be discussed during the meeting. It is up to the district and the family to work together.

What Rights Do We Have If We Choose Mediation to Resolve Our Dispute?

Answer: *The information that you and the school share during mediation is confidential.* What you and the school say cannot be repeated during future administrative or court proceedings and your mediator cannot be called as a witness in future proceedings.

You have certain rights in the mediation process. You may:

Request mediation if you disagree with the school about your child's special education eligibility, program, placement, related services, evaluation, or any other issue;

Receive free services of a state-appointed mediator if the school agrees to mediation;

Bring a support person or advocate with you to meetings;

Give information at mediation meetings;

Use mediation (if the school agrees) either as the sole way of settling an argument or as the first step toward a due process hearing;

Have a written mediation agreement;

Have all that is said during mediation and the mediation agreement itself kept confidential;

End mediation at any time.

What can I do to prepare for mediation?

Answer: Review the PRO Publication, *The Handbook—Parental Rights & Special Education Procedures*. You may choose to view the handbook at www.parentsreachingout.org. Or, you may call Parents Reaching Out to request a copy. Pay special attention to the chapter, "Preparing for the IEP Meeting." There is no substitute for being well prepared for the meeting to make sure that all the issues as you see them are on the table and shared with the mediator.



What Happens if We Reach Agreement During Mediation?

Answer: The mediator will draft a legally binding written agreement (not an IEP) that describes the settlement reached by the parties. The parent and the representative of the local education agency who has authority to legally bind the agency will be asked to sign the agreement. The agreement is not imposed by the mediator. An IEP meeting will be scheduled to incorporate the mediated IEP items into the IEP. The parties tend to follow the terms of a mediated agreement because they participated in developing it, but, if necessary, such an agreement may be examined and enforced in state or U.S. district court.