

***If you need more
information***

about mediating conflicts that might arise over a child's special educational support, please contact:

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The department has prepared descriptive videotapes to provide additional information about how mediation may be used in special education settings. The videotapes are available from:

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**Preparing For
A
Special Education
Mediation
In Virginia**



*by
Art Stewart and the
Virginia Board for People with Disabilities*

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Introduction

As individuals prepare for a mediation, typically they have many questions. To facilitate preparation activities, the Virginia Department of Education requested Art Stewart, a coordinator for many years of a statewide special education mediation system, to identify those questions asked frequently by disputants and to formulate responses to them. Below, these frequently asked questions and their responses have been provided.

issues, encourages new thinking, and supports problem solving. The mediator does not make decisions for the parties, but supports their best thinking and search for solutions.



What is mediation in special education?

Mediation in special education is a process in which a mediator assists people in negotiating issues (e.g., levels of services) affecting a child with special needs. The mediator is a neutral, not an advocate for any parties involved. The mediation is voluntary, confidential, and informal. The mediator convenes and conducts the mediation procedure in a way that promotes joint exploration of

How do I request mediation?

Mediation will take place if parents and school staff agree to try it. Once that decision is made, the school must send a request for mediation to the Virginia Department of Education if both disputants wish the department to be the provider of mediation services. The department will assign a mediator, who will then contact the parties who made the request and schedule the mediation conference.

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Who is the mediator?

The mediator who contacts you is a neutral person who is trained in assisting people with negotiations. The mediator from the Virginia Department of Education is trained to help people work on special education issues and is paid by the department. You can expect the mediator to be unbiased and to treat people fairly and with respect. The mediator will convene the meeting and will take an active role in helping you to define the issues, to support and encourage productive thought, to promote discussion of alternatives, and to help you examine possible terms of agreement.

Will the mediator decide what should be done?

The mediator will assist you in choosing to reach your own agreement and in shaping that agreement. The mediator will not make any decisions about what anyone should do.



How is mediation different from a hearing?

Mediation brings in a neutral person to assist with the negotiations, leaving intact your role to shape, choose, and consent to any settlement made. Mediation is a voluntary and confidential process, conducted in an informal manner. It is focused on the needs of the child and the educational issues involved. The mediator takes an active role in bringing out issues, helping people to reexamine their own and others' ideas. New thinking and the development of new options are encouraged. The preparation for mediation is simple and the time and costs to parents and school staff are minimal. Cooperative problem solving is encouraged.

A hearing is designed to be a more formal, evidentiary

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process where parties provide testimony under oath to a hearing officer who then, as a judge, makes a decision about what happens next. The amount of time in preparing and conducting a hearing are reflected in higher costs to parties. Parties are cast in adversarial roles and the tension and hostility between them may escalate.



Do I need an advocate or lawyer at mediation?

You should be well informed about your legal rights and be confident about your ability to represent the interests of the involved child. It is not necessary for you to bring an advocate or attorney to the mediation. If you choose to do so, everyone involved should understand that you will be representing yourself, and they are present in an advisory role. The mediator will want to hear from you directly to bring out your point of view and to clarify your thinking and sense of acceptable outcomes.

When and where will the mediation take place?

When parents and school staff have mutually decided to try mediation and the school has notified the Virginia Department of Education, a mediator will be assigned by the department to schedule and convene a mediation session. The mediator will set a date, time, and place for the meeting with you and all concerned. The mediation will most often be conducted in your local public school, as it is most convenient for the parties. If you have specific concerns or needs about the setting, let the mediator know. A mediation session typically takes two to four hours to conduct.



Who should attend?

The school should bring enough people to the mediation session to provide someone who knows and has direct experience with the student, someone who knows the available programs in the area of the child's known or suspected needs, and someone who can commit the school to any promises or offers made.

A parent may bring anyone who helps him or her feel more comfortable at the meeting and anyone whose direct experience with or evaluation of the child may shed light on the discussion. The parent may request the school administrator to consider inviting any staff member to the meeting who has particular insight into the child's needs.

How should I prepare for mediation?

Make whatever practical arrangements are needed to be able to attend the mediation session without unwanted distraction or interruption.

Be sure that everyone planning to attend has copies of any new information (e.g., testing results) about the child before the day of the mediation. This will provide an opportunity for everyone to give the information the attention it deserves and will give them time to consider its impact and to think about the questions it raises before you meet. Surprises are unwelcome in productive negotiations.

The mediator will want to start by focusing the discussion on the student. Everyone at the meeting will have experiences with and concerns about the student. Developing a description of who the student is, what his or her interests are, what he or she can do independently, and where support is needed

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is a good place to start and forms the basis for the rest of the discussion. What can you contribute to this that will help people to better understand who the student is?

The federal special education law, for the past 25 years, has had at its core the concept that a child's needs for support through special education would best be met if the decision making was not the product of a single individual or expert, but was a result of the consensus of a team that shared different roles in the student's life. This reliance on consensual planning emphasizes the necessity for negotiations among its members. We need to recognize that we are cast into negotiator roles as we work with each other. What is the goal of a negotiator? To influence and inform each other in order to pro-



ceed to a stage where promises and commitments may be exchanged.

It is important to recognize that you have created a new opportunity for understanding by inviting the mediator into your negotiations. Having a new person present who is not affiliated with anyone and who has not participated in the negotiations brings a fresh perspective to the mediation procedure. You may hear each other differently. You may uncover new understanding that leads to new possibilities. The mediator may encourage a line of thinking that leads you to examine options that had not been considered. To take full advantage of these opportunities, it is important to enter the mediation session with an open mind and the willingness to listen rather than to enter focused on only one single outcome as acceptable.

Bear in mind that students, like other people, are different in different settings. What someone else at the meeting says that differs sharply from your own obser-



vations may offer important clues about changes in the student's program. The contrast may not be a contradiction, but a revelation.

What may bring you into mediation is a history of difficult negotiations with other members of the planning team. In these cases, relationships are often frayed. To be at your best during the mediated negotiation, you need to be neither defensive nor accusatory. If you're having difficulty taking a balanced view of the negotiations, let the mediator know during a private session. The mediator will be familiar with the circumstances and may be helpful to you.

A unique feature of mediation is that it is a free-ranging discussion in a confidential setting. Additionally, the mediator may meet privately with parties for further discussion. This

creates an opportunity for people to share comments and observations with the mediator in an unguarded manner, which they may later conclude can shape the negotiation in an important way. Bearing this in mind, it is to your advantage to be completely open and direct in your comments to the mediator.

Keeping your basic objective in mind in these negotiations is important. In some ways, you are informing the mediator about the considerations you regard as important. However, your primary objective is to inform and influence other members of the team while being informed and influenced by them. Anything you do that makes them more receptive will promote that objective.

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What happens at a mediation?

Each session will be different, based on the mediator's assessment of what is helpful and necessary, but all sessions will have the following elements in common:

- An introduction**, which describes the format, roles, and goals of the process;
- Definition of the issues**, as the mediator elicits the chief concerns of the parties, usually focussing first on a description of the child;
- Processing issues**, as the mediator asks questions that expand on the thinking behind the conclusions people have reached;
- Exploring options**, as the mediator asks parties to examine possible outcomes before evaluating them;
- Closure**, or assessment of options that reveal agreement or honest disagreement.



What happens if we don't reach agreement?

Sometimes there is a need to develop more information by visiting programs or conducting an evaluation before completing the negotiations. The mediation is usually reconvened after these steps have been completed. On other occasions, despite their best efforts, people are not close to agreeing on the key issues facing them. In this event, they may elect to request a hearing or accept things as they are. They may decide to continue negotiations with each other. Often, mediation has clarified or focused the discussion in a way that encourages an agreement after people have left the meeting. This happens often enough to make it a good practice to leave the door open for further discussion.

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How can mediation be helpful to people working on issues in special education?

Assistance in negotiations may uncover options that people haven't explored jointly which may be attractive to each of them.

The mediator's questions may encourage new thought, elicit new options, and provide a format in which people communicate with each other differently, and reach a different outcome than that resulting from previous team negotiations.

People are encouraged to explore the reasons behind their conclusions and re-evaluate their thinking.

The discussion is re-focused on the needs of the student.

Mediation provides a structured, problem-solving approach, that is easily understood and used.



SPECIAL EDUCATION MEDIATION KEY POINTS

KEY POINTS

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For mediation to be effective, be prepared to:

- ☞ use this opportunity to take a fresh look at the issues and possible outcomes;
- ☞ focus on the child's special needs and how they affect his or her education;
- ☞ share any conclusions you may have reached, as well as your observations and concerns;
- ☞ hear new information regarding the child even though it may differ from your own experience;
- ☞ consider new options which may not have been considered before.

You can expect the mediator to:

- ☞ help you to talk about your concerns in a confidential setting;
- ☞ manage the meeting and assist in the negotiations;
- ☞ listen to everyone carefully without taking sides;
- ☞ encourage everyone to take a fresh look at the issues;
- ☞ help you to identify jointly the issues to work on;
- ☞ explore areas of possible agreement but not make decisions about what anyone must do.