



*THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH CAROLINA*

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## **FACT SHEET**

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### **MEDIATION: AN ALTERNATIVE TO DUE PROCESS**

When a parent and school district disagree in an Individualized Education Plan (IEP) meeting, many people immediately consider going to a due process hearing. However, mediation is another way of dealing with a disagreement between the school district and the parent. Parents may want to try this less formal method before asking for a due process hearing.

#### **MEDIATION**

- Is a specific, informal, problem-solving process that can assist parents of children with disabilities to solve disagreements with the school district about the education of their children;
- Is voluntary and can be used only if both parties—parents or guardians and school—agree to use it and agree to the decision;
- Is confidential;
- Uses a mediator to guide the persons involved toward a solution to a problem which is satisfactory to everyone;
- Is free, unless the parent wants to pay an attorney, advisor, or consultant to participate in the process;
- Must not interfere with either the right to a due process hearing or with due process timelines;
- Is not required before holding a due process hearing;
- May be requested or ended by either person at any point in the process; and

#### **THE ROLE OF THE MEDIATOR**

The mediator is not a judge who makes a decision for the parties. Instead, the mediator helps you and the school district solve the problem between you and will

prepare written documentation of any agreements reached. During the discussions, the mediator will do the following:

- Listen carefully and ask questions to make issues clear;
- Require that all persons treat each other courteously;
- Encourage creative problem solving; and
- Encourage both parties to make a good faith effort to reach an equally satisfying agreement that is in the best interest of the student with the disability.

### **THE MEDIATION PROCESS**

- If you want to try mediation, call or write your special education coordinator.
- If the district agrees to mediation, you will be asked to sign a "Request for Mediation Form."
- The mediator will be selected on a random basis, or you will have the opportunity to have input into the choice of the mediator. All mediators are trained and certified by the State Department of Education.
- The mediator will contact you to set the date, time and location for the mediation session and to ask whom you want to participate in the session. You can bring an attorney, advocate, consultant, or advisor/friend to the session. The mediator can answer any questions you have about mediation, so be sure and ask.
- The mediation session generally lasts several hours, but you need to be prepared to stay all day if necessary.
- Sometime during the session, the mediator will meet separately with both of you. You may present sensitive material to the mediator at that time.
- If mediation is successful, the decisions made will be written into an agreement by the mediator, signed by both parties, and may be in the format of a proposed IEP for the child. A signed written mediation agreement is legally enforceable.

### **SUGGESTIONS FOR SUCCESSFUL MEDIATION**

- Try mediation when you and the district cannot agree on a specific problem or two, like what specific assistive technology device your child will use or whether or not the device can be taken home; mediation should not be used if you have lots of unresolved issues.
- When the mediator calls to set up a date for the mediation session, ask what materials you need to provide ahead of time.
- Be clear about exactly what the disagreement is and what you propose as a solution.
- Mediators often begin by asking the parents to explain why they have asked for mediation so think carefully about what you want to say. Notes are often helpful to remind you of points you might otherwise forget.
- Knowing that you and the school have already disagreed on what you see as the "ideal" solution, develop a list of alternative solutions that you might be willing to

accept—**but don't offer these alternatives until you're absolutely sure the district will not agree to your preferred solution.**

- Think about what you might accept as a temporary solution to the disagreement if you know that together, you and the school can agree to work toward a better, more permanent solution.
- Remember to focus on the needs of your child and what's appropriate for him or her.
- Be willing to give a little if the school is willing to do the same.
- Don't threaten. They know and you know that you can take other action.
- Don't bring up past disagreements. Mediation is about trying to move forward.
- In your mind, set a bottom line. However, be willing to consider other options, especially if they are not harmful to your child.
- Remember that, in general, teachers and administrators went into the education business because they like children and want to help them.
- Remember that you and your child are probably going to be in this school district for some time to come. Honest disagreements and discussions are normal. Finding fault, fixing blame, and making accusations will sidetrack the mediation process.

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