

FREQUENTLY ASKED QUESTIONS

IDEA Mediation

1. What is IDEA mediation?

Mediation is one of three formal dispute resolution options offered by the Montana Office of Public Instruction (OPI), also known as the State Educational Agency (SEA), to resolve disputes at the local level in an informal setting. Mediation is a free, voluntary dispute resolution process the Individuals with Disabilities Education Act ([IDEA](#)) requires the OPI to offer for parents, school districts, and public agencies providing education to children with disabilities.¹ The goal of mediation is for the parties to resolve a dispute and execute a signed, legally enforceable written agreement representative of the resolution.²

2. Who can be a party to a mediation?

IDEA mediation is only available to parents and public agencies. Public agencies include the Local Educational Agency (LEA), also known as a school district, the SEA, Educational Service Agencies (ESAs), or other public agencies that have responsibility for the education of children with disabilities.³

3. Who is considered a parent?

Under the IDEA, the term “parent” means:

1. a biological or adoptive parent of a student;
2. a foster parent;
3. a guardian, generally authorized to act as the student’s parent or authorized to make educational decisions (but not an employee of the state if the student is a ward of the state);
4. a person acting in the place of a biological or adoptive parent, such as a grandparent or stepparent with whom the student lives (such as a caretaker relative) or a person legally responsible for the child’s welfare; or
5. a surrogate parent who has been appointed in accordance with 34 CFR 300.519 and 20-7-461 MCA.

¹ 34 Code of Federal Regulations (CFR) 300.506(a). See generally, Administrative Rules of Montana (ARM) 10.16.3506, Voluntary Mediation. ARM 10.15.3506(6) requires Montana special education mediation must comply with 34 CFR 300.506.

² Office of Special Education Programs (OSEP), *Letter to Anonymous*, regarding whether a parent may be required to sign a confidentiality agreement in order to participate in mediation (July 31, 2020), pp. 2-3; OSEP Memorandum, *Dispute Resolution Procedures Under Part B of the IDEA*, Question A-1 (July 23, 2013) p. 1.

³ 34 CFR 300.28(a) and (b) and 300.33.

The biological or adoptive parent, when attempting to act as a parent under IDEA or when more than one party is qualified, is presumed to be the parent, unless such parent does not have legal authority to make educational decisions.

A foster parent may act as a parent under IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a) is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student.

However, if a judicial decree or order identifies a specific person or persons under 1-4 above to act as the parent, then that person shall be determined to be the "parent" for IDEA special education purposes. A judicial order which identifies only an agency or organization is not sufficient to allow any representative of that agency/organization to act as the parent.⁴

4. Is mediation mandatory?

No. Mediation is voluntary. Both parties to the dispute must agree in writing to participate in mediation.⁵ If one party refuses to participate, the mediation will not occur.

5. Who pays for the costs of the mediation?

The OPI pays for the costs of OPI's IDEA mediation process, which includes the fee of the OPI mediator. The OPI is not responsible for and will not pay the fees of a party's advocate or attorney.⁶

6. When can mediation be requested?

A parent or a public agency may request mediation any time there is disagreement about special education for a student who might be eligible for or is receiving IDEA special education services. Parties who are already involved in a [due process complaint](#) or [IDEA state complaint](#) may request mediation any time during those processes.

7. What types of disputes can and cannot be mediated?

Any dispute involving any matter under Part B of the IDEA or implementing Montana Law, including matters arising prior to the filing of a due process complaint and matters that could not be the subject of a due process complaint.⁷

There are limited situations where mediation is not available. If a parent fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency may not use mediation in order to try and obtain

⁴ 34 CFR 300.30 and 300.519; MCA 20-5-501 through 503; MCA 20-7-461; ARM 10.16.3504.

⁵ 34 CFR 300.506(b)(1)(i); ARM 10.16.3506.

⁶ 34 CFR 300.506(b)(4).

⁷ 34 CFR 300.506(a).

agreement.⁸ Nor can mediation be used when a parent revokes consent in writing for the continued provision of special education and related services.⁹ Mediation cannot be used to deny or delay a parent's right to a hearing on the parent's due process complaint or to deny any other rights afforded under Part B of the IDEA.¹⁰

There are limited circumstances in which a parent of a parentally placed private school student can request IDEA mediation from the OPI. A parent of a parentally placed private school student may only request mediation about the requirements relating to identification or evaluation of a student with a disability. A parent of a parentally placed private school student may not request mediation about the provision of the services indicated on the student's private school services plan.¹¹

8. How do I request mediation?

A request for mediation must be signed by all parties and sent to the Dispute Resolution Office, Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana, 59620. The request for mediation does not have to be on any specific form. However, OPI's [Mediation Request Form](#) is available to assist with the process. If a party needs assistance in completing the form, please contact the Dispute Resolution Office at (406) 444-2046.

9. When is a request for mediation considered received by the Dispute Resolution Office?

The request will be considered received on the date it is received by the Dispute Resolution Office.¹² If only one party has signed the request for mediation, the request will be found deficit and will not be considered received by the OPI, until both parties have requested the mediation in writing or both parties have signed a request for mediation form. A request for mediation cannot be submitted by phone or electronically.

10. Is an advocate or attorney required for mediation?

No. The IDEA does not address whether attorneys or advocates should be permitted to participate in mediation. Montana does not exclude advocates or attorneys from participating in IDEA mediation.

11. Who is the mediator?

The mediator is a qualified and impartial mediator who is trained in effective mediation techniques.¹³ The impartial mediator works with the parties to clarify issues, resolve conflicts, and reach an agreement between the parties. Because the mediator is required

⁸ 34 CFR 300.300(b)(3)(i).

⁹ ARM 10.16.3506(2); 34 CFR 300.300(b)(4)(ii).

¹⁰ 34 CFR 300.506(b)(1)(ii).

¹¹ 34 CFR 300.140(a)(1).

¹² ARM 10.16.3506(1).

¹³ 34 CFR 300.506(b)(3)(i).

to be impartial, this means the mediator may not be an employee of the OPI or the public agency (such as the school district) that is involved in the education or care of the student and must not have a personal or professional interest that conflicts with the person's objectivity.¹⁴

12. How is the mediator selected?

The OPI maintains a list of qualified mediators who are knowledgeable in laws and regulations relating to special education and related services. Prior to submitting a request for mediation, the parties may contact the Dispute Resolution Office for the list of mediators and may mutually agree to any qualified mediator whose name is included on the list maintained by the Superintendent of Public Instruction.

If the parties do not include the name of an OPI mediator, the Superintendent of Public Instruction will mail the parties the names of three mediators from the list of OPI qualified mediators. Upon receipt of the list, parties shall have three business days to review the list and prioritize their selection and return the list to the Superintendent of Public Instruction. If the parties do not reach a mutually agreeable choice, the Superintendent of Public Instruction shall appoint a mediator from the list sent to the parties.¹⁵

13. Who can attend the mediation?

Parents and public agencies may invite any participants they believe will assist in the mediation. A parent may choose to have the student present for all or part of the mediation, depending on the student's age and maturity.

14. Where can a mediation session occur?

The mediation must be held in a location that is convenient to the parties to the dispute.¹⁶ This could include mediation over a virtual platform.

15. How long does the mediation take?

The mediator shall schedule the mediation session in a timely manner but no later than 30 days from the date the request for mediation is received by the Dispute Resolution Office.¹⁷ The IDEA and Montana law do not address the timing of the mediation process. Mediation is intended to facilitate prompt resolution. The length of the mediation session itself will depend on the complexity of the issues, availability of the parties, the willingness of the parties to cooperate, and the individual techniques of the mediator. Mediation cannot affect the timelines for due process or state complaints, unless the parties agree to an extension.¹⁸

¹⁴ 34 CFR 300.506(c)(1).

¹⁵ ARM 10.16.3506(4).

¹⁶ 34 CFR 300.506(b)(5).

¹⁷ 34 CFR 300.506(b)(5); ARM 10.16.3506(5).

¹⁸ 34 CFR 300.510 and 300.515; 34 CFR 300.152(b)(1)(ii); OSEP Memorandum, *Dispute Resolution Procedures Under Part B of the IDEA*, Question A-10 (July 23, 2013) p.7-8.

16. Are the parties to a mediation required to sign a confidentiality pledge or agreement prior to, or as a precondition, to the commencement of the mediation process?

No. There is nothing in the IDEA to prevent States from allowing parties to sign a confidentiality pledge or confidentiality agreement; however, the signing of such pledge or agreement cannot be a condition of participation in mediation.¹⁹

17. Are discussions that occur during a mediation confidential?

Yes. Under the IDEA, all discussions that occurred during the mediation process are to remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.²⁰

18. Are mediation agreements enforceable?

Yes. Signed, written mediation agreements are legally binding and enforceable in state or federal court.

19. Does the OPI enforce the mediation agreement?

No. The OPI will not enforce the mediation agreement. Since the written agreement is legally binding, if one party is not complying with the terms of the agreement, a party could seek enforcement in state or federal court.²¹

20. Can I withdraw my request for mediation if I change my mind about participating in mediation?

Yes. Mediation is a voluntary dispute resolution option. If you decide you no longer want to try to resolve the dispute through mediation, you can withdraw at anytime.

If you wish to withdraw prior to the time OPI appoints a mediator, submit a signed statement to the OPI Dispute Resolution Office and the other party indicating your intent to withdraw. Parties do not need to provide a reason for their decision.

If a mediator has already been appointed, then you would notify the mediator of your intent to no longer participate in the mediation.

¹⁹ OSEP, *Letter to Anonymous* regarding whether a parent may be required to sign a confidentiality agreement in order to participate in mediation (July 31, 2020) p. 2-3.

²⁰ *Id.* 34 CFR 300.506(b)(6) and (8).

²¹ 34 CFR 300.506(b)(7).

21. What if the parties do not reach a resolution and sign an agreement?

If the parties do not reach a resolution and sign an agreement, the other IDEA dispute resolution options are still available. Those options include a facilitated IEP meeting, an IDEA state complaint, or a due process complaint. See a comparison chart of the different options at [Montana's IDEA Special Education Dispute Resolution Options](#).

22. What are the advantages and disadvantages of using mediation versus other dispute resolution options?

Mediation allows the parties to reach an agreement conveniently, efficiently and effectively through the assistance of a neutral, impartial mediator. It is a more individualized approach in resolving a dispute and negotiating an agreement and is not adversarial. During mediation, the individuals that know the student best have input into the remedies that will help resolve the dispute. Unlike a due process complaint, which might take several months, a mediation generally occurs in less than two months once the request is received.²² Mediation might be an effective way to resolve a dispute, prior to filing a due process complaint. If a state complaint is involved, mediation might also be helpful in resolving the complaint.²³

An agreement is not a guaranteed outcome of a mediation, but often parties have productive discussions and reach some middle ground on differences each had prior to the mediation process. Depending on the complexity of the issues being mediated, more than one mediation session may be necessary. Mediation is paid for by the OPI. There is no cost to the parties for the mediation process when using an OPI mediator.

23. What resources are available to assist with questions about the mediation process?

More information about mediation can be found on the OPI Dispute Resolution webpage for [mediation](#) or by calling the OPI Dispute resolution office at (406) 444-2046.

The Montana Empowerment Center (MEC), Montana's Parent and Training Information Center (PTI), is available to assist with questions about special education in general but does not provide legal advice or legal representation. More information about MEC can be found at www.mtempowermentcenter.org or by calling 1-877-870-1190.

[Disability Rights Montana \(DRM\)](#), Montana's federally mandated protection and advocacy system, is another resource for parents and can be contacted by calling 1-800-245-4743 or emailing [request for service](#). In some situations, Disability Rights Montana may provide legal advice or legal representation.

The footnotes in this document contain citations to the relevant legal authority. Links to the special education laws referenced may be found [here](#).

The OPI makes reasonable accommodations for persons with disabilities. If you need an alternative accessible format of notices or final report or have questions about accessibility, please contact the Dispute Resolution Office at (406) 444-2046

²² ARM 10.16.3508 through 3523.

²³ 34 CFR 300.151 through 153; ARM 10.16.3660 through 3662.