



SECTION 8

Legal Resources

- Red Flags
- Dispute Resolution
- Mediation Questions/Answers
- Resource List
- Notice of Conciliation Conference
- Summary of Conciliation
- Parent Request for Due Process Hearing

Red Flags to Call For Help

When:

1. A written objection is received from a parent related to a formal proposal for evaluation or placement.
2. A parent communicates that the school district is not meeting the needs of the student and they are seeking a private service provider.
3. Parents request an independent assessment.
4. Parents state they plan on bringing an attorney to a meeting.
5. A letter from an attorney is received.
6. Parent threatens to file a complaint with MDE.
7. Parent wants information for the purpose of a custody study.
8. Parent requests conciliation, mediation, or a due process hearing.
9. A subpoena is received.
10. A placement outside the district is being considered.
11. Student is suspended from school.
12. Police are called to remove a student with an IEP from school.

Contact:

Designs for Learning
Tammy Pulver, Director of Special Education
651.255.8838 or 612.356.6593

SPECIAL EDUCATION DISPUTE RESOLUTION

The purpose of this document is to explain to the reader the process that is available to parents and the school districts to resolve a disagreement over a special education issue. There are a number of ways disagreements can be resolved, varying significantly in degrees of formality. The following is a list of forum in which disagreement between parents and school district can be resolved beginning with the least formal.

IEP MEETING

The IEP meeting is a team meeting that promotes open dialogue among all members including parents, school staff and learners. Any member can disagree with a proposal on the table and feel comfortable doing so. No one member carries more decision making power than another. It is ultimately the responsibility of the school district to ensure that the learner receives a “free appropriate public education” (FAPE). The IEP meeting is a free exchange of information following an established process that leads the team to a mutually agreed upon plan.

FACILITATED IEP MEETING

What is a facilitated IEP meeting?

A facilitated IEP meeting is an IEP meeting that includes a neutral facilitator who promotes effective communication and assists an IEP team in developing an acceptable IEP. The facilitator keeps the team focused on the proper development of the IEP, while addressing conflicts that arise.

When can parents and school districts request a facilitator?

When the IEP team process has been difficult or ineffective at developing an IEP acceptable to the parents and school district, either party may seek to use a facilitator. A facilitator is used to improve communication within the team and help the team resolve conflicts that arise.

A facilitator is not used to resolve disputes unrelated to the IEP or to attend an IEP meeting that does not include all of the minimally required team members pursuant to 34 C.F.R. § 300.344.

Who is the facilitator?

Facilitators are individuals on the roster of the Minnesota Special Education Mediation Service (MNSEMS) who have experience and training in IEP development and conflict resolution. The facilitator is not a decision maker, but models effective communication skills and offers ways to address and resolve conflict. They are neutral and do not represent the parent, the school district or the state.

How is a facilitated IEP meeting different from mediation?

The purpose of a facilitated IEP meeting is to develop an acceptable IEP and involves the required IEP team members, in addition to the facilitator. Mediation may deal with a broad range of issues and involves a balanced number of participants which may or may not include a complete IEP team.

Where and when is a facilitated IEP meeting held?

Similar to any IEP meeting, a facilitated IEP meeting is scheduled by the district and is held at a time and place mutually agreed to by the parent and the district. The district must give proper notice to the parent including the purpose, the time, and the place where the meeting will occur and who will attend. Just as in any IEP meeting, parents can bring an advocate or other people in at their discretion.

How long does the facilitated IEP meeting take?

A facilitated IEP meeting may take longer than a typical IEP meeting but the scheduled time should not exceed four hours. A facilitated IEP meeting can always be reconvened if consensus on the IEP is not reached at the first meeting.

Who pays for the service?

A facilitator is provided by the State of Minnesota at no cost to the school district or the parent.

How do I request a facilitator?

To request a facilitator, the parties must complete and sign the *Request for Facilitated IEP Meeting* form. Once all parties agree to participate in this **voluntary** process, MNSEMS staff will schedule a facilitator within 5-7 days. An attempt to convene a facilitated IEP meeting **cannot be used to deny or delay a parent's right to a due process hearing.**

For more information:

For more information about the facilitated IEP meeting process and the Minnesota Special Education Mediation Service contact your supervisor or:

*Patricia McGinnis, MNSEMS Coordinator
Minnesota Alternative Dispute Resolution
340 Centennial Building
St. Paul, MN 55155
Telephone: 651-297-4635
FAX: 651-282-6396*

For TTY communication, contact the Minnesota Relay Service at 800-627-3529.

CONCILIATION CONFERENCE

A conciliation conference takes place whenever parent/guardian objects in writing to any proposed action of district related to special education evaluation or programming.

Purpose:

To provide school districts and parents a forum to resolve disputes without imposing on the parties the burden of proceeding to a due process hearing, as long as it is mutually agreed upon.

One or more conciliation conferences may be held for the purpose of arriving at a mutually agreeable resolution in an informal setting similar to the IEP meeting.

Sample documentation is provided later in this section.

Timeline:

Conciliation conference will be held within 10 calendar days of receipt of objection.

Written Documentation:

Written memorandum within 5 calendar days of final conciliation conference.

MEDIATION

The Minnesota Department of Education has provided a vehicle to resolve disputes between a school district and parents that is more formal than conciliation, but less than a due process hearing. **The district must offer to mediate, at least when a due process hearing is requested.** The Office of Dispute Resolution offers, at no charge, access to a professionally trained mediator to work with parents and school districts at a neutral site. A process is used that is user friendly and allows for a free flowing dialogue under a structure that is intended to bring the parties to a common agreement. This is strictly voluntary, both parties must agree and mediation cannot prevent the parent from accessing a due process hearing. If an agreement is reached, additional mediation sessions can be held if the parties feel agreement can be reached. The discussion at the mediation is confidential and the mediator cannot be subpoenaed to a hearing. See next pages of this section for more information about mediation

DUE PROCESS HEARING

This is a formal process to resolve a dispute. It usually is costly and may be in nature adversarial. Generally, court room etiquette is followed and both parties are represented by counsel. Evidence, exhibits, and testimony are introduced, and the decision is rendered by an Administrative Law Judge (ALJ). The decision of ALJ is final unless there is an appeal. Appeals can be made to the Commissioner of Education and then to district court. If the parent is the prevailing party, the school district can be liable for attorney fees, in addition to other judgments rendered (see General Directions to complete *Parent Request for Due Process Hearing* form).

Should you receive a written request for due process hearing, contact your principal and Special Education Director immediately. Some first procedural steps will include:

1. Acknowledgement of parent's request,
2. Sending parent/guardian *written Notice of Rights and Procedures Relative to Hearing*,
3. Appointment of Hearing Officer by Commissioner within 4 business days,
4. Sending written notice of time, date, place of hearing at least 10 days in advance.
5. The hearing will occur within 30 days after the written request.

MINNESOTA SPECIAL EDUCATION MEDIATION SERVICE

What is Special Education Mediation?

Mediation is a method of settling disagreements among parents, schools and agency personnel about a learner's special education needs. It is conducted by a specially trained neutral third party, called a mediator. The mediator has no decision-making authority but acts as a facilitator to help the parties reach a settlement they can all agree to.

Mediation is less formal than a parent/school conciliation conference or a due process hearing. The atmosphere of mediation promotes open communication between all participants. It helps everyone to better understand different points of view and work together to explore options that result in a mutually satisfactory agreement.

Mediation does not affect the right to a conciliation conference or a due process hearing. Parties retain the right to seek or continue either process whether or not an agreement is reached in mediation.

Who Can Use Mediation?

1. parents / guardians
2. students
3. school administrators
4. teachers
5. school personnel
6. advocacy groups
7. educational services and funding agencies
8. learners birth through age 21

Why Use Mediation?

Mediated agreements are a highly successful way of solving problems because people are more satisfied with and follow through better on agreements they help create. The parties have control over the outcome. The terms of an agreement are settled by the parties, not by someone else.

Participation in mediation is voluntary. By agreeing to participate in mediation, parties have indicated an willingness to work together to resolve their dispute. Using this process makes it easier to work together to address new problems that might arise in the future.

Mediation is timely and accessible. A mediation meeting can be set up within fifteen days of a request and will be held in a convenient location. Most mediation meetings are concluded in a three to five hour meeting.

The mediation process is confidential. Information shared by either party during the mediation will not be given to anyone else without their permission.

There is currently no direct cost to the parties for the mediation services. Mediator fees are paid by the Department of Education

What Types of Disputes Can Be Handled by Mediation?

Mediation may be used to resolve the same issues that can be discussed at a conciliation conference or a due process hearing. They may include disagreements concerning the identification, evaluation, educational placement, or provision of the free appropriate public education of learners with disabilities and/or the payment for such services.

How Can You Request Mediation?

A request for mediation can occur either before or after the parties have tried to resolve their differences on their own. All parties must agree to participate in order for a mediation conference to take place.

To arrange for a mediation meeting, ask your Director of Special Education to contact the Minnesota Special Education Mediation Service (MNSEMS) office directly. After receiving a written request from the parties, MNSEMS will contact everyone involved to explain the mediation process and to arrange the time and place for the mediation conference.

Questions?

For more information about special education mediation and Minnesota Special Education Mediation Service contact:

MNSEMS
Division of Alternative Dispute Resolution
340 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Telephone: 651-297-4635
Fax: 651-297-7200

MINNESOTA SPECIAL EDUCATION MEDIATION SERVICE

Request for Mediation

We, the undersigned, request that a mediator be assigned to assist in resolving disagreements on the following issue(s):

We understand that mediation is **voluntary**. Mediation is an alternative to a due process hearing and does not waive either party's right to such a hearing.

We understand that the mediation session is **confidential**. Therefore, the parties agree not to request that the mediator appear at any future proceedings.

We agree to approach the session in an attempt to resolve our differences in a mutually satisfactory way in the best interests of the student.

We understand there is no cost to either party for this service.

Please Print

School Dist. Name _____

Student's Name _____

School Admin's. Title/Signature _____

Parent/Guardian's Signature _____

School Admin's. Name _____

Name _____

Address _____

Address _____

City State Zip _____

City State Zip _____

Phone () _____

Phone: home _____ work _____

Date _____

Date _____

Request for Mediation

Instructions

1. Fill out the information that pertains to you and sign the form.
2. Send this form to the other party for them to complete and sign or submit it directly to MNSEMS. MNSEMS will then contact the other party to see if they are willing to participate in mediation in an attempt to resolve the dispute.
3. If parties fill out this form at the same time, it is the school district's responsibility to forward the form to MNSEMS.
4. Upon receipt of the signed form, MNSEMS staff will contact all parties to schedule the mediation session.
5. For additional information, call 651-297-4635.

MNSEMS, Division of Alternative Dispute Resolution, 340 Centennial Building, St. Paul, MN 55155.

GENERAL DIRECTIONS: Use these forms after consulting with Director of Education, Executive Director, or Director of Special Education.

NOTICE OF CONCILIATION CONFERENCE

The purpose of this form is to invite the parent(s) to a scheduled conciliation conference to discuss and resolve concerns regarding their child's special education and related services. Briefly describe the issues and concerns that will be discussed at the conference or attach an agenda and identify the individuals invited to the conference.

SUMMARY OF CONCILIATION CONFERENCE

Document the results of the final conciliation conference by clearly stating in writing the district's proposed action(s). The district may want to include the basis for the decision and a summary of the discussion that lead to the decision.

If the parent does not respond to the proposed action(s) within five (5) business days, the district may proceed to implement the proposal. However, if this relates to an initial action and the parent does not respond within seven (7) business days or objects to the district's proposal, the district must proceed to hearing to resolve the conflict (Update: IDEA 04 does not require the School District to develop an IEP or provide services, if there is no response from the parent or the parent refuses to provide consent).

Recommendation: If agreement is reached, state the areas of agreement. Attach supporting documents, if necessary.

PARENT REQUEST FOR DUE PROCESS HEARING

This form is made available to parents for the purpose of requesting a due process hearing. This form is to be completed, signed and returned by the parent(s), guardian(s), surrogate parent(s), legal counselor, or the learner if age 18 or older.

Any written request for a hearing is valid whether or not this form is used. If a parent requests a hearing regarding a disciplinary action in which the district has ordered the learner to an interim alternative educational setting, the request must be treated as a request for an expedited hearing.