

GOING TO MEDIATION WITHOUT A LAWYER? *HELPFUL HINTS*



*For more information and explanations,
please refer to the*

Users' Guide to Administrative Process



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NOTICE

NOTE: The following information was prepared by the Department of Education's Office of Legislation/Hearings to assist parents to mediation and is meant to supplement and not in any way replace, modify or advise participants about federal and state law or regulations. Furthermore, although the information has been carefully reviewed to ensure the accuracy of the information contained herein, the Department is unable to promise total accuracy of the information and recommends that all participants carefully review and familiarize themselves with relevant federal and state law and regulations prior to participating in a hearing. The Department of Education reserves the right to modify this information, amend or terminate any description of procedures described in this guide at any time.

I. ESSENTIALS

I. BEGINNING THE MEDIATION PROCESS

- 1. NH Department of Education, Office of Legislation and Hearings contact info:

101 Pleasant Street
Concord, NH 03301
(603)271-2299 Telephone
(603)271-1953 Fax

- 2. The Office of Legislation and Hearings does not give legal advice nor act as a representative or advocate for you at Mediation.

- 3. The office cannot appoint a lawyer or advocate to represent you or the student at Mediation.

I. ESSENTIALS

- 4. The office can only assist you with “technical assistance” regarding general information about the Mediation process.
- 5. The Mediator assigned to your case cannot act as a legal advisor or legal representative.
- 6. The Office of Legislation and Hearings has a very useful website:

[Appeals and Mediation | Department of Education \(nh.gov\)](#)

The website has links to

- Forms
- Statutes and regulations
- [Users' Guide to Administrative Process](#) that explains the various administrative processes offered by the Department of Education.

I. ESSENTIALS

- 7. You can negotiate directly with the other party at any time.
 - If the other party has a lawyer, you must negotiate with that lawyer or get the lawyer's permission to contact the other party directly.
- 8. You can withdraw your request for Mediation at any time during the process by sending a letter to the other party and the mediator.
- 9. If you are a parent, you should carefully consider whether it is a good idea for the student to attend Mediation. If Mediation is held in Concord, there is no child care available nor are there separate or secure waiting rooms. Mediation typically last a full business day.

II. FILING FOR MEDIATION

- A. FORMAT
 - If both parties agree to enter Mediation, the school district makes the request to the NH Department of Education, Office of Legislation and Hearings, on behalf of the parties. There is a form entitled Request for Mediation as well as Agreement to Mediate that the school district will fill out. In addition, the school district, prior to mediation, must fill out a form entitled Authorization to Commit Any Resources of the School District as a Result of Mediation.

II. FILING FOR MEDIATION

B. FILING FOR MEDIATION

- Prior to requesting Mediation, both parties to the dispute are requested to select 2 or 3 specific days which are mutually convenient and state what the issue(s) is/are to be discussed and each party's view of what they want;
- Parties will determine whether or not they will attend with a lawyer and/or advocate. If both parties agree, mediation can be held without attorney present;
- Mediations, unless specifically requested, are held in Concord at 21 S. Fruit Street, Walker Building.
- Although Mediations are generally held Monday-Friday (9 a.m. – 5 p.m.), with agreement of Mediator and parties this can be amended.

II. FILING FOR MEDIATION

C. AFTER THE OFFICE OF LEGISLATION AND HEARINGS RECEIVES YOUR REQUEST FOR MEDIATION:

- 1. The Office of Legislation and Hearings will send a “scheduling notice” generally within 5 days of receiving the request.
- 2. The scheduling notice has important information, including:
 - a. the name and address of the Mediator assigned to the matter;
 - b. the date of the Mediation;
 - c. the name and address of the parties to the matter

III. AGREEMENT PRIOR TO MEDIATION

- 1. Agreement: The school district and the parent can reach an agreement by talking directly and informally to each other at any time. If this occurs, you or the school district can contact the Mediator to cancel Mediation.

IV. THE MEDIATION SESSION

- 1. The Mediation Session: If you do not come to an agreement prior to Mediation, you are on the road to Mediation.
- 2. Mediation is a confidential non-adversarial means to discuss disagreements on a variety of matters including, but not limited to, special education, residency, manifest educational hardship, bullying, cyber-bullying, etc.
- 3. Please remember, the mediation session will be more effective to both parties if you are prepared to **listen carefully** to other perspectives and to follow directions given by the Mediator.

IV. THE MEDIATION SESSION

- 4. The role of the Mediator is to:
 - A. Facilitate communication
 - B. Define the issues
 - C. Remain neutral
 - D. Ensure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the Mediator
 - E. Keep information provided to the mediator in private discussion confidential and to not divulge any information to the opposing side unless specifically authorized.
- 5. The mediator does not:
 - A. Have the authority to render a decision or impose a settlement on the parties.
 - B. Sign mediated agreements.

IV. THE MEDIATION SESSION

- 6. Length of sessions varies, however, the matter can take anywhere from 5 minutes to several hours.
- 7. All participants should be prepared to take whatever time is necessary to discuss the matter, including, if agreed to by the parties, staying through lunch.
- 8. Mediation sessions are confidential.
- 9. At the beginning of the session the parties meet together with the Mediator and discuss the matter at issue. At the determination of the Mediator, the Mediator will meet separately with each party to talk about their perceptions and explore possible solutions.

IV. THE MEDIATION SESSION

- 10. If mediation results in an agreement, the Mediator can assist the parties in producing a written agreement, developed by them with the assistance of the Mediator, resolving the issue(s) satisfactorily to both sides.
 - **Important note:** The Mediator does not opine, nor does the Department, about the contents of the parties' Agreement. The Agreement is developed solely by the parties with Mediator, if requested, acting as transcriber.
- 11. Mediated agreements are not enforced by the Department. Agreements are legally binding and enforceable in a court of competent jurisdiction.

IV. THE MEDIATION SESSION

- 12. As Mediation may result in an agreement, each party comes to the session with authority to commit any resources (time, effort, funds, staff, equipment, services, etc.) under their jurisdiction to whatever they may agree to as a result of the session (i.e. parents have authority over their child; the school district representative brings written authority to commit the district's resources);
- 13. If the Mediation does not result in an agreement, parties are free to request an alternative dispute resolution (Informal Third Party Discussion Led by Moderator and for IDEA matters, Neutral Conference) or an administrative hearing (for IDEA matters, a special education impartial due process hearing).

V. WHAT TO EXPECT

- 1. During all contacts with the Mediator and with the other party, you will be expected to:
 - be respectful,
 - be honest,
 - be cooperative,
 - be prepared,
 - be on time.
- 2. It is important to:
 - remain calm,
 - remain focused on your goal.

VI. WORDS TO THE WISE

- a. Remember that the other party, the lawyer(s) and the Mediator are not your enemies. Their skills and experience can be very helpful to you if you maintain a professional attitude and ask for clarification or assistance when you need it.
- b. Keep in mind that everyone else at the Mediation is probably just as uncomfortable as you are.
- c. Listen carefully to the Mediator and the other party. Ask questions if you don't understand.

VII. FINAL THOUGHTS

- 1. The goal of the Mediation is to focus on facts, not opinions. Remember to always keep the facts of the case foremost in mind.

As you know, these disputes can be very emotional. You may be tempted to yell, to call others names, to accuse people of unprofessional conduct or other uncivil behavior.

PLEASE DON'T !!

If the Mediator senses the matter is getting out of hand, he/she has the authority to dismiss the Mediation if your words or behavior are out of line.

VII. FINAL THOUGHTS

Please always keep in mind:

The Mediator does not know you and comes to every Mediation with an open mind.

The Mediator knows you may be unrepresented and will assist you as best they can without prejudicing either party.

The Mediator acts as a facilitator during the proceeding and do not have an opinion about you or your case.

It is the duty of the Mediator to maintain order at all times. This means they can cut testimony off if they think it is irrelevant.

DEFINITIONS

VI. DEFINITIONS

You may see these terms in the Department of Education Hearing rules or in other documents about special education procedures. You may also hear them during mediation, negotiations or at hearing. The Hearing Rules can be found on the Department website:

<http://www.education.nh.gov/legislation/hearings.htm> ,

or you can ask the Office of Legislation and Hearings to send you a print copy of the Hearing Rules.

DEFINITIONS

- Admissible: Made part of the official record of the Hearing that the Hearing Officer will consider when making a Decision. The Hearing Officer can only pay attention to evidence that is “admitted” into the record.
- Burden of Proof: The moving party in a dispute has the burden of proof, which means it is that party’s responsibility to prove that what it said in the hearing request is true. If you request the hearing and you do not meet your burden of proof, you will not “win” your case.
- Caucus: A caucus is often a part of mediation. A caucus happens when the mediator speaks to one of the parties separately and apart from the other. The mediator may then return and caucus with the other party.
- Closing Statement: Your final argument in support of your hearing request.

DEFINITIONS

- Discovery: The process in which parties request and exchange information with one another after the Hearing Request has been filed and before the hearing begins. Interrogatories, requests for documents, and depositions are all different tools for discovery.
- Dismiss: The Hearing Officer closes the Hearing file. The Department will not take any more action on the hearing request.
- Dismiss with Prejudice: The case is closed and a Hearing Officer cannot consider the issues set out in the hearing request ever again.
- Dismiss without Prejudice: The case is closed but the Hearing Officer may consider the issues set out in the hearing request if an entirely new hearing request is filed.

DEFINITIONS

- Evidence: The documents and testimony that the Hearing Officer will consider when making the Decision.
- Examination: Formal questioning. Direct examination occurs when you ask questions of the witnesses you brought to the hearing. Cross examination occurs when you question the witnesses brought by the other party.
- Exclude: To keep a document or part of a witness's testimony out of the hearing record.
- Exhibits: Documents that are accepted into the official record of the hearing.

DEFINITIONS

- Ex Parte Communication: Communication between the Hearing Officer and one of the parties when the other party is not present. Ex parte communication is not allowed. The other party must always be present, either physically or on the line in a conference call, when you speak with your Hearing Officer. Similarly, the Hearing Officer cannot receive written ex parte communication. All correspondence and documents that you send to the Hearing Officer must be copied to any other party at the same time that you send them to the Hearing Officer.
- Expedited Hearing: A Hearing that is scheduled and resolved more quickly due to pressing circumstances outlined in the Hearing Rules.
- FAPE: Free Appropriate Public Education: All children with disabilities are entitled to FAPE according to state and federal law.

DEFINITIONS

- Five Day Rule: A list of all potential witnesses as well as all documents that you want the Hearing Officer to consider must be presented to the other party and to the Hearing Officer at least five business days before the hearing date. If you miss this deadline, the documents may not become a part of the hearing record.
- IDEA: Individuals with Disabilities Education Act: The most important federal law concerning special education.
- Inadmissible: Documents or testimony that does not meet the standards for inclusion into the hearing record.
- Joinder: Adding another agency or school that may be responsible for providing some services to the student as a party to the appeal.
- LEA: The local educational agency or school district.

DEFINITIONS

- Least Restrictive Environment (LRE): The principle that students with disabilities must be educated with regular education students as much as is appropriate and possible.
- Moving / Non-Moving Party: The *moving* party is the one who asks the Hearing Officer to take action (also known as the Petitioner). The *non-moving* party is the person or agency that responds (also known as the Respondent). These terms apply to both the original Request for Hearing and to any Motion made during the hearing process.
- Oath: The speaker swears to tell the truth. There are very serious consequences for the appeal and for the person if she or he is not honest after agreeing to tell the truth.

DEFINITIONS

- Objections: A statement made when you want the Hearing Officer to ignore a document or part of a witness's testimony. There must be a good legal reason for an objection.
- Official Record / Hearing Record: The documents and the tape-recorded testimony that the Hearing Officer will consider when making the Decision.
- Opening Statement: Your formal introduction of the issues and facts to the Hearing Officer.
- Party: A necessary participant in the Hearing. Generally the parties are the parents and the school district. Only parties must obey Hearing Officer orders.

DEFINITIONS

- Pro Se: Means “for oneself.” A *pro se* party is one who represents him/herself at Hearing, as opposed to being represented by an attorney or advocate.
- Pull Out: When the student is temporarily removed from the mainstream classroom for special education instruction or services.
- Recess: A break or pause in the hearing.
- Record: The documents and tape-recorded testimony that the Hearing Officer will consider when making the Decision.
- Show Cause: Means “tell me why.” An Order to Show Cause asks the parties to state in writing why the case should stay active. If the parties do not respond, or do not provide convincing reasons for the Hearing Officer to keep the case open, a Hearing Request may be dismissed.

DEFINITIONS

- Statute of Limitations: The law setting out the “expiration date” for special education claims. Generally, you must request a hearing within two years of the date of the school district’s action that you disagree with.
- Stay Put: A special education term which refers to the program or placement the student was attending at the time the Parents rejected the IEP or the Hearing Request was filed.
- Sua Sponte: Means “on one’s own.” A legal term used when a Hearing Officer decides to take formal action without the request of either party.

DEFINITIONS

- Subpoena: An order commanding a person to appear at a certain date and time, in a certain location, in order to give testimony in a legal proceeding.
- Subpoena Duces Tecum: An order requiring that specified documents be turned over to a party for use in a legal proceeding.
- Testimony: The words of the witness who has taken an oath to tell the truth.
- Venue: Location.
- Witness: The person who is responding to questions under oath at the hearing.