

To Mediate or Not to Mediate: That is the Question

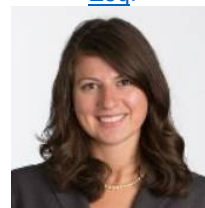
RHODE ISLAND EDUCATION LAW

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WHAT IS MEDIATION?

Mediation is the **most common dispute resolution for special education**.

It is a flexible, voluntary process that allows parties to resolve disputes without a formal due process hearing. This option is available to both parents and school departments as a way to resolve disagreements about a child's special education eligibility, special education services, or programs. Mediation service is **offered for free** by the Rhode Island Department of Education. RI Reg. § 300.506.

WHO ARE THE PARTIES INVOLVED IN MEDIATION?

Each party may invite any persons, including an attorney, they deem necessary for discussion of the issues presented for mediation. This may include available members of the IEP Team, parent(s), guardian(s), school department officials and personnel, and the student, if appropriate. The Rhode Island Department of Education will appoint a neutral, qualified mediator who will facilitate resolution of issues. The mediator does not take sides and does not make decisions on behalf of the parties.

WHEN SHOULD I REQUEST A MEDIATION SESSION?

Mediation **should be** used when the issue cannot be resolved in any less formal way. Conversely, mediation **should not be** requested if the IEP team has not had the opportunity to address the core issue in a meeting. Parents/guardians or the school department may request mediation services by telephoning the Office of Community and Academic Supports at 401-222-8999. The Rhode Island Department of Education will assign a mediator to schedule a session within **fifteen days** of the request. Mediation can be requested regardless of whether a due process complaint has or has not been filed or is pending.

WHAT HAPPENS IN A MEDIATION SESSION?

All pertinent documents and records may be shared at the mediation session. During the session, the mediator will encourage the parties to explain their respective positions and viewpoints, think through new solutions, and/or compromise. The mediator will make a written

record of each session. If a resolution is agreed upon, a written agreement will be drafted and signed by both parties. Such agreements are legally binding and enforceable in court through civil action. Discussions that occur within a mediation session are confidential. Statements, including compromises or offers, made by either party that were not finalized in the written agreement are generally not enforceable.

GENERAL TIPS TO REMEMBER

1. **Practice Makes Perfect.** Spend time before the mediation session articulating goals and desired results. Parents/guardians should be open to multiple possibilities for achieving their goals.
2. **Remain Open-Minded.** Parties should be open to fresh thinking, willing to entertain new ideas, prepared to see others' points of view, and willing to accept some level of compromise.
3. **Preparation of Evidence.** Although mediation sessions do not require evidence, parents/guardians should be able to identify and provide documents or records that support their position, including medical records.

For additional information, please contact:

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Further updates on Rhode Island Education Law can be found on our website at <http://www.adlercohen.com/education-law>

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