

Mediation in Special Education Matters: What Does Voluntary Mean?

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What is Mediation?

Under the Individuals with Disabilities Education Act (IDEA), parents of children with disabilities are provided an opportunity to resolve a dispute with a local school system through mediation. Mediation is a negotiation in which the parents and the school system come together in an effort to reach an agreement regarding a dispute about the child's educational program or placement.

Why Mediation?

Mediation has several advantages. It allows the use of a qualified and impartial mediator with specialized knowledge in the area of the dispute, and the parties are able to control the timing and pace of the procedure. Mediation may offer creative remedies and result in better outcomes. It is often a better option for low-income families raising children with disabilities who cannot afford the expenses associated with a due process hearing, which may include an attorney, an expert witness, lost wages, child care costs, and transportation costs to and from the hearing location.

What is the Problem?

Some school system attorneys have a practice of agreeing to mediate when a parent or attorney files for mediation, and then withdrawing their consent to mediate at the last moment, citing the IDEA requirement that mediation must be voluntary on the part of the parties. Without a statutory obligation to mediate once both parties have consented to mediate, aggrieved parents of children with disabilities are left with little recourse, especially when a due process hearing is cost prohibitive.

Recommendation:

Congress should amend the voluntariness requirement in the IDEA so that only the party who requested mediation can withdraw the request prior to the mediation.

Due Process Hearing

- Fosters adversarial approach
- Not voluntary, all parties do not have to agree to participate

Mediation

- Fosters mutual agreement
- Voluntary, all parties have to agree to participate

Case Example:

Project HEAL (Health, Education, Advocacy, and Law) represented an eleventh grade student who qualified for special education and related services under the IDEA, based on her severe intellectual disability, epilepsy, and anxiety disorder. The school system had failed to provide her Individualized Education Program (IEP) in her family's native language of Spanish, to develop an appropriate transition plan, and to complete an assistive technology evaluation so the student could access her educational program and engage with her peers. After several IEP meetings in which the IEP was revised at the request of her parents and their attorney, the school system continued to engage in substantive and procedural violations of the IDEA. The Project HEAL attorney filed a request for mediation on behalf of the parents. Together, the parents and school system scheduled a mutually agreeable date and time for the mediation. The student's father, an hourly wage earner, took off from work with no pay on the date of the mediation. Less than two days prior to the scheduled day of the mediation, the school system's attorney notified the Project HEAL attorney that the school system declined to mediate the case. The school system attorney stated that mediation is voluntary, and therefore, the school system was not obligated to attend mediation. The Project HEAL attorney had spent numerous hours preparing the case for mediation, as well as preparing the parents (non-native English speakers) for the mediation process, and securing an interpreter for the mediation. The parents spent time preparing and lost wages to participate in the mediation, only to be let down. Their only recourse was to pursue an expensive and time-consuming due process hearing, which they ultimately decided against due to the prohibitive cost.

Mediation Statistics: 2011-12 U.S. and Outlying Areas

Written State Complaints	U.S. and Outlying Areas		50 States	
	Number Reported	Events Per 10K*	Events Per 10K*	Number Reported
Written State Complaints Filed	5,025	7.7	7.7	4,893
Reports Issued Total	3,223	4.9	3	113
Reports with Findings	2,332	3.6	3.5	2,261
Reports within 60-Day Timeline	3,017	4.6	4.6	2,917
Reports within Extended Timelines	168	0.3	0.2	159
Total Reports within Timelines	3,185	4.9	4.8	3,076
Written State Complaints Pending	130	0.2	0.2	130
Complaints Pending a Due Process Complaint	53	0.1	0.1	53
Complaints Withdrawn or Dismissed	1,683	2.6	2.6	1,661

Mediations	U.S. and Outlying Areas		50 States	
	Number Reported	Events Per 10K*	Events Per 10K*	Number Reported
Mediation Requests Total	9,219	14.1	13.4	8,533
Mediations Held	6,055	9.3	8.7	5,576
Due Process-Related Mediations	3,223	4.9	4.4	2,803
Due Process-Related Mediation Agreements	1,978	3.0	2.6	1,670
Mediations Not Related to Due Process	2,832	4.3	4.3	2,773
Mediation Agreements Not Related to Due Process	2,171	3.3	3.3	2,117
Total Mediation Agreements	4,149	6.3	5.9	3,787
Mediations Pending	884	1.4	1.4	2,079
Mediations Withdrawn or Not Held	2,280	3.5	3.3	878

Due Process Complaints	U.S. and Outlying Areas		50 States	
	Number Reported	Events Per 10K*	Events Per 10K*	Number Reported
Due Process Complaints Filed	17,118	7.7	26.2	14,319
Resolution Meetings Held	9,244	14.1	12.0	7,680
Resolution Meeting Agreements	1,992	3.0	2.1	1,340
Fully Adjudicated Hearings	2,262	1.7	1.7	1,106
Hearings Held within 45-Day Timeline	1,991	1.6	0.4	231
Decisions within 45-Day Timeline	1,043	1.4	1.2	764
Decisions within Extended Timelines	948	3.0	1.6	995
DP Complaints Pending	2,079	3.2	3.1	1,998
DP Complaints Withdrawn, Dismissed, or Resolved Without a Hearing	12,777	19.5	17.6	11,215

Expedited Due Process Hearing Requests (EHR)**	U.S. and Outlying Areas		50 States	
	Number Reported	Events Per 10K*	Events Per 10K*	Number Reported
EHR DP Complaints Filed	370	0.6	0.5	304
EHR Resolution Meetings Held	176	0.3	0.2	132
EHR Resolution Meeting Agreements	81	0.1	0.1	64
EHR Fully Adjudicated Hearings	43	0.1	0.0	27
EHR Change of Placement Ordered	11	0.0	0.0	10
EHR DP Complaints Pending	19	0.0	0.0	19
EHR DP Complaints Withdrawn, Dismissed, or Resolved Without a Hearing	308	0.5	0.4	258

Notes:

* "Per 10K" values are computed by dividing the number of events by child count (3-21 years) times 10,000; these "per capita" rates allow comparisons of activity across states.

** Except for EHR Change of Placement Ordered, all EHR data points are included in the numbers reported for Due Process Complaints.

For questions regarding this report, contact Richard Zeller or Amy Whitehorne at cadre@directionservice.org.



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